



GSM ASSOCIATION RESPONSE TO BEREC QUESTIONS TO STAKEHOLDERS
BEREC REPORT ON OLIGOPOLY ANALYSIS AND REGULATION
JANUARY 2015

About the GSMA

The GSMA represents the interests of mobile operators worldwide, uniting nearly 800 operators with more than 250 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and Internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces industry-leading events such as Mobile World Congress, Mobile World Congress Shanghai and the Mobile 360 Series conferences.

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Introduction and Summary

The GSMA is pleased to provide input to BEREC as it prepares to consider the implications of oligopolistic structures on the functioning of Electronic Communications markets in Europe. As the GSMA represents specifically the mobile industry, the following comments refer to, and are limited to, issues concerning mobile networks.

While we welcome the opportunity to address these issues in a public forum, we are concerned by some of the premises and underlying assumptions in this questionnaire, which seem to imply a need to lower thresholds for a regulatory intervention.

1. The scope of the report is too narrow.

As further detailed below, electronic communications markets overall are characterised by increased competition, as convergence adds to existing competitive pressures. It is the view of the GSMA that the forthcoming review of the electronic communications regulatory framework should focus on modernising and wherever possible reducing regulation in the sector taking full account of new sources of disruptive competition that are emerging from non-traditional sources. And it should focus on the broader citizen interest by supporting investment in connectivity rather than managing prices. Limiting the report to the treatment of 'oligopolies' is insufficient and at risk of missing the bigger picture.

2. Oligopolistic market structure does not per se lead to inefficient outcomes

BEREC's choice of terminology is debatable. In economics, the notion of 'oligopoly' comprises different market structures, not all of which are applicable here. A number of communications markets are characterised by high infrastructure investment needs and a concentrated market structure, but do not bear other characteristics associated with oligopolistic competition, such as greater coordination. In the following submission GSMA does not use the term 'oligopoly' but speaks of concentrated markets or – where the legal concept of oligopolistic market power is concerned - of joint SMP or joint dominance.

3. Telecoms markets do not require more regulation, they require better regulation.

Existing data and future trends show that there is no clear rationale for ex-ante regulation. Only entrenched structural competition problems that are not expected to be resolved absent regulation can justify regulation on an upstream market.

For highly concentrated markets, competition law foresees the established legal test of joint dominance, which has been included in the present framework in the form of joint SMP. There is no need to devise a different threshold. Indeed, any different threshold would have to be stricter than the joint dominance criteria, as ex-ante regulation places higher regulatory burdens on undertakings than scrutiny under ex-post competition law (notably by not requiring a proof of anti-competitive behaviour before regulation applies).

As will be shown below, the existence of market concentration in mobile wholesale markets has not resulted, and is highly unlikely to result, in a restriction of competition in retail markets, or consumer detriment overall. Market outcomes should be measured not against the model of perfect competition, but in terms of price, innovation and quality of service. All these indicators show that overall, the market is evolving in the right direction and additional ex-ante regulation is unnecessary.

Situations of oligopolistic competition in the electronic communications sector

1. In the electronic communications sector, do you consider that there are markets that were characterised by oligopolistic structures from the outset? In your view, which factors (scarcity of spectrum, high level of required investments, etc.) explain the existence of these market structures? Are wholesale markets more prone to oligopolies than retail markets?

Electronic communications markets, particularly at the retail level, have changed drastically since the liberalisation of telecoms markets in Europe. Today's communication services are characterised by a rapidly increasing scope and convergence. Consumers are faced with a wide array of technologies and providers, many from adjacent industries, who offer functionally equivalent or similar solutions to consumer demand.

While national licensing regimes and high investment requirements preserve the characteristics of more concentrated structures at the wholesale level, competition at the retail level is subject to competitive pressure from all sides: MVNOs, Internet-based service providers and global content players all compete with telecoms operators in providing end-to-end communications services.

New retail markets are not oligopolistic with voice calls and SMS being classic examples of markets that were previously limited to the number of licenced operators in a market and that is now open to rapid entry and exit (see the recent Commission decision in Facebook/WhatsApp). Similar trends are observed across the service spectrum with innovation being driven from all quarters.

Thus, the arrival of MVNOs and Internet based participation in the retail market for mobile communication services has evolved to reflect high levels of competition with market participants serving a broad range of customer segments with tailored offerings.



Mobile wholesale markets have higher levels of industry concentration compared to retail markets. This is due to a combination of factors including scarcity of spectrum and the high levels of investment required to build out network infrastructure. Clearly, ex post competition law is well established to deal with any individual or collective abuses of a dominant position in any wholesale markets and the GSMA is not aware of any current allegation or case concerning such an “abuse”. This is expected to continue as the ability to “leverage” any concentration has significantly diminished.

Further, the existence of an oligopoly – characterized by few players in a given market – does not necessarily result in a market structure where companies are in a position of joint dominance. “Oligopolies” are often mentioned by regulators in relation to the market power these companies wield rather than to the given number of actors. In most oligopolies, companies maintain their independence and do not directly partner with each other. However, as a result of the characteristics of the limited marketplace, it is assumed that there is a risk these companies indirectly synchronize the pricing and policy decisions they make, an action often labelled “tacit coordination” or “conscious parallelism.”

For a number of reasons outlined below, this assumption does not hold true in mobile telecommunications markets. The telecommunications industry is, at wholesale level, concentrated by nature: because of certain economic characteristics the market can sustain only a small number of infrastructure players. Empirical evidence shows that this concentrated market structure does not per se lead to inefficient outcomes.

With very few exceptions, even wholesale markets with fewer than four operators prove to be highly competitive and have not halted a rapid price fall in the vast majority of downstream and retail markets.

In the few cases where collusion between operators was found and cases of abuse of joint dominance have been proved, ex-post competition law remedies have been effective and sufficient in dealing with such market failure. No ex-ante regulation is necessary or indeed appropriate to prevent such cases.

Issues of potential market failure have also been addressed in several merger review cases. Notably the Commission’s decision in the Irish and German merger cases have shown that even in a forward-looking analysis, unilateral effects are unlikely have any real impact on the competitive structure in the markets concerned. The GSMA believes that the regulatory measures imposed by the Commissions in these cases to allow a reduction from 4 to 3 players were excessive in relation to the effective impact they have had.¹ Any general pre-emptive regulation, in the absence of a specific merger case, would be even more disproportionate.

¹ <http://www.gsma.com/publicpolicy/european-mobile-network-operator-mergers-a-regulatory-assessment>

2. Do you consider that there has been an increase in oligopolistic market structures (including duopolies) in any of the electronic communications services markets or more generally in the sector?

- i) If so, please state in which electronic communications services markets you observe this evolution, making reference to specific retail and wholesale electronic communications services markets. Please state whether you observe this evolution at a subnational, national or European level.
- ii) What do you consider to be the main drivers of this increase (if any) in oligopolistic situations (mergers, fixed-mobile convergence, bundled offers, roll-out of next generation or other networks, operators' strategies, etc.)? Do you expect this trend to continue?

As stated above, the GSMA considers that the majority of retail markets are competitive, and continue to become more competitive as new players enter the market and new services are launched.

In virtually all Member States even core communications services retail markets have, over time, become less concentrated due to the increasing number of both vertically integrated MNOs but more importantly MVNOs, many of which have achieved high levels of market share.

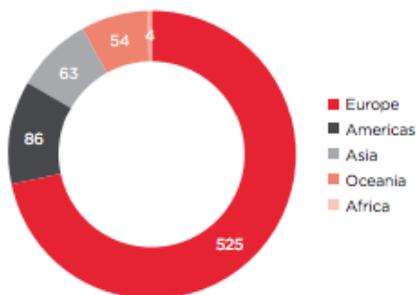


Figure 2: Global MVNO split by region, 2012
Source: GSMA Intelligence

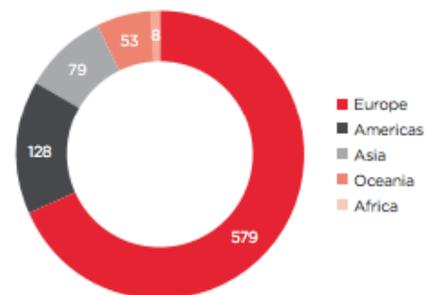


Figure 3: Global MVNO split by region, 2014
Source: GSMA Intelligence

#	Country	Operator	Region	Category	Connections
1	United Kingdom	Virgin Mobile (Liberty Global)	Europe	Media/Entertainment	2,990,200
2	Italy	PosteMobile (Poste Italiane)	Europe	Retail	2,838,000
3	International	Numerex	International	M2M	2,209,000
4	Spain	Jazztel	Europe	Telecom	1,165,504
5	Spain	ONO	Europe	Telecom	1,084,553
6	France	La Poste	Europe	Retail	943,000
7	Italy	Fastweb (Swisscom)	Europe	Telecom	815,840
8	Belgium	Telenet Mobile	Europe	Telecom	750,500
9	Netherlands	Tele2	Europe	Telecom	694,000
10	Italy	COOPVoce	Europe	Retail	485,000
11	Colombia	UNE (EPM)	Americas	Telecom	442,801
12	Colombia	Virgin Mobile	Americas	Media/Entertainment	440,667
13	Colombia	Uff Movil	Americas	Discount	402,350
14	Germany	Turkcell	Europe	Migrant	400,000
15	Japan	Willcom	Asia	Telecom	383,900
16	Australia	TPG Telecom	Oceania	Telecom	370,000
17	Poland	Cyfrowy Polsat	Europe	Media/Entertainment	366,251
18	Italy	ERG Mobile (ERG Petroli)	Europe	Retail	355,410
19	United Kingdom	TalkTalk	Europe	Telecom	260,000
20	Italy	Daily Telecom	Europe	Migrant	249,000

Table 4: Top 20 MVNOs by connections, Q4 2013 (limited to MVNOs that report connections)

Source: GSMA Intelligence

Wholesale mobile markets have, over time, generally also become less concentrated due to the licensing of new network operators. Only recently has this trend been reversed in some Member States due to M&A activity. This more recent trend in network consolidation is the direct result of the transition to data-centric communications networks and services. In most markets this transition has meant that mobile network operators have to achieve a larger scale in order to compete effectively in these changing markets. Key drivers of the efficient scale required include technology developments, strong consumer demand for data and increasingly faster speeds; and direct competition from highly concentrated players in adjacent markets including OTT players. More importantly, deployment of high speed broadband networks, providing consumers with the best possible quality of service, depends on high levels of investment which smaller players often cannot achieve.

Where mobile network consolidation occurred, it has not adversely impacted competition at the retail level. Contrary to some Commission analysis, GSMA data has shown that this is not because of the remedies required to gain approval from competition authorities, but mainly because MNOs and MVNOs profit from more efficient networks. Many transactions have enabled smaller operators to make the

necessary investments to compete more effectively and provide end consumers with wider (real) choice and improved service provision.

None of the EU markets currently has a duopoly in wholesale network access. Once a central licensing system and single EU market has been achieved, even after consolidation there will be many more competitors than in comparable single markets (such as the US). To reach this goal, the intermediate step of domestic consolidation has to be encouraged so as to allow the creation of stronger players which could then compete at the European and the global level.

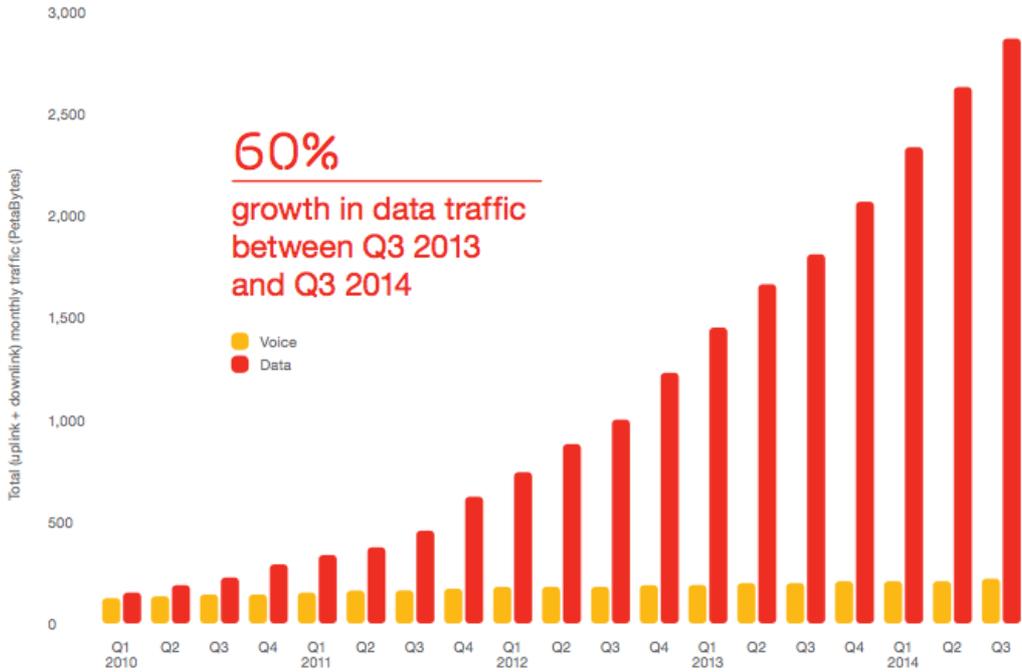
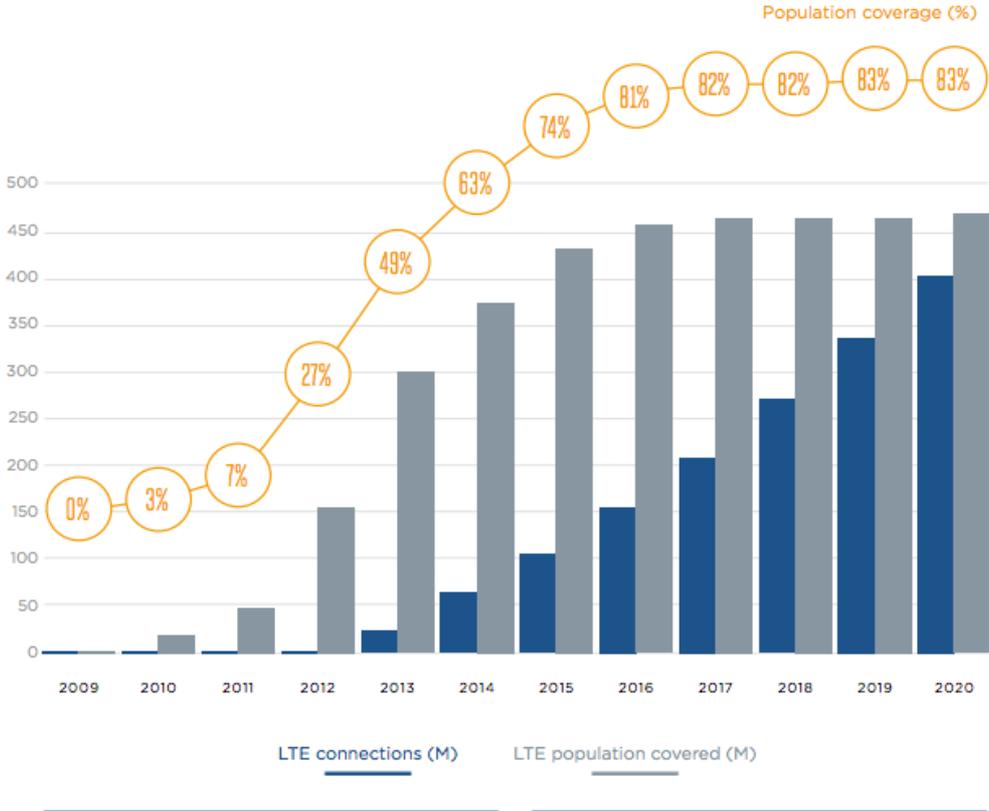
Other mobile services markets, such as the market for mobile operating systems, have for some time been characterised by a much more concentrated market structure (i.e. a quasi-duopoly), with repercussions in downstream (mobile apps) and neighbouring (handsets) markets.

The GSMA believes BEREC's analysis should make a careful distinction between industry-specific drivers of market concentration (fast technological progress, high rate of innovation and patent licensing) and market drivers of market concentration (mergers, exit). The question text refers to both examples of mechanisms (e.g. mergers) as well as drivers (e.g. technology evolution).

The GSMA believes there is an endogenous tendency towards concentrated market structures in the wholesale market for mobile electronic communications services. This is driven by a number of factors, not least the need to generate sufficient returns on the high levels of long-term investment required. Investment in new technology is the most important determinant of consumer outcomes in mobile markets. Frequent technology cycles significantly increase capacity, and reducing unit prices through higher volumes. New network technology cycles also unlock new cycles of innovation in services and devices along the supply chain, which then drive further growth in user demand for new services.

The economic equation for investments in fixed and mobile network infrastructure in Europe is becoming increasingly challenging. This, in part, reflects the growing appetite from end users for very high-speed connections and also the rapid increase in consumption of data traffic.

4G adoption in Europe



¹ Traffic does not include DVB-H or Wi-Fi. Voice does not include VoIP. M2M traffic is not included.

These trends are driving significant incremental investments by operators to push fibre deeper into their networks, create greater capillarity and network density (serving fewer customers from any given access node), acquire more spectrum and invest in new access technologies (e.g. LTE).

In addition, we are witnessing increasing, disruptive competition from over-the-top (OTT) players in the retail markets for messaging and voice services. As a result, in addition to an increase in the required level of investment, the industry is experiencing a reduction in the size of the revenue pool.

These economic realities are the principle driver of higher levels of industry concentration as network-based operators seek to invest and remain competitive in the convergent market through mergers (mobile to mobile and, increasingly, mobile to fixed) and/or organic expansion into adjacent service markets (e.g. quad play offerings).

Concentrated market structures are much evident in adjacent markets such as social networking, instant messaging and online search. All of these markets are dominated by a small number of global players who are able to leverage of regulatory and fiscal asymmetries to gain shares of EU markets. Also, MNOs are subject to laws and regulations which are not applied to these new global players, thus giving them a significant competitive advantage.

Possible effects of oligopolistic competition

3. What are the main threats to competition and to the interests of end-users, which might result from the oligopolistic market structures referred to above?

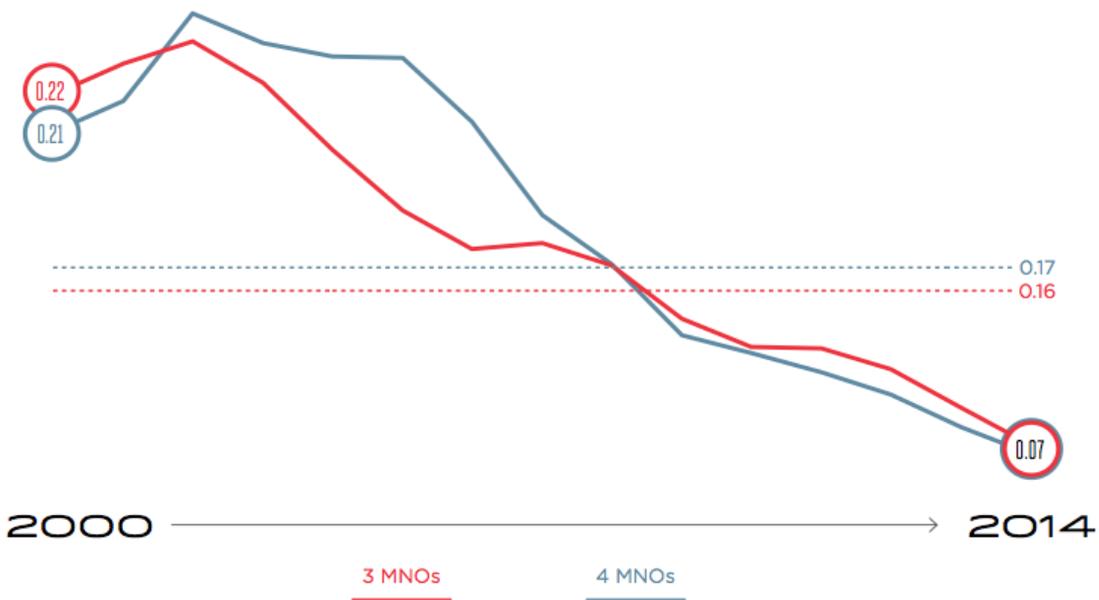
As stated above, mobile operators compete vigorously both at wholesale and at retail level. Data collected by Frontier Economics² suggest that there is no actual risk of price increases linked to concentrated markets, even in cases of 4-3 consolidation at wholesale level.

The European mobile communications industry has seen significant reductions in absolute and per unit pricing alongside improvements in coverage, reliability and capability. These consumer benefits have been delivered despite relatively high levels of concentration, typically with only three, four or five infrastructure-based network operators. Some of the lowest priced markets for mobile services in Europe (e.g. Finland) only have three network operators.

² <http://www.gsma.com/publicpolicy/european-mobile-network-operator-mergers-a-regulatory-assessment>

Prices in three and four player EU markets

Euros per minute



Source: GSMA intelligence

Notes: (1) we consider only those MNOs that have a market share of above 5%, and we do not include MVNOs (2) analysis does not include Cyprus, Estonia, Luxembourg or Slovakia due to lack of data availability (3) these prices are nominal (putting the data in real terms would not change the conclusions)

Going forward, we expect the potential need for larger scale and concentration in some markets to be heavily counterbalanced by very strong constraints and competitive drivers arising from the transition to a data-centric model which, as discussed above, includes direct competition from highly concentrated content and service provider structures, as well as a continued consumer demand for more capacity and data.

4. Do you consider that there are any benefits or opportunities (for instance related to the roll-out of NGA networks in the context of broadband access) that could arise from oligopolistic situations? Please explain your reasoning.

The GSMA believes that scale is a critical success factor in network-based industries such as electronic communications. A certain degree of consolidation is necessary in some markets to provide operators with the resources and incentives to invest in network upgrades and new services.

This benefits end users in a number of ways including: better network coverage, improved reliability, faster download speeds, higher throughput capacity, better customer service and an improved choice (and pricing) of devices.

5. In your view, are there any electronic communications services where oligopolistic markets are more susceptible than others to uncompetitive outcomes? Please explain your view.

As stated above, the GSMA has not seen any evidence that higher degrees of concentration in some (wholesale) mobile markets lead to uncompetitive outcomes. Restrictions of competition typically arise where oligopolies are linked to joint dominance, and this is not the case in any of the markets in questions.

Regulating oligopolies

6. In your view, are there any areas of concern in relation to oligopolistic outcomes which are not adequately addressed by the current regulatory framework (i.e. both the European Union relevant texts and NRAs' policies)? In particular, what is your appreciation of the concept of collective dominance? What do you consider to be the most effective regulation of anti-competitive oligopolistic situations?

The GSMA believes that the European Union text (e.g. the Framework Directive) makes explicit and sufficient provision for the identification of situations of Significant Market Power and Joint Dominance.

Regulation should only be introduced where there is evidence of market failure or abuse and, even then, when no other remedies exist. It is contended that there is little or no evidence of market failure and competition law has all the tools necessary to address any concerns should they arise. It is contended that the burden upon the regulators to show any lack in the ability of competition law to address the very issues being discussed has not been addressed.

Remedies in the context of oligopolies

7. In your view, what are the main ex ante remedies (which are currently present or could be introduced in the European ex ante regulatory framework) that could be applied to electronic communications services markets exhibiting oligopolistic market structures? (similar or differentiated remedies, symmetric regulation, etc.)?

The GSMA believes that there should not be a presumption that oligopolistic market structures require ex-ante regulatory remedies. Ex ante remedies should only be considered following careful analysis with clear evidence of durable anti-competitive behaviour.

The GSMA believes that European mobile markets in general provide end users with a good balance of low prices (especially compared to the US market) and quality (LTE roll-out is increasingly rapidly following the release of digital dividend spectrum).

Electronic communications markets are characterized by high levels of innovation and fast rates of technological change which, as has been observed over the last two decades, reflects very positively on consumers as new and better services are developed in the sector and rapidly diffused in the economy, for the benefit of consumers. Ex-ante regulation can have a large impact on investment decisions and can change market conditions in a way that impacts negatively on innovation and investment decisions. This is particularly the case if the incumbents' incentives and decisions as to whether or how to invest or innovate are reduced or the risks increased.

Other issues

8. Please, provide any other insight or opinion regarding oligopoly analysis and regulation.

We are most concerned by the premise and presuppositions in this document. Telecoms markets do not need more regulation. Much rather, the GSMA believes there is a need to review existing regulation with a view to simplifying and lighten rules where justified, and to take into account the new sources of disruptive competition that are emerging from non-traditional sources. The GSMA believes that consumer benefit should not be exclusively framed by a debate about lowest price. In the context of the mobile industry consumer benefit (and the competitive positioning of the EU as a region) is best served by balancing price with investments to deliver best-in-class networks in terms of (amongst other attributes) coverage, capacity, reliability and speed.

A broad and bold reform of the European regulatory framework is required, which deals decisively with issues such as the new Internet bottlenecks and the years of accumulated legacy regulation in Europe.