

# European Market or European Union Market Regulation?

Dr. Remigijus Šimašius,  
Lithuanian Free Market Institute  
Sofia, November 25, 2006



# An Outline of the Presentation

- EU and its competition ideology
- Example of telecommunication competition regulation
- EU competition regulation impact on competition
- Harmonisation and liberalisation.

# Conflicting Visions of EU

- European Union is a common economic area.

This vision leads to liberalisation, open markets inside EU (and also outside).

- European Union is a political union.

This vision leads to regulation, centralised harmonisation (unification), geopolitical competition.

# Competition: Free, Perfect, Effective?

- Free competition is the possibility to enter a market freely. It works in the real world showing what plans are wrong
- Perfect competition is an imaginary construction only. It is based on equilibrium model and does not exist in the real world.
- Natural monopolies “ought to emerge” when marginal costs are lower than marginal benefits (isn't it always so?..) In fact natural monopolies is a non existing phenomenon. So called natural monopolies are either an outcome of competition or an outcome of legislation.
- Effective competition is actual competition (potential competition is not recognised), and allows to choose “practically”. Effective competition is free competition regulated to become perfect (or at least improved) competition.

# “Traditional” Competition regulation

- Prohibition to abuse dominant position.
- Prohibition of cartels.
- Regulation of mergers.

# Competition Regulation: ex ante, and ex post

- Traditional competition legislation only describes basic principles and decides ex post on case by case basis.
- New trends treat this approach as slow, insufficient and not suitable for rapidly changing markets which is believed have a tendency to develop into natural monopolies.
- Therefore ex ante regulation is being admired by regulators.
- Isn't this approach a market modeling instead of being market protection?
- Isn't it natural to end with market modeling if you start with traditional competition law?

# The Frontier: The Telecommunication Industry

- What are the main specific features of the telecommunication market?
- What are the features of the regulation of the telecommunication market?
- What are the outcomes of these regulations?

# Competition in the Telecommunication Sector Today

- The sector is dynamic
- The sector symbolizes the failure of natural monopolies doctrine
- The survey shows that consumers treat competition in telecommunications as especially tough
- The specifics of the market leads to the formation big players which are by definition dominant (have “significant market power”).

# Regulation in the Telecommunication Sector

- Regulation is sector specific
- Regulation is aimed to introduce effective competition
- Regulators inescapably find most players having “significant market power”
- Regulation is more “flexible” in order to catch up with the rapidly developing market
- The same regulators who ensured monopoly rights now regulate to implement effective competition.

# Outcomes of the Regulation in the Telecommunication Sector

## Visible:

- Many providers
- Lower prices (of broadband, roaming, etc.) in the short run
- Consumer rights (to leave the provider, but to take the number).

## Invisible:

- Disincentives to invest
- Regulatory jungle (companies punished for not bargaining with customers while prices are regulated)
- Technological non-neutrality
- Natural orientation to the signals of regulator, not consumers.
- Slow adaptation to new conditions.

# Competition is affected by Government:

- Regulation
- Taxation
- Public ownership and discrimination of private ownership
- Public procurement
- Intergovernmental harmonisation (“Companies, not governments have to compete”).

# Governments, EU vs. Private Companies:

## *Quod licet Iovi, non licet bovi?*

- EU allows every distortion of competition (standards, zoning by regulation, standards)
- Only some (!) state support is prohibited
- EU does not allow private agreements on the same issues
- EU funding directly distort competition
- States as such are monopolies
- EU as such is a cartel of States.

# Lithuanian Example

- The only state in EU which prohibits anticompetitive actions of governments:  
government and municipalities (but not parliament) are not allowed to take any decision which may hamper competition. Competition Council may issue compulsory rulings concerning these decisions.
- Practical ignoring of this prohibition:
  - EU DG Competition does not force national Competition Council to implement it,
  - the implementation of other provisions is treated as an essential even though it is not required by the Treaty and the Regulation
  - non competitive public purchase from public companies had been treated as illegal, but now it is legal because of EU practices).

# Harmonisation or Liberalisation in EU?

- Harmonisation is not liberalisation
- EU is more interested in harmonisation than in liberalisation:
  - Telecommunication
  - Services
  - Taxation
  - ...
- The dangers of harmonisation (CCCTB, information disclosure)
- Liberalisation may lead to decentralised harmonisation.

# What to do?

- To abolish ex ante competition regulation
- To abolish sector specific competition regulation
- To limit regulation as it always distorts competition
- To allow private agreements which are now illegal because of cartel, dominant position and merger regulation
- To allow competition of both companies and governments.

**We have to choose European market, not  
European Union Market Regulation!**