Kroes CEO roundtable: ECTA’s view on the 11 principles

Principle 1

*The 2020 digital agenda objectives will be achieved only through sustainable business models and more efficient use of scarce resources.* Europe needs healthy companies willing and capable to invest. Players who add value should be stimulated by the right incentives, in order to deter/avoid pure arbitrage strategies.

**ECTA reaction:** We agree that Europe needs healthy and sustainable companies – within the telecom sector these should include not just incumbent/dominant firms, but also telecoms competitors. Indeed, it is often “challengers” that break the mould with new business models, disrupting the status quo. It is concerning in this respect that despite investing considerably more as a proportion of their revenues, even the largest entrants struggle to make a return on their investments.

We would also stress that value can be added not only by capital investment in access network infrastructure, but also through innovative service and commercial offerings, which drive customer take-up of network connectivity and hence help to cover the costs associated with access network infrastructure.

For example, among the earliest entrants in Europe’s telecoms markets were dial-up Internet providers, the first to offer pre-pay were mobile challengers and the first to offer IPTV in Europe were competitors rather than the owners of the access infrastructure. Such business models are not based on “arbitrage” but on innovation and competitive differentiation. It is important that the market structure supports all players that are able to add value and innovate in the market and that barriers to entry are not further increased especially in the telecoms sector. Consistent well-applied regulation of bottleneck assets and enforcement of the NGA Recommendation is essential in this respect.

It is notable that challengers invest much more than incumbents, as a percentage of their revenue, but have consistently much lower

Principle 2

*Our industry has basically four layers:*
- layer 1 access,
- layer 2 transport,
- layer 3 service creation and aggregation,
- layer 4 applications and content.

*Competition on layers 2 to 4 is becoming global but layer 1 (most capital intense) is local. Some players are active on one or a few layers; others are active across the value chain.*
Framework conditions or de facto negotiating power cannot lead to an imbalanced situation where the most capital intensive players bear the burden.

ECTA reaction: We agree that the industry has four layers. It is important in this respect to ensure that competition is supported on all levels of the value chain and that there is no potential for leverage by dominant firms in either direction.

The greatest risk for leverage comes from layer 1, due to the economic characteristics of access infrastructure (significant economies of scale, high capital requirements) which tend to result in bottlenecks (control over end-users’ ability to choose among competing providers). Effective regulation of layer 1 to promote competition is therefore essential to avoid the need for intrusive “consumer protection” measures at other levels of the value chain. Regulation must ensure a fair return on investment, without any over-compensation which could limit competition and raise prices for telecoms services that are essential enablers in the Internet value chain.

The increasing presence and expansion of global content providers also creates a risk that such providers could leverage their market power upstream or conclude exclusive deals with dominant access providers that would undermine competition from other players. Whilst operators should be free in principle to innovate and differentiate their services within a competitive environment, that should not prevent strong ex-ante action being taken where there is a risk of anti-competitive leverage involving dominant players at either end of the value chain.

We agree that services further down the value chain (layers 2-4) can be, and sometimes are supplied on a global basis particularly as regards business service provision. However there are also national players at all levels of the value chain and these players can provide a more locally tailored service offering and boost innovation and competition to the benefit of consumers.

Principle 3

Scale and specialisation are overall market trends. They do not contradict. Europe should support these trends which can imply cross-border mergers or layer-focused investments. European competitiveness is at stake.

ECTA reaction: Whilst scale and specialisation can be positive developments, merger or co-ordination activities should be carefully examined by national competition authorities and by the European Commission to ensure there is no detrimental effect on competition, including the creation of regional duopolies through reciprocal exclusive access. No competition law holidays should be granted.

In the telecoms sector in particular, former monopolies continue to benefit from excessive scale and market power in relation to their competitors (average EU retail broadband market share of 45%) with detrimental effects for consumers and competition.
**Principle 4**

There should be one binding European framework. The rules of the game must be the same all over Europe while allowing for the necessary flexibility to adapt to the regional circumstances.

ECTA reaction: We agree that the same framework should be applied across Europe in terms of both ex-ante telecoms regulation and ex-post competition law enforcement, as well as on other aspects such as authorisations and rules concerning privacy and e-commerce.

It is important in this respect for the Commission to ensure that the revised EU telecoms framework and NGA Recommendation are fully and properly implemented across Europe, and that deregulation in any specific area should not result in closed “islands” which impede the single market – ie the existence of strong commercial incentives to deliver effective access and meet wholesale demand should be a key criteria in judging whether deregulation is appropriate.

In today’s environment, excess “flexibility” has resulted in more fragmentation than is warranted, undermining Europe’s single market. This is of particular concern to companies operating cross-border such as business service providers. We would also add that there are cases where NRAs’ eagerness to proceed with deregulation in specific geographic or product markets, has resulted in strengthening the dominant operators’ market position, suggesting that such deregulation may have been premature.

**Principle 5**

Europe should promote traffic management differentiation to foster innovation and new services and meet demand for different levels of quality. Sound business models combining those services with best effort ones would allow a wide range of innovative offers.

ECTA reaction: Traffic management is necessary and is already expressly permitted by the EU Framework (Articles 20 and 21 of the Directive 2002/22/EC as amended by 2009/136/EC). However, such management practices should not be allowed to extend to anti-competitive practices which aim to discriminate to the detriment of downstream providers and consumers. Within the telecoms sector, ensuring non-discrimination on traffic management is particularly important when defining wholesale broadband access products to be supplied by dominant firms.

**Principle 6**

Business models could be two-sided, based on commercial agreements, respecting the principles of openness and non anti-competitive discrimination. Exploiting the potential of two-sided markets will bring more innovation, efficiency and quicker roll-out of state-of-the-art networks to the benefit of consumers and creative industries.

ECTA reaction: Two-sided models based on commercial agreements could indeed emerge. There is no regulatory barrier preventing this today. However, it is important that agreements do not have anti-competitive effect. This could be a particular risk if dominance is not addressed in the telecoms access network or in content provision.
Principle 7

Europe should foster innovation and investment, as much as consumer interest. Long term consumer interests coincide with the promotion of innovation and investment.

ECTA reaction: As is recognised in the Treaty on the Functioning of the European Union (article 101-106), competition is essential to promote and protect the European single market. Competitive markets drive innovation and investment in the long term.

Europe should foster competition in telecoms markets as this has been shown to support innovative product offerings which boost demand and in turn support network investment (e.g. the EU success in DSL). Efficient investment should of course also be supported, but this can be achieved in tandem with competition through pricing rules which allow a fair return on investment for both the access provider and the access taker. Regulatory holidays will not boost investment or competition.

Principle 8

The market for next generation access will be differentiated, based on local circumstances. In principle, if market parties are willing to invest within a reasonable period of time, market driven private investment will get priority. In areas where competition on infrastructure doesn’t develop, co-investment models will be promoted (this should involve at least two parties). Public funding should be available where otherwise a roll-out of NGA would not be possible.

ECTA reaction: We strongly disagree with this proposal, which is in contradiction with the EU Framework and NGA Recommendation. We believe that, if this principle were to be followed, that it would support regulatory holidays and perpetuate the current uncertainty, fragmentation and stagnation that is occurring across Europe on the deployment of FTTH. The economics of next generation fibre access are similar across Europe, because high costs and scale economies mean that duplication is not viable on any widespread basis.

Whilst there are some regional differences in infrastructure competition, these are not significant in the access network. Typically two parallel fixed access networks can be supported in larger cities (cable + copper/fibre) whilst only one can be supported elsewhere, or indeed none in rural areas. The nature of local access as an economic bottleneck has been demonstrated in studies for numerous European telecoms regulators (including those in the Netherlands, Belgium, Ireland and elsewhere), and is a major reason why telecoms incumbents maintain on average 80% market share in local access (market 4 of the Recommendation on Relevant Markets Susceptible to Ex-Ante Regulation). The remaining market share is typically cable.

It is CRUCIAL in this context that the Commission and regulators properly enforce the Commission’s NGA Recommendation and do not allow regulatory holidays in the mistaken belief that this will encourage fibre roll-out or wait for (economically unsupportable) infrastructure competition to emerge. Instead, recognising that access lines are bottleneck assets across most of Europe, they should set clear rules on their expectations about access to the infrastructure and the regulatory conditions and pricing rules that will apply. Such rules are needed to ensure that competition is preserved, and do not PREVENT duplication if it is economically efficient in any specific location.
Given that fibre duplication is typically not economically efficient, it could also be helpful for the Commission and regulators to encourage business models that reduce costs and risks and promote open access and competition for the long term. Business models could include co-investment in a structurally separate netco, or functional separation where the dominant firm rolls out the infrastructure.

Given the economic power of incumbents, failing to ensure networks are built to permit access now in line with the NGA recommendation is likely to lead to foreclosure by incumbents and to closed networks that would have to be unbundled later through a lengthy and painful process for all concerned. Instead, we should be working across Europe on specifying key wholesale products (see discussion on principle 10) and defining pricing mechanisms including monthly rental and IRUs in a way which supports competition and does not create entry barriers. Focusing on a single network rather than duplication in all areas where fibre is viable should help to maximise the reach of NGA networks. Where fibre is not economically viable, no amount of co-operation or co-investment will improve the business case. In these circumstances, state aid should be used to support investment in open fibre.

**Principle 9**

*Europe should help to improve the framework conditions for NGA roll out and eliminate barriers to investment* by promoting measures that stimulate demand, derisk investment and reduce roll-out costs, in particular in the areas of civil works and in-house wiring.

ECTA reaction: We support taking measures to boost demand, derisk investment and reducing roll-out costs. However, we believe that the most relevant measures to achieve this are to avoid inefficient duplication of access networks and to boost demand through stimulating competition. Access to civil works and in-house wiring is also necessary, but we do not believe that these two items alone will be sufficient enablers to achieve the digital agenda targets.

**Principle 10**

*There is an immediate need for Europe to promote open and interoperable standards for IP-based Quality of Service Interconnection (such as IPX) as well as for next generation bitstream access and other NGA products. They are essential to enable the provisioning of NGA/NGN services across networks in a multi-carrier environment.*

ECTA reaction: We believe it would be useful to develop standards for products that will be offered in a fibre environment. These should include product definitions for each of the following: (i) unbundled access to the fibre loop at the MPoP, (ii) access to the fibre terminating segment, (iii) NGA bitstream access, (iv) virtual NGA access. In addition, the specifications need to address the specific needs of residential-focused providers for multi-cast capable wholesale products as well as the specific needs of business-focused providers for services that deliver high-end quality.
Principle 11

*Europe should promote symmetrical open access* to civil works and in-house wiring.

ECTA reaction: We agree that access to in-house wiring should be addressed and that it can be useful to co-ordinate civil works – ie for operators to be notified when works are expected to take place. Access to ducts is typically mandated as a measure on SMP providers in the telecoms sector rather than on a “symmetric” basis on all operators, and we believe this is a sufficient and proportionate approach which reflects incumbents’ ownership of a widespread legacy duct network not available to competitors.

The notion of ‘symmetrical open access’ cannot be understood as permitting/promoting reciprocal exclusive access, which would lead to the creation of regional duopolies and would imply the abandonment of the EU Framework.