

Workshop on the Application of EU Regulatory Framework

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Gary Healy

The Organisation of Market Reviews

Areas for Discussion

- Structure of Market Review
- Best Practise issues – data, record keeping, consultation
- Liaison & Internal organisation

Structure: Introduction components

- Policy objectives of market review
- A review of the legal framework where the market fits
- The process followed i.e. data collection, workshop dates, consultation process i.e. any liaison with other agencies
- Structure of market review document
- Status of confidential data/responses
- Executive Summary can be useful

Structure: Market Overview

- Detail products and services relevant to the market. Consider;- launch dates, evolution of the market
- Describe the market generally, if wholesale then what dependent products are in the retail market
- Who the competitors are and their product offerings
- How this market relates to others
- Important that this section is neutral!

Structure: Market Definition

- The process is to start with demand-side substitution and using narrow market approach decide what products are in the market.
- Can you use a precedent from elsewhere i.e. EU recommendation? But market needs to be defined by national characteristics.
- Ask questions to clearly define the product market i.e. are fixed calls in the same market as mobile calls? Are fixed access products in the same market as fixed calls?
- Consider supply-side substitution.
- Support conclusions with evidence;
 - survey information
 - technical data
 - pricing data
- Conclude on relevant product market and define it exactly.
- Assess the geographic scope of the market.

Structure: Market Analysis (Dominance)

- For the market defined, show the market structure i.e. market share data, concentration data, market size data.
- Show evolution over time if possible.
- Consider the relevant other factors for either single or joint dominance;
 - economies of scale or scope
 - countervailing bargaining power
 - potential competition
 - vertical Integration
- Some factors will be more important in some markets i.e. countervailing bargaining power in termination markets.
- No single factor concludes dominance, it is the aggregate argument which allows one to conclude dominance.
- Market share evolution is probably the single factor which is most important.
- Clearly state the conclusion and what evidence is most compelling.

Structure: Remedies

- If dominance is found, then state the operator(s) and the market clearly
- Potential competition problems relevant to the market need to be identified;
 - risk of excessive pricing
 - access to facilities
 - etc.
- Need to assess the extent of the problem, i.e. in retail markets are there pre-existing wholesale remedies that may address some of the concerns?
- Detail the remedies proposed and the aim and nature of the remedy. For example price control can be cost based, LRIC pricing, retail-minus, cost-plus.

Structure: Consultation

- Important in the consultation process to explain process, why a remedy is important. Is there an opportunity to forebear (not intervene)?
- Regulatory Impact Assessment is a useful tool to show that the regulator has considered all options, including not intervening.
- Difficult to assess cost/benefits in such assessments, so RIA sometimes difficult to complete.

Best Practice: Key Principles

- Need for NRA to be neutral, balanced and proportionate at all times. Do not consult on remedies in advance of a conclusion on dominance, do not favour competitors over competition.
- Consultation is not just a process to go through – it is the opportunity to hear counter arguments and change views if required.

Best Practice: Key Principles

- Data is key to decisions in market analysis. Data should not be used selectively, it should transparent how the NRA is using the data;
 - important to engage regularly with industry
 - define clearly what is needed and why
 - be flexible where appropriate and accept best efforts
 - be clear where data gaps exist and show in documents how the NRA has addressed this problem
 - consider other sources of data, surveys, reports, technical data

Best Practice: Consultation

- Involve, as far as possible, all those whose voices need to be heard, whether large or small companies, industries, consumers and community groups or just individuals.
- Explain fully the different options that are being considered before a final decision is made.
- Help those with views to respond fully and in an informed way; and
- Listen to those responses and use them to understand the impact of regulatory actions.

Best Practice: Consultation

- Consider innovative ways to consult – call for input, workshops, etc
- Consultation documents should clearly state the process for responding, status of responses, time for responses, confidentiality.
- Each response needs to be read and summarised into response to consultation document. Key arguments presented should be debated and reasons for final decision explained.

Best Practice: Record-Keeping

- Record keeping improves efficiency within the market review, since otherwise team members can waste a lot of time looking for documents. It improves efficiency across market reviews, since different teams can check how similar issues were handled in different reviews and ensure continuity.
- Market reviews are an iterative process: they should be repeated every 2-3 years. In the meantime, personnel can change. It makes life much easier for the new team if they can follow the thought processes of the old team and see how they dealt with problems or issues as they arose;

Best Practice: Record-Keeping

- In the event of a legal challenge, good record keeping allows the regulator to show clearly the “paper trail” of any decision.
- Clear record management numbering and ownership needs to be in place, both electronic and hard copy files need to be filed.
- The key documents need to be kept, correspondence, responses to consultation, advice and the decision making process needs to be documented.

Liaison & Internal organisation

- Competition Authorities (CA) have a role in EU Framework – cooperation essential
- CA involved in external activities & internal training
- Essential to prioritise markets – all markets cannot be analysed together – link markets i.e. Local Loop & Wholesale Broadband, All Retail Fixed markets
- Link experts in working groups i.e. Legal, technical and economic
- Clear decision making procedures and final approval
- Incentivise completion

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Gary Healy

gary.healy@hotmail.com

Mobile: +353866068711