

Wholesale market definition in telecommunications: The issue of wholesale broadband access[☆]

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Abstract

The scope of a wholesale market may, in addition to demand- and supply-side substitution at the wholesale level, also be determined by substitution patterns at the retail level. Considering wholesale broadband access markets, it is argued that each of these forces can be strong enough to render a 5–10% price increase by a hypothetical monopolist at the wholesale level unprofitable and thus may lead to a wider wholesale market definition including, for example, cable networks in addition to DSL. Based on the theory of derived demand elasticities the paper discusses under which circumstances this could be the case. The position of the European Commission and the practice of national regulatory authorities are then reviewed in light of these arguments.

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1. Introduction

In the telecommunications sector, national regulatory authorities (NRAs) as well as competition authorities frequently have to deal with the issue of market definition at the wholesale level. The Recommendation of the European Commission on Electronic Communications Markets susceptible to ex ante regulation,² for example, encompasses 18 markets, 11 of which are wholesale markets. Although wholesale market definition is, from a conceptual point of view, not much different from retail market definition, there is an additional issue which has to be taken into account and which this article attempts to highlight: the role of retail markets

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²Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L 114/45 (Recommendation of the European Commission).

in wholesale market definition. The economic literature has, as far as the author is aware, not been very explicit on this issue to date, but nevertheless (or because of that), there have recently been intensive discussions between the European Commission and NRAs in particular in the context of wholesale broadband access markets. This article uses a simple framework applied to the definition of wholesale broadband access markets.

Section 2 sketches the discussion between the European Commission and some NRAs on the definition of wholesale broadband access markets; Section 3 discusses the role of retail markets for wholesale market definition from a theoretical point of view; Section 4 outlines how competitive constraints via the retail level can be evaluated; Sections 5 reviews the position of the European Commission and the practice of the NRAs in light of these arguments; Section 6 summarizes and concludes.

2. Wholesale broadband access markets—the issue

A discussion about the definition of wholesale broadband access markets has developed since the European Commission Art 7 Taskforce³ received notifications concerning this market from Oftel (now Ofcom, the NRA of the UK) and Comreg (Ireland). The wholesale broadband access market, according to the Recommendation of the European Commission “... covers ‘bit-stream’ access that permits the transmission of broadband data in both directions and other wholesale access provided over other infrastructures, if and when they offer facilities equivalent to bit-stream access.”⁴

One of the crucial questions with regard to this market is whether access via cable networks or alternative infrastructures (e.g. wireless broadband or fibre) delivering broadband services at the retail level should be included in addition to wholesale DSL products. Whereas DSL wholesale products provided by the incumbent telecommunications operator (in most cases due to regulatory obligations or regulatory pressure) are available in many EU Member States,⁵ wholesale broadband access via cable networks or other infrastructures is only provided rarely. Until recently, there has even been a dispute about whether such a wholesale product on cable networks would be technically possible at all but it seems to be commonly recognised today that “... technical solutions do exist for cable operators to provide “bitstream” type services to third parties” as it is stated in *ERG* (2005, p. 24).

However, wholesale broadband access via cable networks exists in few countries and to a limited extent only, which makes a direct competitive constraint imposed by cable networks on DSL at the wholesale level indeed unlikely. Even if such a wholesale product existed, switching would be difficult for Internet service providers as this would require in most cases cooperation with several cable network operators⁶ and even then coverage at the national level would be smaller than in the case of DSL (see *Table 1* in Section 5).

Oftel and Comreg included access via cable networks into the wholesale broadband access market despite their opinion that there is no direct constraint on cable operators on DSL wholesale providers in their countries, and argued as follows: a hypothetical monopolist of DSL wholesale access would be constrained not only by direct supply- and demand-side substitution at the wholesale level, but also by cable-based broadband Internet services at the retail level, which have sufficient impact at the wholesale level to justify their inclusion into the wholesale broadband access market.⁷

The European Commission commented on this market definition as follows (emphasis original, footnotes omitted)⁸:

The approach to defining a wholesale market on the basis of the competitive conditions in the corresponding retail market is, in principle, consistent with the methodology set out in the

³The so-called Art 7 Taskforce of the European Commission reviews market definition and market analysis of NRAs of EU Member States according to Art 7 of the Framework Directive (Directive 2002/21/EC, OJ L108/33). The European Commission has a veto power with respect to these issues.

⁴See the Annex of the Recommendation of the European Commission.

⁵See *ERG* (2005, pp. 9–11).

⁶In most countries there is a number of cable network operators operating their own network and networks usually do not overlap.

⁷See Oftel (2003) and Comreg (2004).

⁸European Commission: “Notifications received under Article 7 of the Framework Directive—Wholesale broadband access—Commission briefing paper to *ERG*”, 20 September 2004.

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