



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

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For Official Use**

**Working Party No. 2 on Competition and Regulation**

**STRUCTURAL SEPARATION IN TELECOMMUNICATIONS**

**-- Presentation by Eduardo Martinez Rivero --**

**14 June 2010**

*The attached document is submitted to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its meeting on 14 June 2010.*

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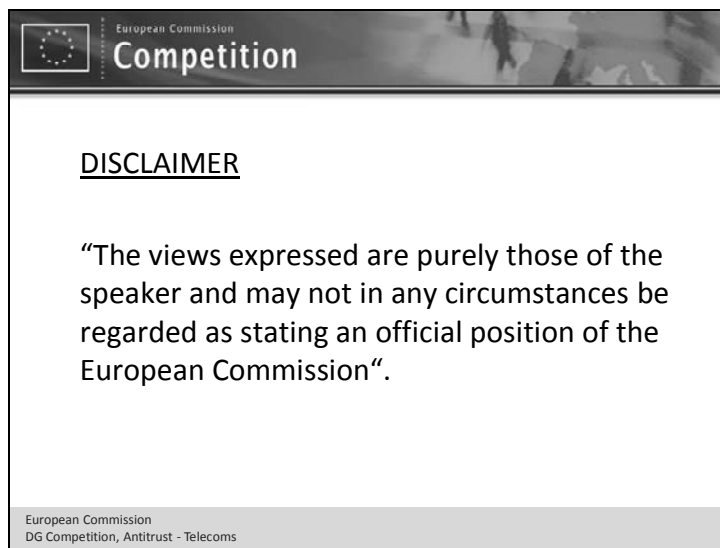
OECD Competition Committee  
Working Party No. 2 on competition and Regulation  
Paris, 14 June 2010

Structural separation in  
telecommunications

*Eduardo Martínez Rivero*

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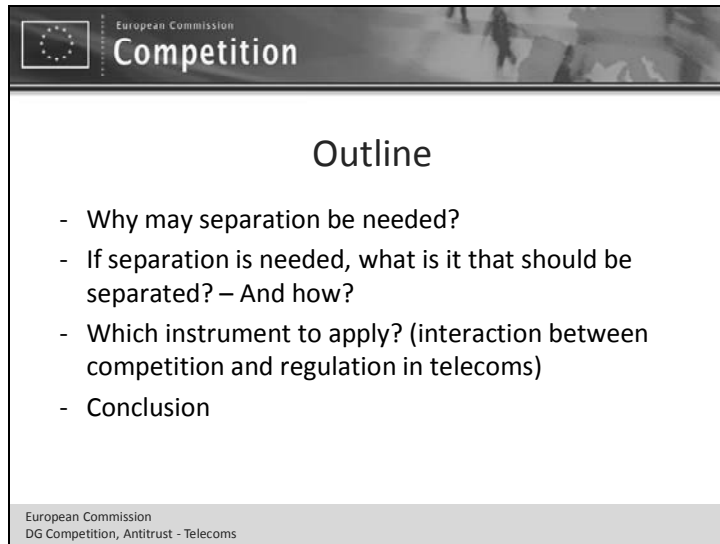
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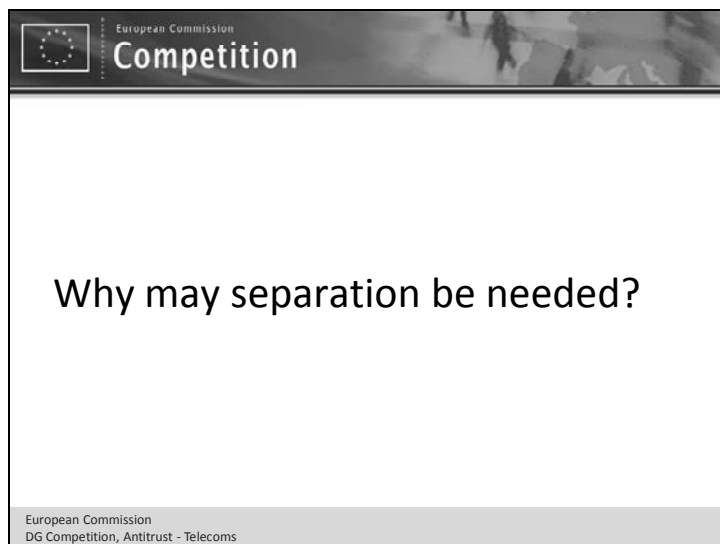
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### Outline

- Why may separation be needed?
- If separation is needed, what is it that should be separated? – And how?
- Which instrument to apply? (interaction between competition and regulation in telecoms)
- Conclusion

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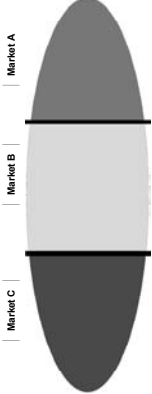
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## Why may separation be needed?

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**Vertical integration –  
There are positive  
aspects...**

- Integration along a « value chain » often concerns complementary products or services.
- Provides substantial scope for efficiencies.

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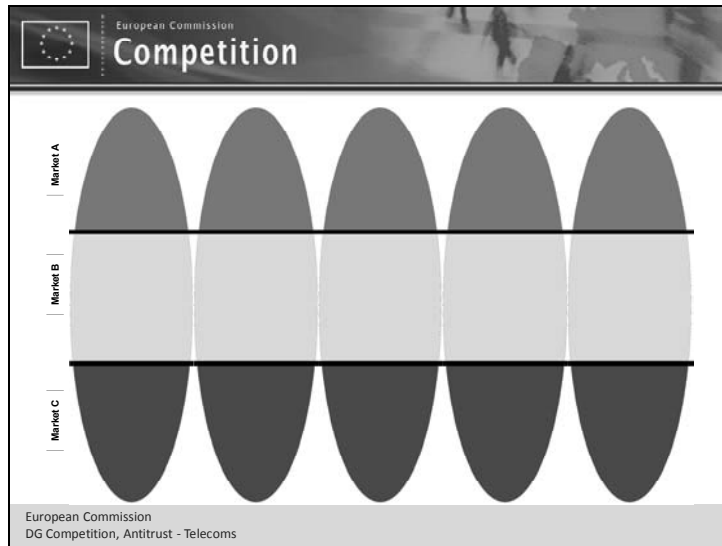
**Vertical integration – there are  
positive aspects...**

Vertical integration is generally deemed to be less harmful to competition than horizontal integration:

- « *For most vertical restraints, competition concerns can only arise if there is insufficient competition at one or more levels...* » (Vertical Guidelines)
- « *Non-horizontal mergers are generally less likely to significantly impede effective competition than horizontal mergers* » (Non-horizontal merger Guidelines)

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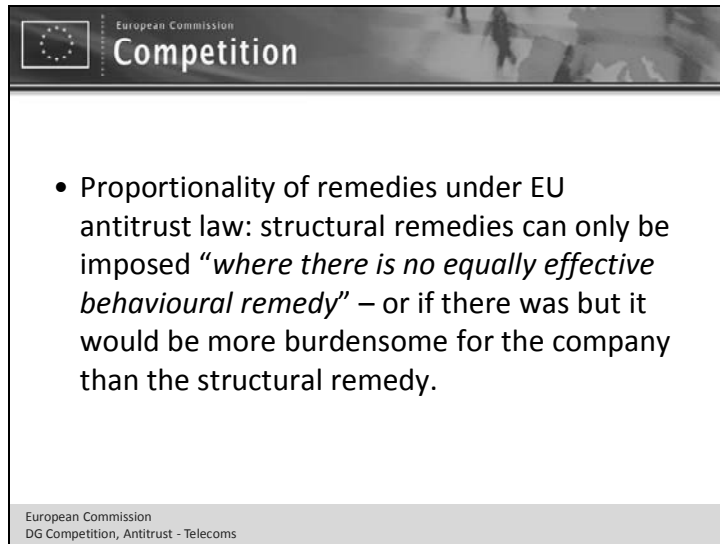
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...but also concerns

- Increase in market power
- Larger scope for abusive behaviour
  - refusal to supply
  - Use of market power in one market to foreclose competition in another (bundling, tying)

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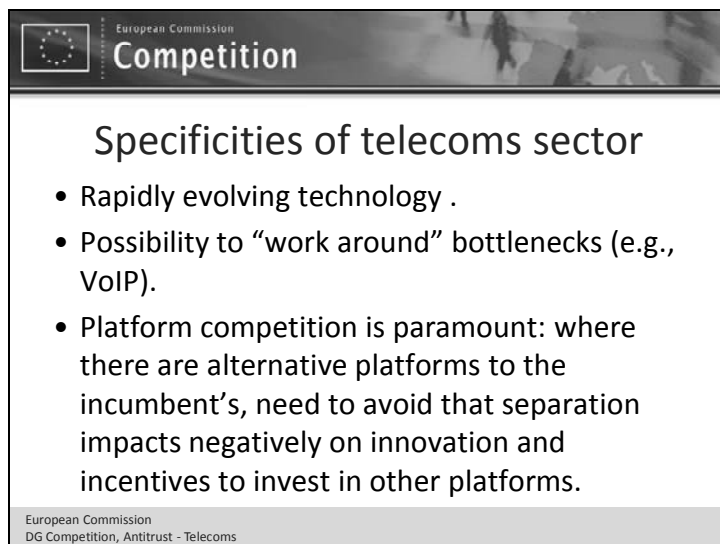


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- Proportionality of remedies under EU antitrust law: structural remedies can only be imposed “*where there is no equally effective behavioural remedy*” – or if there was but it would be more burdensome for the company than the structural remedy.

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### Specificities of telecoms sector

- Rapidly evolving technology .
- Possibility to “work around” bottlenecks (e.g., VoIP).
- Platform competition is paramount: where there are alternative platforms to the incumbent’s, need to avoid that separation impacts negatively on innovation and incentives to invest in other platforms.

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If separation is needed, what is it that should be separated? – And how?

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- Wholesale/ retail
- Two or three legs?
- Equivalence of input
- Need to remove possibilities for circumvention – incentives, governance

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- Does a structural remedy necessarily imply different ownership?
- New telecoms regulatory framework: functional separation of an independently operating business entity.

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Interaction between competition  
and regulation in telecoms

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## Regulation and competition

- Go hand in hand : ex-ante regulation and ex-post application of competition rules should support each other.
- Pro-competitive Regulation : Commission ensures that competition law principles are correctly applied by regulators
- Deutsche Telekom, Telefónica

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## The New Access Directive

- Art 13a – Functional Separation – an « *exceptional measure* » if regulatory obligations « *have failed to achieve effective competition* » and « *there are important and persisting competition problems and/or market failures* ».
- Art 13b – Voluntary separation

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