regulating for the future

Victoria Wren



Getting regulation right is key to making 3G a success in Europe - it is also essential that the lessons learned here are picked up in developing markets. Isabelle Mauro and Michiel Bootz explain

today, the business environment for wireless operators is extremely competitive. The various institutions involved in the regulation of the market – everyone from the European Commission and national governments to national regulatory authorities (NRAs) – are walking a tightrope: abandon regulation and jeopardise the rights of citizens and consumers; impose too much political and legal control and the market withers and dies. The operator community has to deal with the implications of this dilemma – not just in mature markets like Europe, but also in developing markets like South America and Africa.

To begin with, the 3G licence auctions process needs close scrutiny – the principle of the 'beauty contest', as well as the auctions themselves, have been a shock both to the industry and the national governments involved. The problem is that national telecoms have always been part of public policy, but now states feel they are losing money because the mobile industry is draining away valuable call revenue. Governments may well have nurtured an open market, with open players making ▷

Michiel Bootz
Director, Global Regulatory Affairs
GSM Association



Isabelle Mauro
Director, GSM Europe
GSM Association



money from services and deals that are commercially viable and competitive, but individual states are worrying about lost revenue. Many regard significant auction revenue as nothing more than their due.

Operators in developing markets are watching the regulatory lead of Europe around the licensing process with great interest. Many countries that are at a stage where they want to start issuing 3G licences are finding themselves in a difficult situation. While auctions have generated a lot of revenue for governments and put 3G firmly in the headlines, such a vast up-front outlay of capital before any services yield revenue is clearly of serious concern. However, with so many international players now in regional markets, the prospect of a replication of the European auction paradigm seems increasingly remote. Few big players intend to be constrained by another round of capital consuming auctions. In addition, there is a growing appreciation among governments that the levels of investments seen in Europe are neither possible nor desirable in a global downturn.

The GSM Association is playing a key role bringing its members and regulators together to consider how the 3G licensing process was handled in Europe. There's a growing commitment to see how it can be adapted and improved so as to avoid a similar situation in developing markets such as Latin America and Africa. Operators in Africa face the added pressure of a huge technical disparity between the operators of the comparatively rich and advanced South Africa and those elsewhere in the continent. The regulatory imperatives of these two extremes need to be catered for, but operators and governments must also look towards gradually migrating these disparate sets of regulations into a cohesive and standardised pan-African set of regulations some time in the near future. Such transparency is deemed critical to securing much needed investment across the region.



The standardisation of regulatory frameworks poses a challenge to African operators and regulators. Not only do they have to create a set of legal frameworks allowing the market to work, grow and be competitive, but they also have to be aware of what their neighbours within Africa are doing.

There is much that can be learned from the European model: the market started with separate countries creating their own rules, but has been successfully brought together under the umbrella of European Commission (EC) and the law makers in the European Parliament in Brussels. A pan-European regulatory framework has been created under which the whole market now operates.

The favoured style of regulation in Europe – and one from which other regions can learn – is one of self-regulation as advocated by GSM Europe, the European arm of the GSM Association. Self-regulation also has the benefit of filling the gap where regulation is in a transitory phase between full regulation and the use of competition law – and then only where there is

a deadlock or bottleneck in the market – so in this respect it is ideal for a dynamic marketplace, like wireless.

The past year has seen significant lobbying to cap any trend towards more intrusive regulation within Europe. The key point has been to make sure the EC is aware that too heavy a regulatory environment will smother business development. There is already a danger that, with the investment community feeling very shaky at the moment anyway, too strict a regulatory environment across Europe could see the region lose out to Asia or the US in the battle for investment. Similar concerns could also hamper the development of an operator-led market in other parts of the world.

To be fair, the European Commission tends to be refreshingly business-minded. From its point of view, the industry should prove it can regulate itself but the commission also wants to be able to step in and control it if the industry fails to do so.

Operators and industry bodies in Europe are in general agreement with this approach, but with UMTS deployment imminent, they want to be able to roll out where they think the market will be competitive. For the industry, it seems absurd to try and regulate something now that is not yet in place. Even the best strategists do not know where the mobile market will be in 2003.

However, these issues have to be discussed and options evaluated if the operators, the EC and the industry associations are to be in a position to make the most of the opportunities offered by the new technology.

To this end, the second reading of the keenly anticipated EU Communications Review is virtually complete and the consensus is that it must resolve a number of checks and balances before it can be regarded as a truly effective and welcomed piece of regulation.

The member states have overruled the EU's original proposal, which forced a right of veto on to the commission, leaving GSM Europe, the EC and the industry all in a state of compromise between parliament, council and commission. This is an obvious hindrance in terms of creating a meaningful role for the commission and of reviewing national regulatory authority (NRA) decisions – particularly as it gives a great deal of additional power to the NRAs.

In the absence of a harmonised telephony market, there is clearly a need for a centralised decision making mechanism. On the other hand, large markets like Germany want to be closed, because their businesses tend to be up and running and because they have few significant problems and thus have little motivation to open up.

Right now, the NRAs in each member state are getting more power and it is leading to a situation in which decisions directly affecting the industry will be made without its voice being heard and without any opportunities to lobby. With the first reading of the Communications Review last year there was a lot of concern about significant market power (SMP) definitions. Under the framework being discussed, many operators were going to have access to SMPs and many of the operators were going to be SMPs. The industry is still waiting to see what happens.

One of the major challenges facing operators from a regulatory point of view is that of how European m-commerce impinges on other aspects of regulation. For example, m-commerce services involving banking and finance are going to move into the realms of strict banking and finance regulations.

There is also the issue of copyright: with the 3G services wireless internet will bring, there are a number of issues surrounding protection of material and intellectual rights already hinted at with the internet proper. Here regulatory authorities, the GSM Association and, to an extent, European central government, have to play a role in making sure operators are working within these 'outside' regulations. At the same time these regulations must not be allowed to act as hindrances or otherwise to 3G regulation and mobile market forces.

> the 3G licence auctions process needs close scrutiny – the principle of the 'beauty contest', as well as the auctions themselves, have been a shock both to the industry and the national governments involved

It is a tough call. To many, it should be up to the operators that run services falling under the remit of these laws to make sure they are met within the framework of their own markets' laws. Others see it as the role of the NRAs to embrace financial regulations and copyright laws into their own charters.

While the operators and NRAs get to grips with these complex issues, there are many other regulatory challenges that pertain purely to the mobile industry and which the European industry must get to ▷

grips with. Roaming is an obvious example: there are already a lot of cost-orientated concerns surrounding roaming; there are a lot of threats coming to bear on international roaming cost-based retail prices and against call termination operators.

There are also proposals from the European Parliament to force the introduction of real time per call information, which will allow callers to see how much a call has cost them directly after making it. Parliament believes this is technically possible, but as any operator knows and many are trying to explain to Brussels, that is not the whole story: some aspects of it are possible, some are not. Whatever the outcome this is a clear indication that roaming has to become more consumer driven.



with the investment community feeling very shaky at the moment anyway, too strict a regulatory environment across Europe could see the region lose out to Asia or the US

GSM Europe has introduced a code of conduct for roaming that comes into being this year. The organisation is keen to see the reaction among operators to it and particularly how the proposed mode of self-regulation the code stipulates will work among the operators. This code of conduct on roaming has been a huge achievement for GSM Europe; it has been the first piece of self-regulation the body has done and the GSM community is keen to see it succeed. It also draws a line in the sand for the future of self-regulation in other markets outside of Europe: if it works here then it can be adopted in other areas, speeding the development of fledgling mobile markets.

Aside from roaming, one of the biggest hurdles facing the wireless industry is the growing unrest – and associated misinformation – surrounding mobile phones and health risks. Here, there are definitely troubles ahead for the roll out of 3G. In France and the UK it is becoming harder to get site approval on difficult sites, as local authorities play the health and environment card with increasing frequency. As the process starts to take much longer, at around $60,000 a day for each delay on a site something must be done about this issue.

Again GSM Europe has adopted 'good practice' recommendations to address community health and environmental concerns. The group has taken this initiative to ensure the right balance is struck between enabling development and access to mobile services in Europe. The objective is to enable operators to voluntarily address the community issues presented by the implementation of additional network infrastructure for 2G and 3G services.

At a conference on health issues recently, there were many sorry tales from Belgium, Italy and Switzerland where operators have been hit by severe regulations imposed on them by their own regulators for 3G roll out. This is likely to have a knock-on effect across Europe, as even though Switzerland is not in the EU it is still affected by roaming, thanks to being sandwiched between France, Germany and Italy. The Swiss are also in the European Business Corporation and have therefore had to take on board many of the issues affecting other members.

The operator's main concern is that, even within the EC, some national regulations are going to hinder roll out and others are not, leading to a spill-over effect. As with anything to do with health, governments tend to go beyond whatever is in place, just as a precautionary principle and because they have the right to apply more stringent criteria than the EC.

The EC is very conscious of the fact and, with some directives in place already, it is looking at how to use existing legal instruments to try and stop this from occurring. For all its problems, the European market leads the world. The European operators have seen their market change and with it the regulations have adapted. Yes, they face many challenges, but they also show the other regions of the world how to overcome them.

In many ways Europe is lucky in having a centralised body, the European Commission, and the institutions of council and parliament. This gives the region a common voice from a common body and a common open market with competition laws, which cover every member state. Outside the US and its Federal Government, no one else has this and it is one of the biggest strengths that all in the region can continue to benefit from. □

i *www.gsmworld.com*