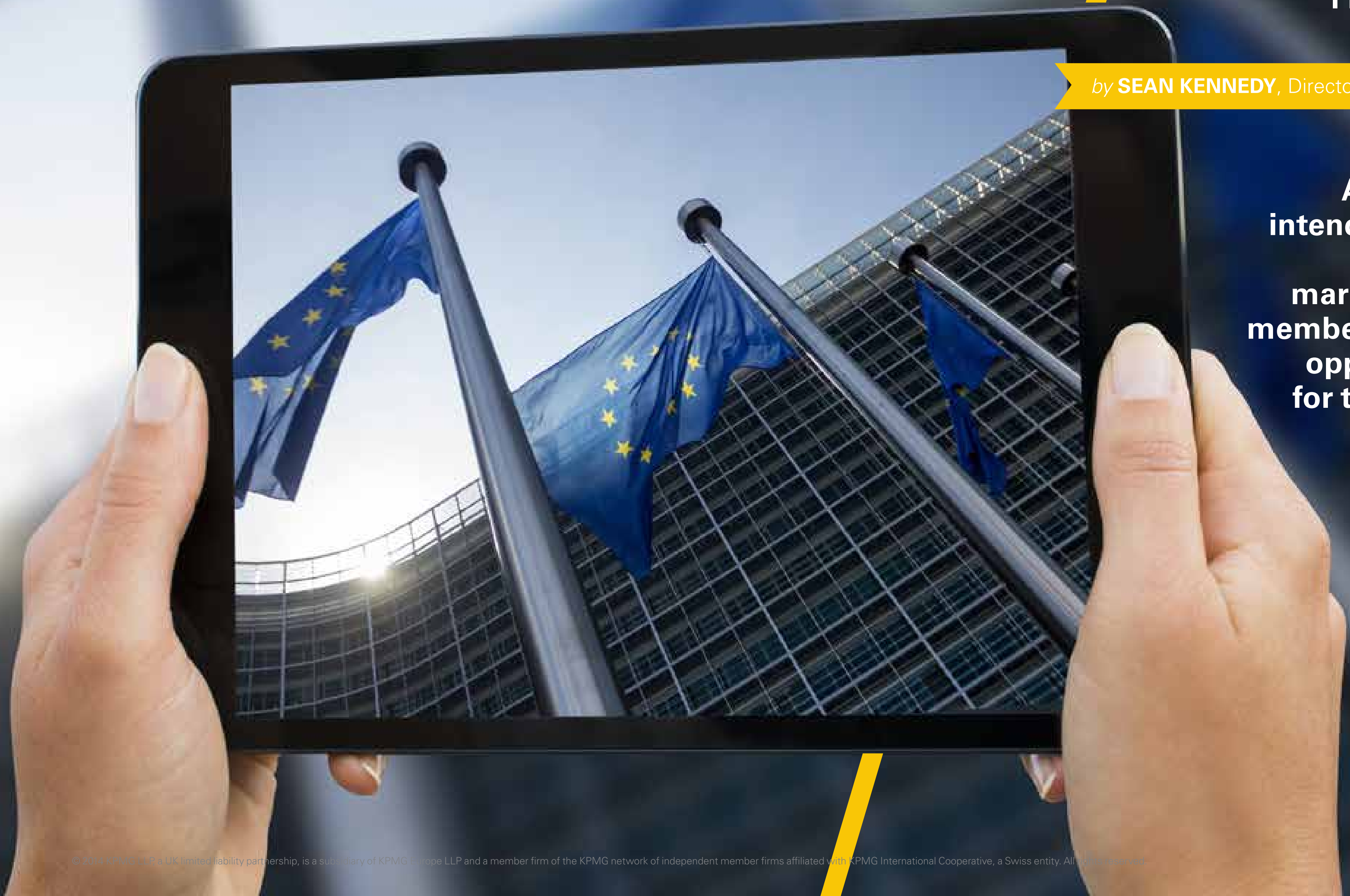
REGULATING THE TELECOMS INDUSTRY

by **SEAN KENNEDY**, Director, Telecoms Regulation specialist

A range of proposals intended to create a more integrated Telecoms market across the 28 EU member states brings both opportunities and risks for telecoms companies operating in the EU.



The draft legislation is being championed by Nellie Kroes, Vice-President of the European Commission responsible for the Digital Agenda, who set a deadline of Easter 2014 to bring the proposals to a vote at the European Parliament. The draft legislation comprises a suite of initiatives, including:

- The abolition both of roaming charges and of disparities between national and international calls and SMS across Europe;
- The introduction of an "EU passport" for telecoms operators, which will provide a single consistent authorisation to provide services across all member states;
- Greater harmonisation of access for operators, through:
  - better coordination on spectrum assignment for mobile and wireless services;
  - a consistent and harmonised range of "regulated access products" in each country;
- No regulation of access prices on fast NGN (broadband) networks where anti-competitive behaviour is shown to be constrained.
- A "fairer deal" for consumers across Europe, which will include:
  - Open and non-discriminatory access to the internet (including the prevention of anti-competitive blocking or throttling);
  - Greater transparency for consumers on their contract terms and conditions;
  - An easier system for consumers to switch providers.

The delays in the allocation of the 4G spectrum across Europe over the last few years hampered the business case for many operators (particularly smaller operators). There was, for example, a three-year delay between the allocation in Germany (2010) and in the UK (2013). Other countries, such as the Czech Republic, have yet to allocate the 4G spectrum. A lack of harmonisation has also put Europe behind the US in terms of the timing of the 4G network rollout and the launch of services to consumers.

A consistent, regulatory remedy across EU member states would make sense when there has been a proven, durable market failure. It would also help companies wanting to launch services to consumers in multiple countries, particularly those who want to offer bundled services (such as mobile, voice and broadband) but who don't own all the relevant infrastructure and need to acquire wholesale access from operators with significant market power.

That said, some of the initiatives could create more problems than they solve. The EU consists of a diverse set of countries with wide disparities in economic circumstances, such GDP growth, tax rates and regulations. These differences will make implementation of some of the measures difficult and there is a real risk of unintended adverse impacts on industry and consumers.

One example of this is the proposed move to abolish roaming fees and disparities in charges between national and international calls/SMS across Europe. This measure is highly controversial, especially for mobile operators who are already facing annual reductions in revenues of 1.5% a year to 2020[1]. The political rationale in favour of regulating roaming charges (lower prices for consumers) has always trumped the economic rationale. Despite Commissioner Kroes referring to roaming charges as being a "rip off" it is questionable if there is actually a durable market failure requiring regulation. However, the new proposals raise greater economic concerns.

Firstly, roaming revenues worth €1.5bn (or 2% of industry revenues) are at risk. This means there is less money available for operators to upgrade networks across Europe. Clearly, the European Commission views these revenues as being in large part undeserved, super-normal profits.

Secondly, the Commission's earlier initiatives to introduce regulation to promote virtual roaming operators meant operators had to invest significantly to update billing and customer handling systems. The new roaming proposals make the whole case for these virtual roaming operators much less certain and it may transpire that existing operators have needlessly and wastefully invested to support these virtual operators. In his article **'Taking a View'** BT Group Director, Strategy, Policy and Portfolio, Sean Williams talks further about European regulation on cross border transactions.

"PROPOSALS ENVISAGE THE ABOLITION OF ROAMING CHARGES ACROSS EUROPE BY 1 JULY"

From 1st July 2014 operators can no longer charge for inbound roaming calls. The Commission has offered them a further incentive (a "carrot") that all other roaming retail price regulation will be removed if they extend their domestic tariffs across the EU i.e. they allow their customers to "roam like home". Unless backed by some form of wholesale price regulation, this proposal seems set to favour those operators with large, multinational footprints, who can quickly, easily and cheaply agree to multi-lateral reductions in wholesale roaming prices, while leaving smaller rivals exposed.

The "stick" being wielded by the Commission is that if operators choose not to adopt "roam like home" tariffs, customers must be able to choose a virtual provider of roaming services separate from their home network operator. It may be that some operators choose the stick over the carrot and virtual roaming operators do enter the market. However, as discussed below, the carrot does not just remove retail price regulation: it creates an entirely new business model for existing operators throughout the Community. In addition, European lawmakers have recently proposed additional changes that would remove this voluntary mechanism and replace it with a simple ban on retail roaming fees altogether.

This new model is the third, and perhaps most important element of the roaming proposals: the creation of opportunities for arbitrage between national markets. If roaming fees are abolished and differentials between national and international rates are removed, it seems there is little to stop, for example, UK customers switching from their existing UK operator to an

Source: [1] AT Kearney (2013) A Future Policy Framework for Growth, A report for the European Network Operators Association (ETNO), Figure 7, p. 16. (www.atkearney.co.uk/documents/10192/1040188/A+Future+Policy+Framework+for+Growth+Report.pdf/271259a5-a099-405e-aa2d-65613bf60652) operator in another member state that is offering a cheaper price per minute on national calls.

Allowing overseas operators to use lower regulated roaming fees to compete directly with national operators for their domestic customers would be a retrograde step and unfairly punish those operators already trading in fiercely competitive national markets. It will be crucial that any regulation is structured to prevent these domestic arbitrage opportunities. If not, the risk is that there will be a 'race to the bottom' with demand from price-sensitive customers across Europe for the services provided by the operator with the cheapest price.

Ms Kroes' deadline of Easter 2014 to see these proposals put before the European Parliament is an ambitious one but necessary because of the Parliamentary elections due in May 2014. It remains to be seen which, if any, of the proposals will pass into law in this parliamentary term. Even so, some of these measures seem aimed at reducing revenues and increasing costs for European operators at a time when they are already under pressure to fund network upgrades to manage the expected sharp increase in traffic over the next few years. European operators could do without the distraction.

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