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The Digital Single Market: Market Developments and the Review of the EU regulatory Framework for electronic Communications[2]

Let me thank you for inviting me to address the opening of the works of the "Digital Regulation Forum". I think this event is very timely, because it addresses some policy issues that are high on the European political agenda.

The development of the digital economy and the Digital Single Market is one of the key instruments to tackle the main threat that Europe is faced with today: the risk of an increasing loss of international competitiveness and of a weak and fragile growth, if not even the risk of a secular stagnation, with a consequent impact on the unemployment rate and on the sustainability of the European welfare state. To cope with this threat, Europe needs to focus on research, innovation and industry 4.0, the acceleration of digitalization being its enabling condition.

The boom of digital services and products is probably the biggest change European citizens have experienced over the last decade. We have fast moved from analogic to digital and we are now moving from broadband to ultra-broadband connections. Citizens around the world can access plenty of services and so do Europeans. In order to rip the digital economy's growth potential, we cannot do without a common policy and a common regulatory framework throughout the EU. This is valid for telecom

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[2] Introductory speech to the 10th Digital Regulation Forum, "*Policies for the Digital Single Market: an evolution or a revolution?*", London, 20-21 April 2016.

rules, privacy rules, *e*-commerce rules, intellectual property rules, taxation rules and new rules applicable to on-line platforms.

As we speak, new economies are rushing towards financing their huge ambitions in terms of infrastructure deployment. From India, to China, to smaller nations in the region, the Asian Development Bank estimates the region's transport and information-related needs at roughly 8 trillion dollars by 2020. While these growing economies race towards new digital networks, numbers from more mature markets such as Japan and U.S. are also striking: in the period 2010-2014, mobile investments grew by 98% in Japan and by 69% in the US.

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Where is Europe in this picture? In particular, how do we ensure that enough investments are made in broadband and ultra-broadband networks deployment, in digital contents and services development, in boosting digital skills and learning, so that economic and social benefit[3] can materialize?

The answer, which is at the heart of a new approach to industrial policy, is probably in a mix of policies that promote private investment by smart and updated regulation and some degree of state intervention by means of well targeted public investments[4]. Public investment is needed in order to ensure the new universal human right of the XXI century, the right to access to new generation digital services and contents, but also considering the important positive externalities for growth and competitiveness produced by the digital infrastructures and services. The Italian Government Plan for Ultra-broadband Network and the yesterday announced EU Commission's Action Plan for Digitising European Industry are two examples of well targeted public interventions. However, the available public resources must be steered to the areas of market failure, because of the EU treaties prohibiting State aids and promoting open market competition, and also because most EU Member States should implement strict fiscal consolidation policies to reduce excessive public debts.

[3] According to the EU Commission, the Single Digital Market "could contribute €415 billion per year to the EU economy and create hundreds of thousands of new jobs".

[4] In 2015, the Italian Government decided to allocate up to 6 billion Euros, coming from European structural funds allocated to Italy, to finance the construction of a fiber public network in market failure areas and to provide incentives for private investment in the other areas (mostly in the form of vouchers for families).

State aid rules have for long been well fit to drive smart investments: public resources can be allocated only to investment projects that would not be carried out by private operators. But the current economic challenges strongly indicate that, in the application of competition rules, the focus should not be on restricting public aid, but on distinguishing '*good aid'*, fostering growth and competitiveness, which should be promoted, from '*bad aid'*, which should be discouraged.

In principle, State aid rules are already there: State aid is compatible with the Treaties when it contributes to objectives of common interest, corrects market failures, has incentive effects, without or with negligible distortions of competition. But we must ensure that the EU competition rules are applied in a uniform and consistent manner by all the authorities (European and national) and without unjustified rigidities.

In the digital context, moreover, authorities should carefully consider whether the relevant markets are national or, instead, European, and take into account that European companies compete on the global market in almost all sectors. Regulators and policy makers too often forget this or seem to ignore it, and thus they end up encouraging the national fragmentation and prevent the processes of concentration and cross-border consolidation which are needed to put European industry in condition to compete in global markets

In any case, considering the regulatory and financial limits of public intervention, the role of private investment and financing is crucial. Liquidity on the global markets is today abundant, but the demand for capital investments is huge and the competition for attracting them is ruthless. In order to attract private capital, and stimulate private investments, the overall policy scenario needs updating, first of all by the creation of a general regulatory environment conducive to investment. Cutting red tape, predictable rules on access to infrastructures, well-functioning dispute settlement systems are of paramount importance, but are not sufficient. They should be accompanied by a long-sighted review of the international and/or European financial regulation, which still favor short-term financial investments and penalize long-term investments with high positive externalities for growth and competitiveness, such as the investments in infrastructure, technology, research and innovation.

In this context, we expect a stronger commitment of the European Union and the European Member States to recalibrate the currently prudential regulations and accounting standards (IAS/IFRS, CRD IV and Solvency II/Omnibus). Assuring the financial stability must still be the main goal of the regulators. But, considering that economic growth is a condition for financial stability (and also for the long-term sustainability of fiscal consolidation processes), there is clear room for a fine tuned recalibration more friendly to long term investment without jeopardizing overall financial stability.

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Important updates are also needed with regard to the policies and regulations specifically referring to the telecommunications sector and the digital economy. New advanced digital technologies are being introduced in public fixed and mobile communications networks. The aim of the telecom rules that were thought of at the beginning of this revolution has been achieved: markets are open and access to digital networks has become available and affordable at a large public. Not only, European rules have also met general interest objectives like freedom of expression, media pluralism, social inclusion and consumer protection.

The digital networks have large capacities and possibilities for processing personal data. But the successful cross-border development of these services is highly dependent on the deployment of common rules across the Union: because the internet is overturning traditional market structures by providing a common, global infrastructure, the EU must create a common legal and regulatory field in order, for its market players, to be able to compete globally and, for its citizens, to enjoy the highest possible level of technological innovation.

It looks to me that this is the primary goal that the European policy makers have to look at, when addressing the issue of reviewing telecom rules: the focus should shift from market liberalization (the rules that we have today) to creating conditions for economic growth, global competitiveness and high value for citizens. We should seize the opportunity to adopt a smart EU regulatory framework capable of becoming the benchmark (a regulatory ‘gold standard’) at the global level.

Therefore, we need, on the one hand, to ensure a level playing field between all market operators, including the OTTs, and, on the other, to abide to the principles of better regulation. In the digital area, the risk of hindering innovation should be avoided: the proportionality principle should still be our compass in the review of the overall regulatory framework for the digital single market, including in particular electronic communications networks and services.

The digital economy and the resulting new business models (peer-to-peer; platforms etc.) raise new challenges for the traditional regulation of many services. A basic principle of the Single Market is that regulation in the Member States restraining access to the market or the provision of services should never go beyond what is necessary in the public interest. In order to apply this principle in the new digital context, we should probably start a systematic review of several sectoral (European and national) regulations so as to give leeway to innovative ways to meet consumers' demand.

As to electronic communications, the current framework is based on outdated definitions that do not adequately take into account the convergence of services and the consumers' perspective. The vision for a new digital Union requires a modernisation of both our policy approach and of our regulatory tools. We should be ambitious on our objectives: massive scale-up of broadband investment and enhanced service innovation should be achieved. Perhaps we do not need a revolution, but certainly we need a set of concrete and profound changes to the current regulatory landscape and a fresh policy focus leading the way. Together, they can make a real impact.

"Smart rules" and "innovation fostering" ideas are required to define the regulation framework of the new playing field provided by NGNs. They should provide rules and mechanisms appropriate to stimulate long-term investments in NGNs and innovative digital services and contents. Innovative solutions, such as the (corporate and/or ownership) unbundling of connectivity services between network and trading services, should be considered.

Let me offer a couple of examples. As for OTTs, we should consider that they are not mere service providers but are the main investors in the most profitable and strategic portion of the NGN: the Content Delivery Network. The perspective is that they could become the main investors in both video content production and delivery; and video content will account for 80% of Internet traffic in 2020. Are the regulation tools ready for this challenge? Content production is a global market and themes like rights and geolocation of viewers should be addressed at global level; but the CDNs are to be deployed closer and closer to the end users, intertwined with the telcos access networks and hence pose a "local" problem to NRA. This local-global nature of OTT regulation asks for the "smart rules" I was mentioning above.

The issue of the spectrum management is another good example of the need for common rules, related to common industrial policies supporting growth and competitiveness; without proper common rules and without a supranational enforcement of the same rules, for instance, the allocation of frequencies still occupied by television broadcasters to ultra-broadband fifth-generation (5G) mobile networks (allocation planned or already decided by some MS) could be in fact prevented, given the cross-border interferences, by the few MS still reluctant to impose the transfer of the television programs on the fixed network (which would, moreover, favor the development of fiber fixed networks).

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Once achieved the objective of a modernized set of policies for the digital single market, in order to grant a level playing field across the continent, it is of utmost importance to ensure that regulatory competences are properly allocated between EU institutions and national authorities and that national regulatory authorities have harmonized objectives and principles to follow.

In particular, it is worth to point out that the future smart regulation should aim to encourage long-term private investment needed to equip Europe with future-proof new generation infrastructure networks: those who invest, those who create new generation networks, on equal terms than their competitors, should be subject only to obligations needed to ensure the interconnection and interoperability of networks, following criteria of proportionality of the obligations imposed. In that framework, the new set of policies should promote investment drivers like co-investment and commercial arrangements and support the broadband deployment in challenge areas.

My final point is that action on the points raised above should be taken swiftly and timely: the Digital Agenda for Europe targets will likely not be met if deployment and uptake trends continue as they are today; and the gaps between countries and between urban and rural areas will not disappear if resources are not re-directed to the less profitable areas.