



GSM Europe  
*The European interest group of the GSM Association*

<http://gsmeurope.gsmworld.com>

**GSM Europe comments on the Commission Staff Working Document on “Barriers to widespread access to new services and applications of the information society through open platforms in digital television and third generation mobile communications”.**

1. Interoperability is in the interest of industry. GSM Europe supports interoperability as it is critical in creating a market and developing value. It therefore is simply in our business interest. Only by giving customers the ability to communicate with as many people as possible can we grow our business. An example is SMS whose use increased exponentially when networks interconnected and sending messages from one operator to another became possible. GSM Europe would like to recall that the cooperation of manufacturers is crucial to ensure interoperability of interfaces.
2. With the introduction of new and ever more advanced systems there will always be initial technical difficulties with regard to interoperability. GPRS, MMS and definitely 3G are far more complicated than ‘simple’ GSM-voice, which makes interoperability a bigger challenge. New data products offer significant advantages to consumers in terms of breadth of service, innovation, usability and user experience. However, due to it being state-of-the-art, seamless interoperability with other (competitors’) networks cannot be guaranteed at the time of launch. It would neither be in the operators’ commercial interest, nor in the consumers’, to delay launch until full interoperability has been achieved. Until there has been some market testing it is also unclear what elements of a service customers need to be interoperable. It could lead to abortive work and in the end delay take up if too much double guessing of customer requirements was done prior to testing in the market. So whilst technical complications may initially delay interoperability between operators, GSM Europe is confident that these will be solved because it is in the interest of all operators that they are.
3. The Commission Staff working document raises the possibility of regulatory intervention in case industry cannot guarantee interoperability. As a starting point, GSM Europe believes that such intervention is unlikely to be necessary. Its members fully support the ongoing work in international standards setting bodies such as OMA, 3GPP. GSM Europe believes that the Commission should state the problem – if any – clearly, before considering what type of regulation would be appropriate to address any unforeseen bottlenecks. Interoperability is a basic characteristic of telecommunications networks in the substantial interest of network operators.
4. The term ‘interoperability’ – and the ‘market’ to which the term refers - has not been defined (either in the new regulatory framework or in the Commission’s Staff paper) and as the Commission Staff paper suggests, means different things to different people. Both the market(s) and the term ‘interoperability’ would need to be clarified

before any meaningful discussion could take place on the levels or forms of interoperability the Commission would deem acceptable and when it would consider regulatory intervention to be appropriate. It is for example unclear whether interoperability is intra platform (e.g. DTV) or inter platform (e.g. DTV and 3G).

5. GSM Europe notes there may be several forms of possible intervention: (i) imposition of mandatory standards under Article 17 Framework Directive; (ii) imposition of 'interoperability' obligations under the Access Directive; and (iii) ex post competition law. Under (ii), GSM Europe believes that any definition should make clear the distinction between 'access' [to networks and services] 'interconnection' and 'interoperability'. GSM Europe considers there is a clear distinction between these concepts, if only because regulatory treatment under the new regulatory framework is completely different. Because 'interoperability' requirements can be imposed on all operators, SMP or non-SMP, it is important that access-requirements cannot be mandated under the wrong guise. GSM Europe also recalls the Commission's own view that at present 3G services constitute a new and emerging market, to which it would be inappropriate to regulate. GSM Europe believes the distinction between networks and customer equipment should also not be overlooked. For networks – service considerations, security data integrity need to be balanced with any investment in openness.
6. GSM Europe has no doubt that industry itself will provide for interoperability. As mentioned in the Commission Staff's document industry bodies such as OMA (in which GSMA and many GSME members are involved) are preparing to provide key platforms and standards that will guarantee that handsets will interoperate with networks. Despite some initial technical difficulties operators have started to interconnect their networks for MMS traffic. International GPRS roaming is now also widely available.
7. Interoperability would only be in contradiction to an undertaking's commercial interests if such an undertaking were to have overwhelming large market share (near monopoly). Provided there were proven network effects, this would probably lead to that undertaking further increasing its market share and abusing its dominance. In mobile there are no such entrenched positions, nor are there any network effects. Each market has at least three or more operators and market shares are such that the risk of a snowballing effect as described above is extremely small. Manufacturers are also reluctant to pursue operator specific solutions for the same reason.
8. GSM Europe considers that there is only a case for intervention if a proprietary technology is used to establish a dominant position that could be abused. Such intervention should be *ex-poste* and should rely on competition law instruments. GSM Europe recalls in this respect that one of the key principles of the new regulatory framework is a transition to preference for the use of competition law rather than *ex-ante* regulation.
9. Competitive markets will create a balanced outcome between interoperability on the one hand and a sufficient ability for operators and their partners to create competitive advantage. Interoperability does not mean that product differentiation is impossible. Regulatory intervention would probably leave less room for the market to find such a balanced outcome or it would force industry to adopt a strategy that is in the long term not sustainable. Best example for free powers of market is the development of WLAN as alternative and additional access technology where the markets demanded and no regulatory intervention was necessary.

10. GSM Europe believes that we have to be vigilant to avoid an absolute belief in the merits of an ill-defined 'interoperability' that thwarts market development and becomes a brake on innovation. This would undermine the long term interests of consumers and industry. The dire straits the internet industry currently is in, demonstrates that the fixed internet of itself doesn't create value. In fact the TCP/IP technology was never designed to be used in commercial applications. The mobile industry, but also legislators and regulators, have to learn from this experience and avoid making some of the mistakes that lead to the failure of so many internet based businesses. Industry has to employ business models that deliver products and services that customers are willing to pay for if it wants to make mobile data into a success. Legislators and NRAs have to resist taking the fixed internet as a simple template for mobile data.
11. Interoperability must allow commercial differentiation. Some differentiation by an operator or for example APIs isn't contrary to a competitive market or consumer interest. It is obvious that mobile data services –if only because of the limitations of the handsets– can not be compared to the PC based internet user experience. WAP has shown that the user interface is critical for the adoption of mobile data services. In mobile the user experience has to be better than with fixed internet. In order to attract customers and third parties and provide many new e-commerce services, trustworthy billing and network security has to be guaranteed. The extreme openness of the fixed internet and the anarchic way it developed would therefore not be conducive for the adoption and use of mobile data services.
12. GSM Europe is committed to develop a superior user interface and customer management and GSM Europe plans to mediate in billing relationships because this is in our opinion the only way mobile data services can be provided effectively. Operators therefore need to develop these user interfaces and service platforms for their own networks. GSM Europe reiterates its full support for technical interoperability. Industry bodies like OMA provide key platforms and standards that will guarantee that handsets will interoperate with networks. But the software and the user interface will need to be bespoke. Mobile data services are infinitely more complex demands more than the one size fits all treatment that sufficed for 'simple' mobile voice.
13. To enable further development of mobile data services and mobile commerce as well as 3G to the benefit of both consumers and third parties it is essential that mobile operators have an efficient micropayment system in place. For this to happen we need clarity as to what rules apply and proportionate regulation is needed where only low risk micropayments are involved. The E-money Directive was originally adopted 'to create legal certainty, encourage new entrants, encourage competition and contribute generally to the development of electronic commerce' and facilitate the emergence of e-money, as a means to further develop the Information Society. However, the Directive was drafted and adopted at a time where few had the types of mobile commerce we see today in mind. Therefore it should not apply to telecom services including premium rate services and where appropriate apply in a proportionate manner to other prepay services taking into account the low level of risk. GSME would therefore welcome a clarification of relevant Community legislation, such as the E-money directive.
14. Interoperability must not mean restricting operators to being vanilla bit transport businesses. The mobile market with its added complexity and strong inter relationship with terminal devices should not have artificial barriers put in place under the guise of interoperability. Mobile networks will never be solely simply bit transport

businesses similar to some fixed network businesses, although they will provide simple bit transport services such as GPRS.

15. The Commission Staff working document deals both with Digital Television and 3G. GSM Europe is of the opinion that it is unfortunate since both platforms are completely different. From a technical point of view 3G is a peer-to-peer technology, whilst DTV is point-multipoint. But more importantly, with DTV there are very specific cultural issues at stake that drive policy and possible regulatory intervention. These reasons don't apply to 3G.
16. GSM Europe believes that by singling out DTV/3G that other customer equipment (e.g. WLANs/PCs/DAB/Automotive equipment) may be being overlooked.
17. Regulatory certainty, on a medium term basis, is needed to make choices in these areas and is required even more from a sceptical investment community. It is essential that by overstating any interoperability issues further unnecessary confusion is caused to the industry. GSM Europe looks for more regulatory certainty in these areas whilst encouraging flexible services, together with their deployment to build e-Europe.

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