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## Regulatory and competition law issues of broadband developments

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## Broadband Developments

1. Broadband provides the means to transport various signals (voice, data, video etc.) which have traditionally been subject to differing regulations.
2. Infrastructure costs in the broadband sector are extremely high.
3. Technological innovations play a major role in broadband markets.
4. First mover advantages have great implications for competition in broadband markets.

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## Regulatory Choice

1. Sector specific access regulation
2. Application of competition law (essential facilities doctrine)
3. Competition between different suppliers of broadband networks

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## Goals of sector-specific regulation and of competition law

1. Sector-specific regulation: intranet-competition within existing networks
  - strict access regulation with low access charges
  
2. Competition law: control of dominant market position
  - determination of dominant market position
  - duplication potential of new entrants
  - time factor: do not destroy the first mover-advantage
  - concept of dynamic competition

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## Methodological Issues

1. Comparative cost-benefit analysis of sector-specific regulation and application of competition law
2. Assumption of systematically incomplete information
3. Competition as a learning process

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## Legal and economic issues

1. Legal issues
  - interpretation of competition law provisions
  - law-making in the field of sector-specific regulation
2. Economic issues: choice of two concepts of competition
  - (1) Competition with many competitors in the market, no one enjoying market power and slow progress of technological innovation
  - (2) Dynamic competition which provides high incentives for technological innovation; different phases of competition with quasi-monopoly of the first mover in given periods and oligopolistic competition in other periods

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## Consequences for sector-specific regulation

1. Distinction between ‘old’ and new (emerging) markets
2. Delayed access in new (emerging) markets: protection of the first mover advantages (compare intellectual property rights’ functions!)

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## Consequences for application of competition law

1. Determination of dominant market position essential
2. Role of dominant market position in dynamic competition
3. Counterproductive effects of over-stretching the concept of abuse of dominant position
4. Dynamic interpretation of the essential facilities doctrine
5. Focus on inter-net competition instead of intra-net competition



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## Outlook

1. Ambiguity of the technological convergence paradigm
  - excuse for extending sector-specific regulation into new markets hitherto not being subject to regulation
  - competition between different technologies intensifies competition so that neither sector-specific regulation nor application of the essential facilities doctrine is been justified
2. Promotion of competing technologies
3. Incentives for technological innovation by means of first mover advantage