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Draft Commission recommendation on regulated access to Next Generation Access networks

Introduction

BUSINESSEUROPE welcomes the initiative of the Commission to address the issue of setting a stable and favourable regulatory environment for the investments in Next Generation Access (NGA) networks and hopes that the efforts of the Commission, the Parliament and the Council in this domain will lead to consistent and future-proof results.

In our view, the general picture and the nature of regulatory provisions proposed in the draft Recommendation is quite similar to the framework that is applied now to the existing networks, and deserve further thinking in view of the investment challenges ahead and the relative position of the EU regarding fibre and wireless development. To achieve a balanced outcome, the Commission proposal should be less prescriptive and take into account the wider set of views expressed by stakeholders.

INVESTMENT IN AND ACCESS TO NEW-GENERATION NETWORKS

A major concern for Europe's economy is the timely roll-out of new generation, high-speed broadband access networks. Investments of billions of euros are needed to provide the necessary world-class communications infrastructure that Europe's consumers and companies need in order to successfully compete in tomorrow's knowledge based societies.

Regulators need to encourage investment and innovation, optimising legal certainty for investors and infrastructure competition where feasible. This approach must involve recognition of the considerable commercial risk involved in deploying new networks, and must also ensure that markets remain competitive, as competition, choice and certainty of supply are vital for users and for the competitiveness of businesses using the new networks.

BUSINESSEUROPE believes investment should be led by the market, with public funding only used when there is a long-term market failure and on a basis that does not distort competition.

SPECIFIC COMMENTS ABOUT THE DRAFT RECOMMENDATION

BUSINESSEUROPE agrees that the upgrading of high-speed networks enabling the provision of innovative broadband services is key for the further development of the European economy, and we support the efficient and timely development of broadband network as a key Community objective. In this context, providing guidance to prevent regulatory approaches that could harm competition, hinder or delay investment and undermine the development of the electronic communications Single Market is of paramount importance.

BUSINESSEUROPE agrees that there are a number of possible scenarios for the roll-out of future Next Generation Access and that competitive outcomes may vary.

The Commission's recommendations are insufficiently forward-looking and need further elaboration on how the way principles of NGA development will occur in the mid-term future. The focus on NGA as fibre-optic cable, which the Commission's analysis seems to adopt, skews the debate towards forms of service demand and development that do not fully reflect more variable ones that are likely to arise in combinations of fixed/wireless technologies. These combinations will almost certainly play a major part in bringing high speed applications and services to rural areas but may also be significant means of delivery in urban areas, and a combination of both on-the-move and fixed point services for a range of service types.

The development of an all-P environment and the "Internet of things" in the next three to five years will generate huge demand for communications networks and services of variable nature and bandwidth. Intelligent networking of embedded devices and remote sensors in everything from roads and cars, to packaging and white goods, to retail items and point of sale (POS) systems suggests a need for local bandwidth availability well in excess of today's copper-wire networks. This demand will be much more dispersed, variable and scalable than for inter-connection of devices and sensors amongst households, business supply chains and retail outlets, and public utility infrastructures in a PSTN. Moreover, the fact that intelligence lies less in the network – as with traditional copper-based PSTNs – and more at the edge under the determination of users or the applications or services they are using has significant implications for service demand and development. The Commission needs to consider the potential implications this would have for investment, competition and regulation.

An essential part of any regulatory framework is the recognition of the need for a fair return on investment. We agree that a reasonable return on capital employed should be foreseen (including a risk premium) but we believe the Commission may be taking too prescriptive an approach in terms of access conditions, price controls and regarding what the appropriate cost methodology should be. A regulatory concept for NGA should also allow for long term regulatory decisions to give sufficient planning security for investors given the rather long pay-back periods of investments on NGA. The Commission should also look at other possibilities for sharing of investment risk between the investor, other access seekers and other players in the value chain, resulting in a dynamic retail market. We note the proposals made by the European Parliament and believe risk-sharing models should be applied in the context of non-discrimination.

We agree that a migration path is needed to allow alternative operators to adapt to new network developments. Innovation and investment should however not be held back by the need to retain copper networks provided a proper migration path is put in place.

The Commission's draft Recommendation largely reflects the view that NGA regulation will in many respects be the same as in the existing local, copper-based communications environment. However, the emphasis in the Commission's consultation on passive infrastructure sharing (Market 4) excludes analysis of the drawbacks of horizontal partnering and risk sharing. The limited discussion of infrastructure sharing and active remedies, combined with the favour shown for passive remedies (such as duct sharing) means that many new aspects of regulation in an NGA environment are overlooked. Its discussion of partnering and risk sharing in relation to broadband services (Market 5) should address those issues related to active remedies.

A substantial part of the draft Recommendation addresses technical differences between the main NGA architectures, and proposes different regulatory approaches around Fibre To The Curb (FTTC), Fibre To The Home (FTTH) as well as wholesale broadband access remedies. We agree that the different architectures pose different economic, competition and regulatory questions, but believe the NRAs should assess these situations depending on their own market review. Similar solutions may apply in similar circumstances but, for example, some of the pricing principles proposed for duct access and for wholesale products when such products are relevant need to be improved, or not prescribed in the recommendation, whose objective should not be that of promoting certain technologies or pre-determine a certain path for technological progress. The choice of the relevant technology should be left to market players.

Numerous studies have illustrated the economic challenges of NGA deployment, with significant differences of cost and potential demand both between and within Member States. A guiding principle of the Commission's approach is therefore the need to recognise these variations and provide guidance that can aid consistency at the level of principle, without while allowing NRAs to act to reflect national / local market circumstances.