



23 July 2009

SECOND DRAFT COMMISSION RECOMMENDATION ON REGULATED ACCESS TO NEXT GENERATION ACCESS NETWORKS

BUSINESSEUROPE welcomes the opportunity to comment on the second draft of the Commission Recommendation addressing the need to set a stable and favourable regulatory environment for the investments in Next Generation Access (NGA).

Next generation networks are a key driver for jobs, growth, innovation and competitiveness in the 21st century. The timely roll-out of high-speed broadband is therefore a major concern for Europe's economy. 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 compete successfully in tomorrow's knowledge-based societies.

OBJECTIVES

Creating high-speed networks enabling the provision of innovative broadband services is key for the further development and competitiveness of the European economy. BUSINESSEUROPE supports the efficient and timely development of broadband networks as a key Community objective.

In this context, providing guidance to NRAs to support regulatory approaches that foster investment, competition and access to further develop the electronic communications Single Market is of paramount importance.

Regulation needs to stimulate investment and innovation, optimising legal certainty for investors and infrastructure competition where feasible. We agree with the objective of fostering the application of consistent regulatory responses by National Regulatory Authorities (NRAs) throughout the EU, but believe this should be balanced with the need to reflect the specific conditions of national markets.

This approach must involve recognition of the considerable commercial risk involved in deploying new networks. It must ensure that competition can develop in the markets, as competition, choice and certainty of supply are vital for users and for the competitiveness of businesses using the new networks. When promoting efficient investment and innovation in new infrastructures and the development of effective competition, due account must be taken of the risks incurred by those investing in new networks.

Use by businesses generates consumer services, content and applications, thereby driving demand through new processes and efficiencies. Social and economic well-being linked to broadband investment comes not only from the telecoms sector but also from the value added by business supply chains. Assessment of NGA investment must therefore take into consideration wider indirect social and economic well-being.



GUIDING PRINCIPLES

BUSINESSEUROPE believes that the Commission's draft Recommendation:

- should provide a framework of principles for the application of remedies focussing on the outcomes that should be achieved;
- should be technology neutral;
- should not be overly prescriptive, especially in the application of remedies to certain investment models;
- should be flexible regarding changes in market conditions.

While agreeing on the need for a consistent approach to regulation throughout the EU, we consider that the new draft Recommendation is too prescriptive and does not leave NRAs sufficient flexibility regarding the choice of remedies. This does not allow the authorities to adjust the remedies to reflect the situation in the national market. Different architectures pose different economic, competition and regulatory questions, and NRAs should assess these situations depending on their own market review.

The recommendations should not encourage any particular technology and should be forward looking, to avoid hindering the use or development of certain technologies in the future. Ultimately the market should determine the most appropriate technology. However, when trying to clarify the applicable remedies, the current draft Recommendation selects some investment and network deployment models (particularly point-to-point and multifibre solutions) and, under certain conditions, tries to favour them or prescribe the regulatory response. This involves the risk of distorting the market towards certain solutions, without sufficient analysis of the consequences on competition and investment. In the current draft, some technical solutions that can be efficient in some situations are disadvantaged in favour of other not still proven solutions.

It is important that the new Recommendation set general principles, which can be realistically expected to be valid for a reasonable period of time and independent of market developments. Changes in the attitude adopted by regulators in the application of the rules create uncertainty and should be limited by adopting a long-term approach.

The principle of gradation of remedies can help to achieve a proportional and competitive framework, minimizing complexity and regulation where possible but it should not be applied in a way that automatically imposes remedies where there is no market demand and where the result would be to drive up cost and reduce competition. The draft Recommendation seems to recognise to some extent that gradation of remedies should be taken into account by NRAs, but this principle should be given more relevance throughout the document. Importantly, remedies should not be pre-judged by the Recommendation before the national market analysis has taken place. Regulation should not prevent the development of infrastructure competition in geographic areas where this is appropriate and possible or is considered feasible in the long/medium term, while preserving service competition. In this context, it should be left to NRAs to evaluate whether the new pricing principles introduced by the draft recommendation for NGA could also be applied to other access technologies.



As previously mentioned, the draft Recommendation leaves very little room for NRAs to tailor remedies to their specific markets. As an example, with specific regard to pricing regulation, it must be noted that this type of obligations may vary depending on the national case. In addition, with very limited NGA deployment up to now and business cases still not clear, it is very difficult for both market players and regulators to make a sound assessment of the costs and possible revenues at the current time. This calls for a more cautious and flexible approach to pricing regulation, leaving flexibility to explore new business models, whilst maintaining competition in national markets.

We agree with the European Commission that a clear and effectively implemented migration path towards next generation access is needed to allow operators to adapt to new network developments within a reasonable timeframe. It is important that all users be granted the continuation of service at the same qualitative level. 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.

As a final remark, BUSINESSEUROPE underlines that certainty is needed for investors on a fair return on their investment and for users to benefit from a competitive market. These issues were highlighted in the March European Council conclusions, balancing the importance of sharing investment risk with the need to maintain non-discrimination.

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