

**CEEP contribution statement
to the public consultation of the European Commission
on a Draft Recommendation on regulated access to Next generation Access
Networks (NGA)**

CEEP supports the Commission's goals of promoting throughout the EU the access to broadband services, investments in new infrastructures, and guaranteeing fair level of competition through infrastructure competition, but **would like to add some clarification to several of them:**

- our members welcome the clear separate treatment between FTTH and FTTN/ VDSL deployments taking into account the fact that the two systems lead to different competitive contexts. The regulators should not underestimate the negative effect on competition inherent to the VDSL roll out and adopt the necessary ancillary obligations such as dark fibre access for SLU and flexible and enriched bitstream VDSL offer.

The success of infrastructure competition in a FTTH context must rely on a well balanced broadband market, on a non discriminatory and operational access to ducts or risk sharing when no ducts are available and symmetric obligations in the sharing of in-door wiring under the efficient supervision of trustworthy National Regulatory Authorities.

In the specific context of new generation access networks, FTTH access obligations should consist of a single access obligation corresponding to the lowest level of legacy bottlenecks in order to guarantee the maximum level of infrastructure based competition.

- CEEP supports the fact that a transparent migration path should be established for current users of wholesale services, when the deployment of new networks technically or operationally disrupts their activity. For example, this can imply a proper transition period for unbundlers and the development of suitable wholesale services. As analysed many times, the possible perturbations are mainly related to FTTB/N meaning VDSL scenario.

This should not jeopardize investment and technological development of current networks. For instance, it should not prevent setting a deadline for the end of the copper network, after the transition period elapses, in order not to build anymore in copper or to remove copper cables.

- Attention should be brought to confidential business information and the reliability of the information seekers

- The treatment of new services, kept outside elementary obligations, is sound with respect to the weak commercial visibility of their future deployment and success. However, a clear cut boundary between broadband and new very high broadband services instead of the fuzzy concept of “chain substitution” should avoid discretionary decisions.

We would like also to **highlight the following issues that should be taken into account** with a particular care or reconsidered in the project of Recommendation:

- As seen notably in large cities, different kinds of ducts are suitable for fibre deployment. To foster the fibre deployment in an efficient economic framework, Member states and Regulatory bodies should engage actions towards owners of ducts, such as city-networks companies which mainly co-operate with serious operators and at the same time foster competition for the benefit of end-users, and outside the electronic communications sector, to make their capacity available when necessary and possible (Communes, Electricity providers, Sewers..).

Our members would like to see symmetric obligations on the ducts property issue and on building wiring, as well as the inclusion of CATV networks in relevant market analysis in order to reach equal treatment and symmetry among electronic communications providers.

- Historic cost does not insure the revenue necessary to keep alive the vital telecommunication infrastructure in the long term. It will lead to underinvestment, and to a slow but irreversible degradation of the infrastructure. Civil works reference costs should at least correct the effects of inflation in the valuation of assets and take into account actual assets lifetime for amortisation calculation. Economic depreciation also leads to more stable and objective values than accounting depreciation.

Reference to historic cost would lead to random variations because arbitrarily depending on national accounting standards, history of ducts ownership, financial and accounting operations which accompanied this history. They would lead to large random variations of ducts costs throughout Europe. Moreover, it is inconsistent with cost references used for unbundling of the copper loop. The Project of recommendations also seems to be in contradiction with the European Court of Justice that has notably stated that the real cost must be taken into account.

- National Regulatory Authorities should refrain from mandating or regulating access, should commercial voluntary agreements be concluded between undertakings. Where no voluntary commercial agreement can be concluded and where National Regulatory Authorities may regulate access to new generation access networks it should do it whilst ensuring that access seekers bear a reasonable share of the risk incurred by

the investing operator. In specific areas where infrastructure competition cannot occur and to the extent where commercial agreements are not reached between undertakings, regulated wholesale access may be needed. In that case, wholesale access price should have the same structure than network costs in order:

- to share the risks of the investment fairly between the access provider and the access seeker
- to avoid granting the strategic advantage of being able to choose between a fixed and a variable cost structure to the last mover at any time
- to enhance fast FTTH service penetration thanks to lower marginal price per access allowing the development of demand oriented prices on the retail market.

Such type of “Risk sharing” wholesale price structure should be analysed and authorised in the Recommendation. Risk premium is mentioned; however it does not address the more critical question of access price structure but rather addresses the question of access price level.

The regulators should not underestimate the risk of regulatory instability that could be the consequence of the new market analysis to be undertaken as per the issuing of the future NGA Recommendation. **The regulatory environment should be predictable** for a period consistent with the time required to establish the profitability of heavy investments.