

ABERTIS TELECOM COMMENTS ON THE  
DRAFT COMMISSION RECOMMENDATION ON REGULATED  
ACCESS TO NEXT GENERATION ACCESS NETWORKS

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## 1. INTRODUCTION

abertis telecom, the leading broadcasting network operator in Spain, welcomes the opportunity to express its views on the Draft Recommendation on Regulated Access to Next Generation Access Networks which is the object of a public consultation.

This document from the European Commission is intended to provide guidance to NRAs on how to adapt their regulatory response to the development and upgrading of the current networks, so as to prevent divergences in regulatory approaches throughout the European Union.

## 2. GENERAL COMMENT

abertis telecom welcomes the approach taken by the European Commission to move towards more consistency in markets 4 and 5 regulation. This initiative which will contribute to a higher level of regulation certainty is fundamental in a period when operators have to decide on whether or not roll-out NGA networks and how to do so. The decision implies high investments and risk assumption since there is uncertainty, mainly about demand for higher bandwidth offers. On the other hand, it is acknowledged that regulation can influence investment incentives and that regulatory modifications may adversely affect the business plans of operators who have carried out substantial infrastructure investments.

When a company is considering the possibility to invest in NGA networks, its decision will be mainly driven by the relation between risk and profitability of the investment as compared to other investments, either in the sector of electronic communications or in different sectors of activity.

In this context, any step taken in order to provide the market with more certainty is important. In particular, a stable regulation, coherent with the guidelines issued at European level, as well as the promotion of efficient investments not only from the SMP operator but also from alternative ones, constitute elements of certainty which will facilitate the operators' decision to invest in NGA networks.

On the other hand, the existence of consistent regulatory measures throughout the E.U. will foster the emergence of a transnational market where operators should be able to increase and diversify their business and achieve economies of scope and scale.

### **3. SPECIFIC COMMENTS**

#### **3.1. Regulated access to non-active infrastructure**

##### **3.1.1. Regulated access**

The European Commission recommends that SMP operators should be mandated to make reference offers, within 6 months of the imposition of the obligation, for – inter alia – access to ducts, other engineering works and other non-active elements necessary for the roll-out of a competing infrastructure, in particular, fibre optical networks.

abertis telecom can only support this recommendation since it is sometimes difficult for alternative operators to replicate the passive infrastructure which has been built and is controlled by the SMP operator.

The access should be regulated on the basis of:

- cost-oriented prices;
- account separation in order to control the mark-up between costs and wholesale prices and the differences between wholesale prices and retail offers;
- the drawing up of processes setting deadlines for SMP operators to respond to requests, as well as alternative solutions in case of unfeasibility of access to civil engineering works.

Since the access to ducts and civil engineering works constitute a new wholesale access offer which will be part at the same time of other services, the price of usage should correspond to the real use of the non-active infrastructure, avoiding cost duplicities.

##### **3.1.2. Risk assessment**

As far as prices are concerned, the European Commission recommends to take into account the risk which has been assumed by the SMP operator when building new civil engineering works. In that case, the usage price should be based on costs plus a project-specific risk premium.

On this issue, abertis telecom wishes to draw a distinction between two types of situations: when a SMP operator, with a large and diversified consumer base, builds ducts and other civil engineering works in new housing developments in order to provide the same services as the ones it already provides in other areas with a mature technology (e.g. copper), the risk assumed is extremely low. In addition, when the SMP operator roll-out fibre optical cable, he can use the same civil engineering works for the provision of services based on both copper and fibre optical during an indefinite period, since no switch off deadline has been set up for the substitution of existing technologies for NGA ones.

The case of an alternative operator with a small, if not inexistent, customer base, who builds engineering works to roll-out a fibre optical network or uses non-active infrastructure of the SMP operator, in order to offer broadband services, is very different because he will have to assume a much higher level of risk due mainly to the uncertainty about demand.

It is therefore fundamental to accurately assess the level of risk assumed by the SMP operator in order to include a risk premium in the usage price.

As far as calculation of risk premium is concerned, the European Commission proposes the CAPM model as an adequate methodology. According to abertis telecom this model, which is being applied in Spain, is acceptable although it may present some difficulties when being implemented. In particular, it can be difficult to set the adequate value of the beta (non-diversifiable risk) when a company is not listed on the stock exchange. It will be necessary in that case to resort to an alternative method which could consist of using the beta of companies which are comparable in terms of risk (not necessarily from the telecommunications sector). It is fundamental that the parameters used in order to determine these comparable companies are adequate and sufficient (for example, size of the company; market share; indebtedness rate; type of financing of the company; type and concentration of customers; service and technology diversification).

### **3.2. Other price issues**

With respect to ancillary services pricing, abertis telecom considers that it is important that the composite LLU product be available at a price which is not higher than the wholesale price charged for LLU, as it is stated in point 4 of Annex I.

Another major price issue, is the need for a control of both wholesale

and retail prices applied by the SMP operators in markets 4 and 5, to enable alternative operators to replicate or improve either the SMP operator's wholesale services or the retail ones. In order to be able to take part in these markets, alternative operators should receive an adequate return for the provision of services, which should reflect the level of risk assumed and be consistent with the price framework set for these markets.

### 3.3. Geographic markets

The European Commission stresses the need for geographic market definition taking into account the differences existing in competitive conditions at both national and sub-national level as a consequence of the progressive roll-out of NGA networks.

abertis telecom supports this approach since the development of NGA networks will magnify the differences which already exist between the competitive conditions of the different areas of a national territory. The experience shows that in those areas where competing networks (such as cable networks in Spain) have been rolled-out, the SMP operator's market share has significantly decreased and end users can benefit from distinctive and cheaper services than the ones offered by the SMP operator. This situation which is already a reality will expand with the introduction of NGA networks. Different market conditions in different geographic areas also lead to a different use of access wholesale services by alternative operators together with a typology of wholesale prices set up in accordance with the geographical areas.

This situation should consequently induce NRAs to define markets at sub-national level in carrying out market reviews.

### 3.4. Guarantee of service continuity

When an SMP operator decides to upgrade part of its network with fibre optical, this decision will affect alternative operators whose equipments are collocated at the SMP operator's sites. In that case, it seems appropriate to set a reasonable transition period for alternative operators to decide on their business strategy to cope with the changes, as is recommended by the European Commission. In the same way, before an SMP operator decides to remove existing infrastructure, the NRAs should make sure that the transitional arrangements put in place are appropriate to guarantee the service continuity to alternative operators.

The guarantee of wholesale access service continuity also requires that SMP operator be mandated to make a reference offer for copper sub-loop unbundling since the existing wholesale service of local loop unbundling is not to be replicated on NGA networks and access to the end user is available at the street cabinet. This is expressly stressed by the European Commission in its draft recommendation and abertis telecom wishes to underline the importance of such a regulatory measure.

### 3.5. Sub-loop issues

- abertis telecom considers that the reference offer for sub-loop unbundling in case of roll-out of Fibre Optical to the Node (cabinet) should be similar to the reference offer for local loop unbundling. It should include inter alia information on ancillary services (such as access to energy; air conditioning; wiring; monitoring; security...) and space availability in the street cabinet, and should set reasonable deadlines for SMP operator to respond to the requests of access seekers. The information on street cabinets deployment should be made available at regular and reasonable intervals and information should be periodically updated.

Provisioning delays and quality of service indicators should also be set, as well as the obligation to issue periodical reports on the quality of service provided by the SMP operator and adequate indemnities in case of failure to comply with the service levels.

- In case there would not be enough space in the street cabinet, SMP operator should facilitate the building, by the alternative operator, of a new cabinet next to the first one by means of access to ancillary services such as energy, security elements etc... SMP operator should also facilitate the interconnection of both cabinets.
- The European Commission recommends that NRAs take measures tending to ensuring an adequate size of street cabinets in advance of NGA deployment. abertis telecom would like to draw the attention to the risk of mandating to build overdimensioned street cabinets which would be contradictory with the efficiency philosophy. As a possible solution, one could think of a consultation of the alternative operators potentially interested in sharing the cabinets prior to assessing the adequate size and to building up street cabinets.

### 3.6. Emerging markets

The European Commission considers that NRAs, when they find that a service provided over NGA networks constitutes a newly emerging retail market, should not impose inappropriate wholesale obligations. Although abertis telecom agrees that an unconsolidated market should not be subject to strong regulatory measures, a total lack of control on the SMP operator's NGA business would enable him to counter any offer from alternative operators through the launch of a cheaper service. It is therefore important, in order to foster sustainable competition and maximise consumer benefits, to establish some kind of control to prevent an SMP operator from scuttling innovative broadband offers of alternative operators, both at the wholesale and retail levels in markets 4 and 5.