

## EICTA comments on the draft Commission Recommendation on regulated access to Next Generation Networks (NGA) published on 18.09.08

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### 1. Introduction

EICTA agrees with the European Commission that deploying fibre optical cable in the access networks is a desirable objective from the perspective of both end-users and economic development. As a matter of fact, European citizens expect more personalized online healthcare, education and public services and innovative entertainment, as well as smarter and healthier living environments. In addition, broadband services are key to the competitiveness of the European industry and greatly contribute to economic growth and employment within Europe.

The benefits of the services facilitated by NGAs are well-known. A timely move to NGAs is needed. The question is not whether these networks are needed but rather how the investments in NGAs necessary to gain the benefits across society, enterprises and consumers to realize growth, cohesion and a sustainable development can be stimulated.

Compared to the US, Japan and Korea, Europe shows significantly lower investment levels, which result in a slower adoption of new technologies. Despite gradual progress in recent years, by the end of 2007 only approximately 1.4 million subscribers were using fibre connections in Europe, while in the US and especially in Korea and Japan the number of subscribers was far higher.<sup>1</sup> Europe has a large catch-up potential in fibre-based infrastructure – both in coverage and subscriptions.

EICTA also notices that NGA capabilities will be provided by more than one alternative infrastructure. For all services but those requiring very high bit rates competition will also increasingly come from mobile systems.

EICTA believes that regulatory measures should be defined in accordance with the competitive situation of each market; ex-ante regulation, if needed at all, should focus on long term enduring bottlenecks only. Competition law is sufficient in markets where no such bottlenecks exist. Avoiding an automatic extension of existing ex-ante remedies is of paramount importance as this may act as a serious disincentive to any large scale investment.

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<sup>1</sup> IDATE, *DigiWorld Yearbook 2008*, p.32 et seq. <http://www.idate.fr/pages/index.php?idl=7&rubrique=digiworld&idr=15>

## **2. Regulatory certainty – a requirement for stimulating investment in NGA networks**

EICTA strongly supports the Commission's attempt to provide for greater regulatory certainty with respect to Next Generation Access networks. Regulatory certainty greatly contributes to removing investment barriers.

Also, the risks involved in building expensive next generation broadband infrastructure are high with a long payback period, and regulation should not put off companies that might invest in this next generation infrastructure and should ensure all market players have sufficient incentives to move in these markets.

Moreover, in EICTA's view, a consistent and future-proof regulatory approach needs to go hand in hand with the proposals on the telecoms review recently adopted by the European Parliament in first reading. EICTA notes that the Parliament's proposals on NGA are not discussed in the Commission draft Recommendation. EICTA strongly recommends that the Commission takes into account the Parliament's proposals in the final text of the Recommendation and assesses any contradictions between the Recommendation and the proposals.

## **3. Infrastructure-based competition – a means for spurring investment and increasing public welfare**

EICTA strongly welcomes the Commission's firm commitment to infrastructure-based competition and believes that any policy initiative should underline incentives for investment.

EICTA would welcome clarified language in recital 7 of the draft Recommendation, where doubt regarding the technological or economic feasibility of duplication of infrastructure is expressed. A decision on whether duplication of infrastructure is impractical or undesirable should be left to Member State level.

EICTA notices that the definition of infrastructure-based competition remains unclear, e.g. it is debatable whether the renting of infrastructure from one operator/service provider by another can be considered infrastructure (-based) competition. EICTA's view is that "infrastructure competition" and "infrastructure-based competition" should mean competition between ICT infrastructures. EICTA would also like to stress that such competition contributes to public welfare.

With the exception of limited geographic areas, the next generation access networks do not yet exist. It is therefore important to create a "roadmap for incentives and innovation" to allow the transition to NGAs to happen, keeping in mind that there is no "one-solution-fits all" model since many different scenarios are likely to develop.

EICTA believes that there is substantial scope for the emergence of competing NGA infrastructures in urban and sub-urban areas representing a large percentage of EU households.<sup>2</sup> The situation does

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<sup>2</sup> At the end of 2006, the average (EU25) level of coverage of DSL networks was 89%. On average, at EU25 level, 94% of the population in urban areas is able to subscribe to a DSL connection, as against 72% of the rural population. See Commission staff working document accompanying the i2010 Mid-Term Review, Volume 1: i2010-Annual Information Society Report 2008, Benchmarking i2010: Progress and Fragmentation in Europe's Information Society, Brussels,

however vary greatly among Member States. This is best illustrated by the dense coverage of cable networks in urban areas of some Member States while in others cable networks have very limited coverage. High-speed mobile broadband networks are also expected to significantly increase their reach in the coming years.

Markets with well developed cable infrastructures are best positioned in terms of infrastructure competition. Cable networks are expected to migrate shortly to technologies providing similar capabilities and services to those offered by telecommunications NGA networks. They should therefore be considered as NGAs and be part of Market 4, included in national or regional market analyses and SMP assessments and covered by the proposed Recommendation. A situation where only one technology is considered as NGA is inconsistent with the technology-neutral principle of European Regulations.

#### **4. Taking investment risks into consideration**

Regarding paragraph 6 of the draft Recommendation, investment decisions are taken on the basis of profit and risk evaluations for each project. Determining a regulatory “project-specific risk premium” is therefore not likely to encourage investments. In order to increase the regulatory certainty needed for promoting investment and to address and possibly remove barriers to investment in next generation networks, the European Parliament has proposed the concept of risk sharing for the roll-out of new networks in a legally binding way. EICTA invites the Commission to take into consideration the EP proposals in its NGA Recommendation.

#### **5. A new market approach is necessary**

EICTA is of the opinion that a new market view is necessary due to the development of NGAs and the broadband services they facilitate.

Existing broadband services (such as teleconferencing, telepresence, IP-TV, video, gaming, etc.) can be delivered by service providers via different types of networks, such as copper-based DSL, current cable systems, broadband wireless (and mobile) and of course FTTX. In some geographical zones market forces have already resulted and will increasingly result in the deployment of alternative broadband networks. Infrastructure competition exists or is imminent, and regulating the migration of one of the competing infrastructures towards NGA networks should be done gradually if at all.

Commercial investors in NGAs rely on the delivery of such new services (i.e. multi-service bundles) for the viability of their NGA business case. The purpose of deploying NGA networks is the possibility to provide new multi-service offers and not to merely increase the available capacity.

Non-commercial NGA investors (municipalities for example) are likely to have other prime objectives than the delivery (as service provider) of multi-service offers.

## 6. EICTA welcomes the Commission's support to fibre deployment

EICTA shares the view that fibre deployment is essential for reaping the ultimate benefits of NGAs. While technological developments will continue to enhance the capabilities of good quality parts of the legacy copper access network, new services that will be developed in the longer term will require fibre to the end-user.

While we believe that the delivery of new services is the main driver for investments in fibre systems (FTTX), reduced operational costs resulting from the decommissioning of legacy copper access networks are also taken into consideration in investment decisions. Therefore the obligation for an investor in FTTX, with a legacy network, to continue providing copper access beyond his business viability severely constrains his or her business case, especially compared to an investor without a legacy network.

Very High Speed Fixed Networks, based on fibre in the access segment, are at the heart of European operators' and local municipalities' development strategies. There are two main approaches regarding fibre deployments in Europe:

- "Copper Centric": Optical fibre is laid in the access network from an optical central office to a street cabinet where active equipment (Vdsl) is installed. The copper pair is used to link this street cabinet to the end-user premises. This solution is generally called Fibre to the Node (FTTN) and allows up to 50 Mb/s asymmetrical bandwidth. Fibre to the home end game is considered as a second step or an immediate step for Greenfield areas.
- "Fibre Centric": Optical fibre is laid from the optical central office to the end-user premise. The copper pair is no longer used and no active equipment is installed in the access network. The fibre centric approach – also called Fibre to the Home (FTTH) – requires the roll-out of a new optical local loop allowing virtually unlimited bandwidth (100 Mb/s and more).

It should be noted that a third approach, Fibre to the Building (FTTB), consists of laying fibre until the building basement where active equipment is installed, the copper pair being used to link the apartments. European operators choose this option only when installing fibre in the building is prohibitive (e.g. due to high cost, rights of way by landlords etc).

EICTA considers that the "fibre-centric" approach (FTTH) is the end game, while "copper-centric" (FTTN, FTTB) allows NGA roll-out with shorter time to market

## 7. Access to ducts and civil works – need for a pragmatic approach

According to various estimates the cost of civil works necessary to build the passive infrastructure of an NGA network represents 50-80% of the total investment. This includes trench digging, duct and cable installation, building of new optical street cabinets and central offices, installing indoor cabling etc.

Access to and the cost of civil works are therefore of key concern for the investor in NGA networks. Timely and equitable access allows the deployment of alternative networks and true infrastructure

competition between operators. As emphasized earlier in this paper, EICTA believes that infrastructure based competition provides the best basis for sustainable competition, investment and innovation.

Nevertheless, EICTA notes that duct availability and management as well as approaches to infrastructure usage vary significantly throughout the European Union. Today, the full scope of civil works infrastructure is not subject to electronic communications sector specific regulation. Thus, harmonization via a Recommendation seems to be challenging. From an EICTA perspective, a harmonized approach at Member States' level to open alternative civil works infrastructures (e.g. water/electricity) for the deployment of fibre is desirable.

Access to ducts and civil works could be considered a "public utility" obligation similar to roads, water works etc. When such facilities are publicly controlled or owned they should be available on equitable terms to all investors in NGAs and possibly financed by access fees from service providers. When no such facilities exist, any regulation of access should be symmetrical and not limited to ECS providers. The inclusion of ECS ducts into local planning procedures should be strongly supported.

Besides regulatory measures, a number of other policy measures can be adopted to encourage deployment of fibre by all market players. These include smoothing the process for obtaining rights of way and lowering the relevant fees; planning civil works in other domains such as electricity, gas, roads or water in such a way that ECS operators can simultaneously deploy fibre; and promoting access to existing and available ducts owned by public utilities or local government to all operators and service providers on a non-discriminatory basis. An inventory of all available ducts is highly desirable from the standpoint of operators who may want to deploy fibre and provide services using such ducts.<sup>3</sup>

EICTA recommends the creation of NGA national forums to facilitate coordination between public institutions (local communities, ministries, regulatory authorities etc) and stakeholders (incumbent and alternative operators, equipment manufacturers, consumers etc). One of the major topics that need to be addressed by such forums is NGA deployment in suburban and rural areas.

Regarding paragraph 13 of the draft Recommendation, in order to provide end-users with a choice of alternative in-building infrastructures the deployment of parallel micro ducts could be encouraged.

EICTA believes that, in general, facility sharing should be market-driven and regulatory intervention should only take place in case of market failure. Regulatory intervention, if needed, should be objective, transparent and proportionate and provide for a sharing of costs on a fair basis.

The costs of civil works to build infrastructures (especially fibre) are very high and obtaining building permits is often very time-consuming. From that perspective, measures that would facilitate sharing might have a positive impact. However, excessive sharing obligations may negatively impact investment plans both for incumbents and new entrants. In any event, regulatory intervention should not lead to delays and impact the operators' ability to design their own network topology.

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<sup>3</sup> See for example Portuguese Decree-Law no. 68/2005, of 15 March 2005, aimed at enabling synergies between civil works and deployment of electronic communications networks. <http://www.anacom.pt/render.jsp?contentId=451181>

## **8. The assessment of existing “best practices” is a prerequisite for defining sound regulatory approaches**

EICTA considers that the deployment of “Very High Speed Broadband” networks is a priority and all measures aiming to promote this must take into consideration current “best practices” across Europe.

In EICTA's view very high speed access consists of sustained bandwidths significantly in excess of those currently widely available using existing local access infrastructures and technologies. Very high speed network access is characterised by (a) the possibility of symmetrical access (b) instant communications (very low latency) and (c) simultaneous applications. Downstream access should be capable of supporting services such as multiple HDTV feeds using MPEG4, broadband internet and voice services. Upstream access should support an increasing range of interactive and user generated services and applications.

The draft Recommendation requires NRAs to determine a number of parameters such as the “appropriate” or “relevant” level of profitability and performance of operator’s NGA investments. This may come in too early as operator’s investment decisions may in times of a financial crisis not yet be firmly taken and many NGA rollout-plans may be too nascent to be appropriately judged by the respective NRA.

The proposed and at times rather detailed Recommendation would lead to imposing existing obligations for legacy networks to new networks that are not yet built and that require private financing in a competitive market.

## **9. EICTA supports geographical segmentation**

The competitive situation and other local conditions (level of risk, existence of non telecoms ducts and civil works, etc) on the various geographical markets should be taken into account when determining the appropriate level of passive infrastructure sharing and the required involvement of public authorities in the development of NGAs.

The extent of market dominance, if any, will greatly vary from one geographical market to another. Urban areas in several Member States already enjoy significant competition in broadband access provision.

## **10. NRAs should have room to define appropriate remedies in accordance with the existing situation in the different Member States**

Given that the various national markets are very different in terms of market situation and level of development of legacy infrastructures, EICTA believes that regulatory certainty should not necessarily equal full regulatory harmonization.

Common regulatory principles and measures/remedies are worthy objectives. However, as indicated in the Commission's draft Recommendation, factors that influence investments vary between Member States, market players, geographical zones in a given country, as well as over time. Therefore regulatory certainty is more important than consistency in regulatory remedies across markets that will remain diverse in many respects.

Since the objective of "consistent" regulatory approaches across the EU might conflict with the objective of stimulating investments, the latter should have priority. Recent national experiences also suggest that there is no unique best practice applicable to all EU Member States and that some of the national solutions already in place are different from the measures proposed in the draft Recommendation.

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### About EICTA:

EICTA, founded in 1999 is the voice of the European digital technology industry, which includes large and small companies in the Information and Communications Technology and Consumer Electronics Industry sectors. It is composed of 61 major multinational companies and 41 national associations from 29 European countries. In all, EICTA represents more than 10,000 companies all over Europe with more than 2 million employees and over EUR 1,000 billion in revenues.

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