

**Ericsson comments on
Draft European Commission Recommendation on regulated access to Next
Generation Access networks (NGA)**

Introduction

ERICSSON¹ supports the European Commission view that deploying fiber optical cable in the access networks is a highly desirable objective from the perspective of both end-users and economic development. Such Next Generation Access networks are key to the provision of all types of broadband services to consumers, businesses and public users. They will play an important role in the transformation of Europe into a sustainable and competitive society in line with broad political goals.

The beneficial effects of NGAs, both with respect to its inherently lower climate load due to lower energy consumption and the wider secondary benefits of the services it facilitates, should be strongly promoted. Ericsson therefore strongly supports the Commission objective to incentivise investments in NGA.

Ericsson believes that any regulation affecting infrastructure investments should take into account that that NGA capabilities will be provided by more than one alternative infrastructure. In addition to new-build fiber networks modern Cable networks will offer fully comparable and directly competing services and access. Moreover, for all services but those requiring very high bit rates, competition will also increasingly come from mobile systems.

Regulatory certainty is needed by investors

Ericsson 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 deter companies that might invest in this next generation infrastructure and should ensure that all market players have good incentives to engage in these markets.

Infrastructure-based competition is key

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

Ericsson would welcome clarified language in paragraph 7 of the consultation 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 the market. Current technologies allow the deployment of parallel passive NGA ICT infrastructures (i.e. fiber, not civil works infrastructure) at a minor cost premium.

Ericsson 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. Ericsson's view is that "infrastructure competition" and "infrastructure-based competition" should mean competition between separate ICT infrastructures.

In Ericsson's view there is substantial scope for the emergence of competing NGA ICT infrastructures in urban and sub-urban areas that represents a large percentage of EU households. This is best illustrated by the dense coverage of Cable networks in urban areas of some Member States. High-speed mobile broadband networks are also expected to significantly increase their reach in the next few years.

Markets with well developed cable infrastructures are best positioned in terms of infrastructure competition. Cable networks are already migrating to technologies providing similar capabilities and services as those offered by telecommunications NGA networks. They should therefore be considered as NGAs and be included in the analysis of Market #4, included in national or regional market analyses and SMP assessments, and covered by the final amended Recommendation where SMP is found to exist. A situation where only one technology is considered as NGA is inconsistent with the technology-neutral philosophy of European regulations and legislation.

The benefits of genuine infrastructure competition lie not only in business aspects. For some NGA services there is close interaction between different network layers and the integrated control of both service and active network layer is important to achieve optimum service delivery and stimulate innovation.

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. Ericsson invites the Commission to take into consideration the EP proposals in its NGA Recommendation.

NGA is an emerging market – the need for a different approach

Existing broadband services 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 FTTH. While these services require high bandwidth they do not require NGA networks for their delivery. In some geographical zones market forces have already resulted and will increasingly result in the deployment of parallel competing broadband networks. ICT infrastructure competition exists or is imminent and regulating the migration of one of the competing infrastructures towards NGA networks appears inappropriate.

In low population density areas broadband coverage will not develop by market forces and will call for an all together different approach. Public funding or support will be necessary for broadband deployment and regulatory requirements on supported access providers would be appropriate to facilitate a competitive service market.

New broadband services that require the capabilities of NGAs (in terms of latency and capacity, e.g. in excess of 10 mbps) and cannot be delivered over copper-based DSL, current Cable systems or wireless (and mobile) networks should be considered as a new market and hence be left unregulated. A multi-service broadband offer, including multiple (H)DTV streams combined with high-speed Internet per household, constitutes an example of such services.

Commercial investors in NGAs rely on the delivery of such new services (i.e. multi-service bundles including real-time video) for the viability of their NGA business case. The purpose of deploying an NGA network is the possibility to provide new multi-service offers and not to merely increase the bit-rate of Internet access for current services.

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

Ericsson believes that the level of regulation supported by the NGA Recommendation would stifle NGA investment and deprive consumers, businesses and ultimately society from reaping its benefits in a timely manner.

Ericsson welcomes the Commission's support to fiber deployment

Ericsson shares the view that fiber deployment is essential to reap the ultimate benefits of NGAs. While technological developments will continue to enhance the capabilities of legacy copper access network where line quality is sufficient and loop length is short, new services that will be developed in the longer term will require fiber to the end-user. Fiber also plays an important role in connecting wireless/mobile system base stations that are delivering increasingly large amounts of data at higher speeds. Such mobile back-haul is an important driver for fiber into the second mile segment.

While we believe that the delivery of new services is the main driver for investments in fiber systems (FTTX), reduced operational costs resulting from the decommissioning of legacy copper access networks is also an important factor in NGA investment decisions. Therefore, the obligation for an investor in FTTX, with a legacy network, to continue the provision of copper access beyond its business viability severely constrains his business case, especially compared to an investor without a legacy network.

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 is therefore of key concern for the investor in NGA networks. Timely and equitable access to these facilities allows the deployment of alternative networks and true infrastructure competition between operators. As emphasized earlier, Ericsson believes that infrastructure based competition provides the best basis for sustainable competition, investment and innovation.

Nevertheless, Ericsson 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 Ericsson perspective, a harmonized approach at Member States' level to open alternative civil works infrastructures (e.g. water/electricity) for the deployment of fiber is desirable.

Access to ducts and civil works should ideally be handled as 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 ICT NGAs. When no such public facilities exist, any regulation of access should be symmetrical (i.e. applied equally to all facility owners) and not limited to ECS providers. The inclusion of ECS ducts into local planning procedures for civil works in other domains such as electricity, gas, roads or water in order to facilitate ECS operators’ simultaneous deployment of fiber should be strongly supported.

In order to provide end-users with a real choice of alternative service and communications providers, deployment of in-building infrastructures such as parallel micro ducts or multiple fiber strands should be encouraged. Such measures would be a strong guarantee against a last mile monopoly and be a basis for real infrastructure competition.

Ericsson believes that in general ICT 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 fiber) are very high and obtaining building permits is often very time consuming. From that perspective, measures that would facilitate sharing would 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.

The draft Recommendation supports a heavy regulatory burden on operators investing in NGAs but also on NRAs charged with determining the “appropriate” or “relevant” level of many items including financial, profitability and performance parameters. This might lead to conflicting interpretations and requirements and can negatively affect investment decisions.

Ericsson supports geographical segmentation

The proposed detailed regulation points in a direction of imposing existing obligations, that were established for networks mainly built by public funds in a monopoly situation, on essentially new networks to be built with private financing in a competitive market.

We believe the regulatory measures should be defined in accordance with the competitive situation of each geographical market. 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.

The competitive situation, especially the existence of other NGA capable infrastructures, and other local conditions (level of risk, existence of non telecoms ducts and civil works, etc) on different geographical markets should be taken into account when determining the existence of SMP and the appropriate level of regulation.

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.

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

The various national markets being very different in terms of market situation and level of development of legacy infrastructures, Ericsson believes that regulatory certainty should not necessarily require full regulatory harmonization.

Common regulatory principles and measures/remedies are worthy objectives. However, as indicated in the Commission's documents, factors that influence investments vary between Member States and market players, across geographical zones in a given country, as well as over the 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 in our view be given priority. If networks are not built there are no benefits to consumers, businesses and society and consistency in regulatory approach becomes irrelevant.

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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