

Finnet reflection document in response to the Commission Recommendation on regulated access to Next Generation Access Networks (NGA)¹

General Finnet position

Finnet² welcomes the possibility to express its position on to the Commissions Recommendation on regulated access to Next Generation Access Networks (NGA).

The European telecom sector is in the middle of investment challenge. So far the deployment of new high-speed fibre access networks (NGA) in Europe has been far too slow. Only a tenth of the fibre lines deployed in East Asian economies and less than half of those deployed in the US have been built in the EU.

The telecom industry, given the right conditions, could play a major role in overcoming this crisis by channelling investment to high-speed fibre access networks. It is widely acknowledged that such investments would positively effect productivity growth, the competitiveness of EU businesses and eventually help to preserve and create employment in the EU.

The Commission's final NGA Recommendation could play a vital role in creating a virtuous circle for NGA investment by reducing regulatory risk to improve conditions for NGA investment while supporting competition through open access to economic bottlenecks.

However it is very obvious that the draft recommendation does not yet provide the adequate response to the increased risks involved in NGA investment and therefore will not facilitate those investments in Europe. Key elements of the draft should therefore be adapted or revised accordingly. Also the number of details in draft exceeds all the expectations regarding the plans of cutting the regulations in the field of telecommunications. Nowadays in Finland the focus of business (as regard the number of customers) is in mobile business but the regulation still remains in fixed networks even though the fixed telephony markets have been proved to be competitive for years by now. The draft still supports this distortion by giving extremely detailed obligations to the newly emerging NGA markets.

¹ Finnet also supports ETNO's response to the Recommendation.

² Finnet is a co-operative and consultative body for its member companies (Finnet Group).

Finnet supports the stated goal of the Commission to promote investment and competition in NGA and to foster sustainable infrastructure-based competition. However the draft itself should also support Commission's goal. We also support the regulation which takes account competitive conditions in different regions. The competition between different infrastructure techniques should also always be taken account when assessing for example SMP obligations. This means also the infrastructure competition between NGA and mobile networks. The Recommendation should therefore remain neutral as regards the technology used. It should be also noted that a legacy of a copper network should not automatically leave to the SPM in NGA³.

Negative elements in the Recommendation

1. Splitting the network will not enhance competition

Commission has stated in the Recommendation as follows:

“Where alternative operators have access to ducts, other civil engineering works and other elements which are not active and deploy their own fibre to the building or to the vicinity of the building, the NRAs should analyse carefully the SMP operator's network architecture and determine where the concentration point of the terminating segment of the access network, including inside-building wiring, should be for the purpose of granting access. In making such a determination NRAs should take into account the fact that multiple physical access deployments may be impractical or undesirable within buildings and that any concentration point will need to host a sufficient number of end-user connections. Physical access to the fibre sub-loops should be mandated as a remedy in Market 4 at the SMP operator's concentration points. In this context, NRAs should consider whether specific interfaces are required to ensure efficient access. Such access should be provided according to the principle of equivalence as set out in Annex II.”

As mentioned above, the Recommendation includes very detailed actions to provide access to access seekers. In Finland, however, the practice has proved that “bitstream access” to be only functional alternative to provide competition between operators. The past has shown, especially in regards to market with multiple market players, that it has been nearly impossible and in terms of economical and technical factors to design and build up networks in co-operation. The size and operational methods of market players varies substantially. Also the fault management and maintenance of a network in a split network model just do not work in a best possible way. It has been and is more useful to co-operate with players from another fields, like electricity works. A straight competition situation always creates friction between competitors and therefore bitstream access would be the best way to achieve the goal.

³ Finnish Communications Regulatory Authority (FICORA) has recently analysed SMP-markets 4 and 5. In market 4 SMP has been automatically extended to cover NGA. No so called three criterion test has been conducted between different and parallel techniques. According to FICORA mobile networks cannot be seen as a competitive network compared to NGA. In contrary, the situation in retail market shows that mobile broadband market share has rapidly gone up. In fact, this means the mobile network is more than a potential factor regarding competition between networks in a wholesale level. Also the coverage of mobile broadband networks is significantly larger than NGA in Finland. There is now

2. *The Recommendation does not provide the much-needed incentive to invest NGA and a fair compensation to the investor*

Commission has stated in the Recommendation that wholesale price should not exceed retail price:

Pricing of ancillary services Annex I, p. 10

“The pricing of ancillary services (such as power supply in street cabinets) should be calculated on the same basis as paragraphs 2 and 3 above as appropriate depending on whether the service exists or is new.

The access price of ancillary services should be consistent with the price implied by the SMP operator's other wholesale products (e.g. local loop rental). An access seeker should be able to assemble a composite LLU product at a price which is not higher than the wholesale price charged for LLU”.

In the real world, however, this is impossible. This can be shown by the following example⁴: A fibre connection will be built to a region where there are 1.000 detached houses. The building cost will be 1.200 € per detached house. Holding time is 25 years. Interest rate is 10 %. In regards the given values the investment cost per detached house by capital recovery factor is 133.2 €/year and 11.1 € in one month⁵. The given cost, 11.1 €, presumes that all 1.000 detached houses purchases the FTTH instantly and keep it 25 years non stop.

However, if only 10 % of above mentioned detached houses purchase the FTTH during the first year, the cost is, as regards the given values, $11.1 \text{ €} / (100/1000) = 111,1 \text{ €/month}$ ⁶, which is supposedly too high to charge from the end user during the first years. According to our point of view, operators might charge from the end user for the FTTH approximately 70 € per month but at the same time, in order to cover investment costs, the fee from an access seeker should be 111 € in month during the first year. However, the Recommendation suggests that retail price should be higher than the wholesale price. In this respect the Recommendation should be revised to respond the economical facts.

The Recommendation is in conflict with The Court of Justice's recent judgement concerning the access to LLU and the principles of cost orientation

The Court of Justice has given a judgement⁷, where, according to the Court:

“1. The interest on the capital invested and the depreciation of the fixed assets deployed for the initial implementation of the local loop are among the costs to be taken into account in accordance with the principle that rates for unbundled

⁴ Maintenance fees not included.

⁵ A charged fee from the non-incumbent operator for the access to the network.

⁶ See footnote 4.

⁷ C-55/06,

access to the local loop are to be set on the basis of cost-orientation, laid down in Article 3(3) of Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop.

2. When applying the principle that rates for unbundled access to the local loop are to be set on the basis of cost-orientation, laid down in Article 3(3) of Regulation No 2887/2000, in order to determine the calculation basis of the costs of the notified operator, the national regulatory authorities have to take account of actual costs, namely costs already paid by the notified operator and forward looking costs, the latter being based, where relevant, on an estimation of the costs of replacing the network or certain parts thereof.

And the Recommendation suggests the following:

”Page 10 Annex 1:

Pricing of existing ducts, other civil engineering works and other elements which are not active:

The usage price for existing ducts, other civil engineering works and other elements which are not active, should be based on cost estimates contained in the regulatory accounts of the SMP operator. These cost estimates should be historical costs minus depreciation, or, where this information is not available, current costs minus depreciation. Where these are not yet included, a proportionate share of the common costs of an efficient operator should be added to these cost estimates”.

From our point of view the Recommendation is at variance with the Court ruling and the principles of a said ruling should be taken account by the Commission. The Recommendation does not provide the long waited support for the NGA investment and does not provide a fair return to the investor.

One size does not fit for all

The Recommendation includes very detailed factors. From Finnet's point of view such details are a major concern in terms of a national special characteristic. The NRA's should have tools that fit to national circumstances. Such a detailed Recommendation does not necessarily take account national circumstances. In a country like Finland, the telecommunications market is much diverged with numerous operators. The Recommendation will just make harm to the business and finally to consumers. The Commission should make a brave step to create flexible regulation and in the end route the industry to the situation where only general regulatory principles apply.

Helsinki 14.11.2008

FINNET ASSOCIATION

Teemu Summanen
Director, Legal Affairs