

Malta's Comments on the Commission's Draft Recommendation on Next Generation Access Networks (NGA)

The following are Malta's comments on the European Commission's draft Recommendation and its accompanying explanatory note on regulated access to Next Generation Access Networks (NGA).

On a general note, Malta supports fully the European Regulators Group (ERG) position on NGA entitled IRG/ERG Response to the Draft Recommendation on the regulated access to Next Generation Access Networks (September 2008), particularly the need for the discretion of the National Regulatory Authority (NRA) to pick the most appropriate remedies from a range of adequate regulatory measures.

While Malta appreciates the Commission's effort to be proactive on such an important topic, it feels that the current version of the Recommendation is too prescriptive given the state of development of NGAs in Europe. Indeed, Malta feels that since investment in NGA is still in its infancy stage, the Recommendation should make every effort not to stifle it by stringent regulatory measures. For this reason, the Recommendation should limit itself to develop the desired regulatory principles such as the need for duct access, transparency, non-discrimination, cost orientation, visibility on network changes and the need for continuation of services of operators hosted on traditional access infrastructure.

Without prejudice to the above, Malta would also like to react to certain specific issues featured in the Recommendation which, if the Commission intends to retain in its final Recommendation, should be further clarified.

Risk premium

While the draft Recommendation states that one should expect that the required rate of return related to undertaking NGA investments will be higher than the typical utility and telecommunication companies, the Recommendation fails to give specific guidelines on how such a higher risk premium is to be calculated.

Furthermore, if such a level of detail is still to be maintained in the Recommendation, the document needs to develop a more comprehensive approach on how to tackle the characteristic's common costs of access networks. In this sense the current state of the recommendation does not give any details on how to treat the eventual inconsistency between the pricing of other services using the same access networks; such as, leased lines which at present feature conventional weighted average cost of capital rates.

Pricing

For the price calculation of ducts, the Recommendation suggests that the use of Historic Cost Accounting (HCA) for existing ducts and Current Cost Accounting (CCA) for the new ones.

This represents a shift from current best practice as well as contradicts the Commission's stance in favour of CCA expressed in previous Recommendations. Malta feels that the choice of the cost methodology to be used should be rooted in a more reasoned economic rationale, particularly one which takes into account the prospects for future competition and the extent that such a chosen methodology is likely to distort future competitors from entering the market. Malta feels that such a choice on the cost methodology should reflect a consistent approach and should be left to the discretion of the NRA.

Moreover, should the recommended approach be maintained, Malta feels that a risk of arbitrage arises since different parts of the network offering the same service would be priced differently.

Malta also urges the Commission to evaluate the cost distortions that are likely to occur if fully depreciated ducts will be rehabilitated under the recommended scenario, as well as the consistency issues that will transpire when one considers the other services that currently use the access network. Once again the recommendation fails to take sufficient account of the underlying common costs characteristics of network industries.

Assumptions on SMP operators

Malta also feels that at present the Recommendation is making a fundamental assumption *a priori* that existing Significant Market Power (SMP) operators will be the only players investing in a NGA setup and hence it is placing all its regulatory prescriptions on SMP regulation. In this respect, the Recommendation fails to cater for the possibility that non-SMP operators would also resort to NGA investment. Malta believes that this is an important scenario that the Recommendation should consider in detail. Such a scenario will affect the legal basis upon which the mentioned regulatory measures are to be anchored.