

POSITION OF TELECOM AUSTRIA ON THE EC'S RECOMMENDATION ON NGA

1. INTRODUCTION:

The coming years will be crucial for the migration to high capacity Next Generation Access ("NGA") networks. However the deployment of these networks requires substantial investment in the range of billions of Euros over the coming years.¹

Investment decisions depend on a number of factors. **Economic and technological feasibility** and a **regulatory framework that fosters innovation** are clearly essential. We understand that the European Commission (EC) welcomes the development of new higher capacity networks and refers to it as a means of facilitating innovation and long-term consumer welfare. We also appreciate the EC's ambition to strengthen the innovative potential of the European marketplace.

Unfortunately the EC has not only **remained silent on the NGN proposals recently adopted by the European Parliament** in its first reading of the telecom review, but it **even partly contradicts these proposals (e.g. risk-sharing arrangements not included?)**.

Any political decision taken on NGA now will have far-reaching implications for the future. We therefore appreciate the opportunity to comment on the Commission's NGA proposals which, we fear, **fail to stimulate future investments** and are unfortunately **not an improvement on the prevailing legal framework**.

¹ Commission Staff Working Document; Explanatory note to the EC's RECOMMENDATION on regulated access to Next Generation Access Networks (NGA)

2. MAIN CONCERNS ABOUT THE PREVAILING RECOMMENDATION:

Large scale roll-out of new broadband infrastructure requires not only significant financial investment by the market participants. It also requires commitment - commitment by decision-makers to acknowledge the risks involved in investing in NGN such as financial aspects or potential market uncertainties.²

In light of these challenges, the **European Parliament (EP) has proposed the concept of risk sharing for the roll-out of new networks.** It has adopted these proposals to **address and possibly remove barriers to investment** in next generation networks. Furthermore, the Parliament has emphasized the **principle of proportionality for any regulatory intervention**, especially to avoid risks for innovation at an early stage. Thus, we would like to present our main requirements in order to amend the current recommendation.

Key requirements to amend the current EU-Commission's draft:

1. **Establish risk-sharing as the main concept in the Commission's recommendation** in order to promote investments;
2. **Add the principle of proportionality** to the recommendation;
3. **Delete both annexes** in the recommendation;
4. **Acknowledge and include the alternative prevailing infrastructure** as regards NGA access obligations;
5. Establish a policy that does **not subject investors to more risks than in other sectors.**

Key parameters to encourage innovation in the EU:

In its recommendation, the EU Commission unfortunately continues to impose very strict obligations on established operators in advance, without properly acknowledging either the risk inherent to next generation networks or the prevailing heterogeneous market conditions within the EU.

A one-size fits all approach would endanger the promotion of innovative products and services and also ignores market realities. Austria, for instance, has been at the

forefront in Europe as regards **fixed to mobile substitution (for voice and meanwhile even broadband services³)** and platform competition **is highly advanced. Overall**, the current EC recommendation ignores alternative NGA-access possibilities and hence contradicts the principle of technological neutrality. A decision on whether duplication of infrastructure is impractical or undesirable should also be left to the market.

Another conceptual flaw of the EU recommendation is the fact that the recommendation also ignores **cross-sector competitive constraints** on telecommunication companies, which emerge with new services that incorporate features from various sectors such as entertainment, gaming and television – yet face no market intervention. While ignoring **these additional threats to the telecommunication sector**, the EU Commission contradicts its own prerogative to lift sector-specific regulation as soon as competition prevails. In addition, it misses the opportunity to properly respond to these challenges and to strengthen instead of restrict the innovative potential of those companies willing to invest in infrastructure and new services.

The roll out of next generation infrastructure - enabling the provision of innovative reliable and interactive services for consumers - is an ambitious goal for the European Union. Decision-makers should thus facilitate and not hinder incentives for investment.

² This has been acknowledged by NRA's e. g. RTR

³ Customers in Austria embrace mobile broadband as a valid alternative to fixed net access (via DSL or CaTV). As a consequence 33% of all broadband connections within Austria have been realised through mobile access as of the end of September 2008.

III. CONCLUSION:

If Europe is to remain competitive in the 21st century, there is still much to do: systematically extending current rules that were defined for different market realities in the sector, in order to provide new access networks, would discourage investment in new and alternative platforms.

It would also constrain the dynamism of the European economy, which crucially depends on the development and adoption of new technologies. Especially with a view to the United States and Japan, it is even more obvious how much the EU needs to keep an offensive attitude towards innovation.

Overall we need a clear policy to encourage investment that does not subject investors to more risks than in other sectors. Assessing the conditions under which enterprises are able to invest in new networks would thus be a key requirement that is yet to be met by the EU Commission. We would thus suggest a high level, in-depth expert analysis about how to legally enhance economic feasibility of these large scale investments, and would welcome an open-minded dialogue on potential drivers of innovation.

The process of shaping the legal framework for further investments in the sector is not only a process of paving the way for further competitive conditions in Europe. It is also a process that mirrors the degree of commitment decision-makers are willing to put into the creative and innovative potential of the European Union.