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European Commission
DGInfosec

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UK Government Response to Commission Recommendation on Next Generation Access

The UK government is grateful for the opportunity to respond to this important consultation and fully supports the Commission's attempts to introduce greater clarity to the regulation of next generation networks across the EU, and also welcomes its attempts to inform and raise the level of debate to reflect the range of issues that impact on next generation access.

Through discussion with the UK regulator we have familiarised ourselves with both OFCOM's and the common ERG position: and can confirm our broad support for their respective positions.

We consequently have some concerns and points of clarification on the Commission text.

Our main concern focuses on the balance between passive and active remedies, which we feel is overly biased in the current draft towards passive remedies and does not reflect well enough the reality that will be witnessed with deployment of NGA. We accept the premise that promotion of competition at the lowest (passive) level is in principle correct, but do not accept the somewhat inflexible stance conveyed by the current text.

The document at present places great weight on duct access as a preferred remedy, the implication being that operators will use duct access as a means to deploy their own fibre network either ahead of or alongside that of the incumbent. Our view is that there will be occasions either dictated by physical limitations, or financial realities, where it would be either impractical, or economically unsustainable for competitors to deploy fibre in this way in the

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near term. Therefore, any such approach will require the complementary availability of active remedies – termed ‘Virtual Line Access’ in the Commission Recommendation.

We believe that greater emphasis should be placed on ensuring that wholesale Virtual Line Access products are fit for purpose and avoid the defects of current generation bitstream access products. We also believe that the Commission could play an important role in encouraging the development of a common template for such wholesale products as well as giving a lead to industry to develop, as far as possible, common interfaces and technical standards.

Where fibre is deployed, however, for example in Greenfield developments, we would want to avoid the necessity for incumbent operators to feel compelled to overlay copper in order to meet their USO obligations. We consider that this adds further weight to the argument that active and passive remedies are essential to the promotion of competition.

The UK Government welcomes the continued focus on competition as a means of ensuring consumer benefit, but would prefer to see the Commission Recommendation maintain a more technology neutral stance than the current text implies: where it appears to specify fibre deployment as the default option in all circumstances.

The UK position differs from this view on the grounds that there will be instances where for example geographical features make this both inappropriate and unrealistic.

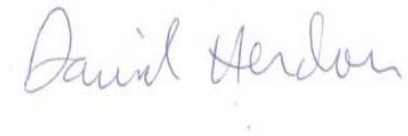
We believe therefore that the Recommendation should give greater recognition to the role that alternative technologies may play in the deployment of next generation access – including cable, mobile and wireless - and also recognise the competitive stimulus that alternatives to fibre and copper can have on developing a fully functioning competitive market.

In addition, the UK feels that the extension of competition should not be limited to access and that it should be encouraged in backhaul, to ensure that prices reflect effective market forces, rather than needing to be subject to regulation.

The UK Government would like to see removal of the references to risk sharing from the recommendation on the basis that this may encourage an anti-competitive interpretation in which incumbents seek to raise entry barriers for competitors by demanding large upfront payments or financial commitments before granting access. Of course it should be possible for commercial entities who want to share the capital costs of investing in NGA

subject to the general application of sector regulation and competition law, allowing regulators and competition authorities' recourse to the full range of remedies should anti-competitive practices emerge.

On a similar note the UK sees no reason to treat risk premium as a wholly separate issue and would argue that it should be built into calculations for rates of return, again allowing flexibility for NRAs to act where appropriate to maintain and encourage competition.



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