

UNI-Europa contribution to the European Commission's draft recommendation on Next Generation Access Networks

As a trade union federation representing some one million telecom workers across Europe, UNI-Europa would like to take the opportunity to contribute to the consultation on the European Commission's draft recommendation on New Generation Access Networks. We would like to underline the importance of consulting and involving trade unions as industry stakeholders in the legislative process in general.

It is obvious that development of fibre networks is an important aspect for the future of the European telecom industry both in terms of its competitiveness and the creation of employment. Consequently, an appropriate regulatory climate has to be created that encourages the investment and innovation that is required. UNI-Europa welcomes the draft recommendation as the beginning of a necessary public debate on how and in what circumstances NGA networks should be introduced.

However, we think that the European Commission's recommendation at this time undermines the current review of the telecom framework legislation. The provisions on investment in fibre-based NGA should have rather been integrated into the framework directive on telecommunication currently debated in order to ensure a consistent legislative approach and an in-depth public debate.

Apart from this general remark on legislative coherence, UNI-Europa would like to stress several aspects that the European Commission fails to address in its recommendation:

Regulatory framework:

- The uncertainty around demand for NGA services, the legal uncertainty on European and national level, the high costs of fibre roll out and the current economic situation should be seriously considered when assessing the prospects and the potential for NGA networks in general.
- At this time, with some national regulators promoting the upgrade to copper based broadband networks and communication providers committing significant investment to Next Generation Networks, there is a strong case for realizing the full potential of NGN before promoting the wider development of NGA networks.
- The Commission does not seize the opportunity to limit ex-ante regulation and to define the conditions and circumstances under which regulatory measures are necessary. Instead, the recommendation favors more detailed and asymmetric regulation focusing on the incumbents and limiting the latitude of NRAs regarding the choice of remedies.
- NRAs should have more options to decide about appropriate remedies and be able to base their decisions on their respective national situations. The draft recommendation and explanatory note do not allow for a more differentiated approach and rather discourage incumbents without whose commitment investments on a larger scale will be impossible.
- The provisions of the recommendation are far too detailed with respect to information and specifications that operators have to provide in the reference offers.
- The public sector is likely to be involved in rolling out of NGA networks and should have a key role in terms of demand aggregation, encouraging of investors and

ensuring an equitable access for all socio-economic groups. NRAs should liaise regularly with public authorities and network investors to monitor trends in the rolling-out of networks, to map progress and to encourage early intervention where there are signs of market failure.

Investment and predictability:

- We need more regulatory stability and predictability in order to create appropriate conditions for investment in NGA networks. Any imposition of further physical access obligations should have full cognisance of the need for SMP operators to make a reasonable rate of return from their investment. NRAs should be clear about such obligations from the outset, so that these are predictable, and should take into full consideration, before mandating them, their impact on the desire of SMP operators to make such investment.
- The margins for return for investors must be clearly defined – which is not the case in the recommendation. The CAPM model for calculating risk shares put forward by the Commission is insufficient and the reference to other calculation options very vague. The pricing principles set out in the annex of the recommendation lead to more insecurity as they mix historical costs and replacement costs and differentiate between old and new infrastructures.
- Investment can be encouraged through incentives such as risk premiums, first-mover-advantages or coupling of risk premium with geographic obligations in order to enable operators to build networks in less populated areas. In the absence of clear legal provisions, a sectoral agreement based on a fair and adequate return for risk model, which is based on upstream prices, could be an alternative.
- Planning security for communication providers increases investment confidence and consequently impacts the creation and preservation of jobs. Without technological innovation, we will lose ten thousands of jobs in Europe in the next five to ten years.

Digital divide:

- The recommendation relies mainly on the establishment of a competitive framework for NGAs. This may in the long-term lead to market failure in several areas, for example in rural or underdeveloped areas, and to an over-concentration of NGA networks in more urban regions. NRAs should, in conjunction with appropriate public authorities and operators, develop policies and projects to deal with those who are likely to be excluded from coverage because they do not live in an area which is attractive to NGA network investors. NRAs should take an early lead in addressing possible market failures as soon as possible and consider social implications of geographical variations as regards fibre roll-out.

Passive assets and physical access obligations:

- Existing street furniture (street cabinets) may have physical space limitations. Therefore, co-location can only take place where physical space limitations permit. NRAs should ensure that new, purpose-built street cabinets facilitate competitive access.
- There is a serious oversight in the draft recommendation concerning the integrity of the passive network and safety issues with regard to the general public and the workforce. The experience of service providers using contract utility vendors, whose labour force is poorly trained and equipped, raises the question of safety and health

risks. It is important to give consideration to the standards required to be met in order to allow other operators access to the passive assets.

- The substantial investment required from the pre-planning to build of a sub loop co-locator facility will delay considerably NGA rollout and raise the question of unrecoverable sunk costs.
- In order to ensure a balanced competition, the access obligations should not be limited to the SMP operators but should be equally imposed on other network providers. This would as well create more choice for alternative operators requesting infrastructure services on wholesale level from other providers.