

Public Consultation on a Draft Commission Recommendation on regulated access to Next Generation Access Networks (NGA)

– Wind Telecomunicazioni comments –

Wind Telecomunicazioni S.p.A. (“Wind”) welcomes the opportunity to comment on the European Commission’s draft Recommendation on regulated access to Next Generation Access Networks (NGA).

Established in 1997, Wind Telecomunicazioni Spa is one of the few European alternative operators to offer integrated fixed, mobile and Internet services. In Italy, Wind is the third-largest mobile operator, with a market share of more than 18% and more than 16 million customers. Under the brand Infostrada the company is also the leading alternative operator in fixed-line services, with more than 1.6 million LLU customers and more than 1,2 million broadband users. Wind owns also “Libero.it” which is the top Italian web portal and is one of the largest service providers in the country.

Wind is part of ECTA and **fully supports ECTA views** in response to this Consultation.

General remarks:

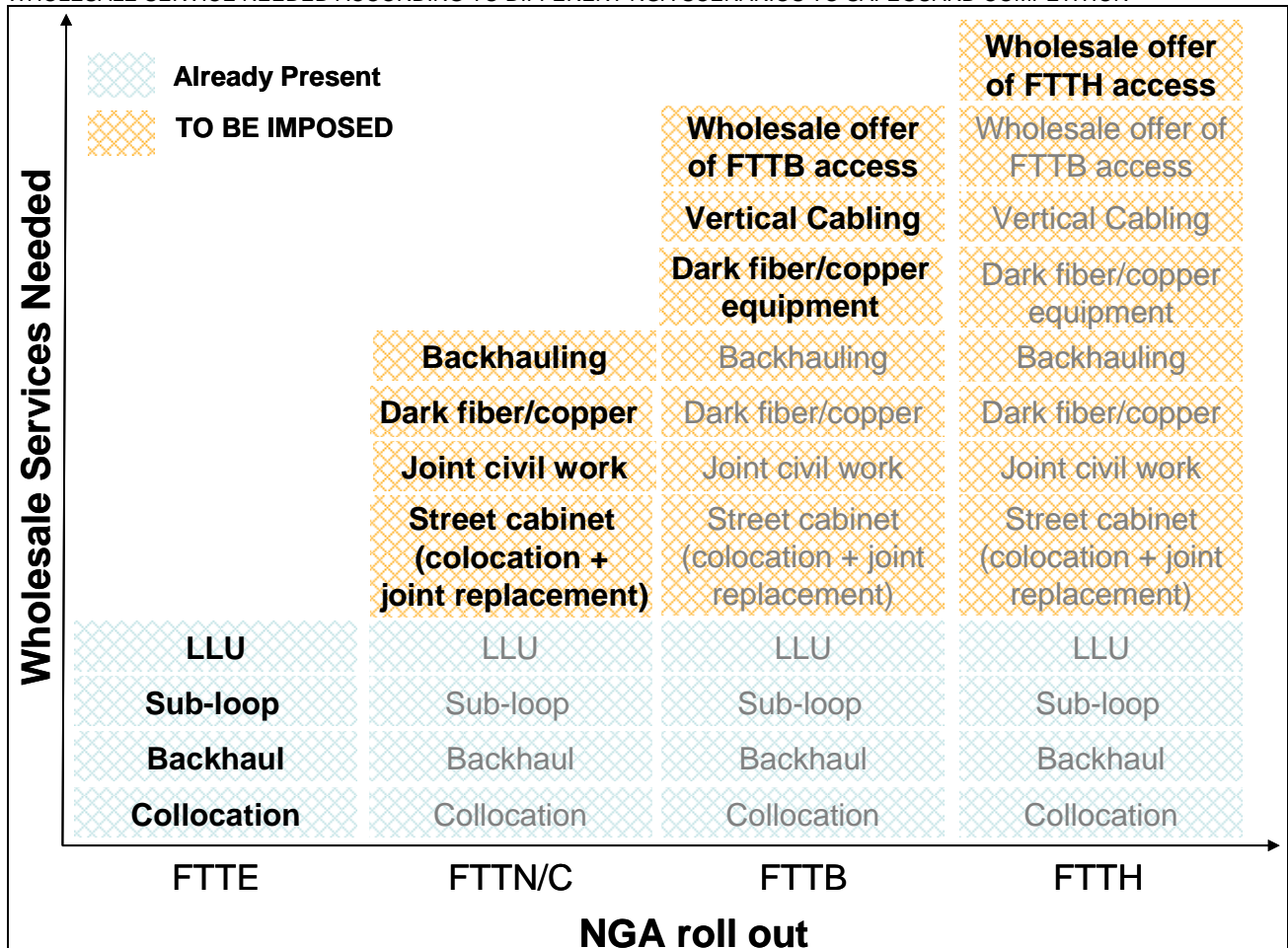
First of all, Wind would like to express its support for the Recommendation on Regulated Access to Next Generation Access Networks (NGA) with the aim of establishing a consistent approach throughout Europe capable of fostering investments in NGA and at the same time securing that the overarching objective of sustainable competition in European telecommunication markets is reached. In this respect whereas (4) is particularly welcomed *“The overall objective of this Recommendation is to foster the application of consistent regulatory remedies to SMP operators throughout the EU in Markets 4 and 5 regarding access to “NGA” networks or in other markets pertaining to NGA that NRAs may identify as not being effectively competitive. Such a consistent approach is required in order to provide regulatory certainty to investors and foster investment and innovation for the benefit of all parties involved”*.

In fact, it is clear that in absence of a clear regulatory approach on NGA only the SMP operators will be able to undertake the heavy investments needed. Such a situation would be particularly dangerous for the future of competition since the return of the investment would be seen by the incumbent operators in the re-monopolisation of the fixed market more than in the successful provision of advanced services. Fortunately, the Recommendation clearly shows that prompt and appropriate measures shall be imposed by NRAs on operators which hold SMP on existing MKT 4 and 5 without the need to carry out a specific market analysis on NGA.

According to this, Wind invites the Commission to define a minimum set of detailed rules to be promptly adopted during first part of the roll out of NGA to avoid the risk of market pre-emption/foreclosure. Those remedies (figure below) should deal with the hybrid NGA

solution that will be initially adopted by incumbents (fibre plus copper architecture, e.g. FTTN/VDSL).

WHOLESALE SERVICE NEEDED ACCORDING TO DIFFERENT NGA SCENARIOS TO SAFEGUARD COMPETITION



Wind agrees with the Commission on the importance of NGA roll out across all the European countries: *“the development and upgrading of high-speed networks based wholly or partly on fibre optical cable is a desirable development which will enable the provision of innovative and better broadband services. Broadband is a key Community objective for the further development of the European economy and there is therefore a need to make the transition to fibre-based access networks in an efficient but timely manner.”*

At the same time Wind strongly believes that equal importance should be given to the objective that NGA roll out does not conflict with achieving sustainable competition in European markets (i.e. NGA roll out should not result in stranded costs for Alternative operators¹ or a lessening of competition). In this respect Wind agrees with the Commission

¹ Wind invites the Commission to further specify in the Recommendation that “In case the migration path causes stranded investment for Altnets, then the SMP operators will have to restore these investment to Altnets”.

statement that “it is therefore important to provide guidance in this context (the deployment of NGA), and to prevent undesirable divergences of regulatory approaches which could harm competition and undermine the development of the electronic communications single market”.

As a matter of fact, regulatory remedies on NGA are crucial for the promotion of sustainable competition in the interest of Consumers and for future investments on NGA since the stability and predictability of the regulatory framework that will be applied to NGA strongly affects investment decisions both of incumbents and of Alternative operators.

In this respect, it is important to remark the fundamental contribution of the Recommendation as main guidance for NRAs to contribute in the NGA development by providing the clear and specific ex ante regulation needed before operators start investing in NGA. The negative example of Italy, where Telecom Italia has already started to invest in NGA in absence of any regulatory measure and without any possibility for Altnets to compete on an equal footing, shows how real is the risks that incumbents exploit NGA to adopt market pre-emption and foreclosure strategies.

As for the imposition of regulatory remedies, Wind agrees with the Commission on the fact that NGA is only an upgrade (wholly or in part) of the current access networks and that hence ex ante remedies can be directly imposed on operators found to hold SMP in market 4 and 5 without the need to wait for a specific new market analysis only on NGA which would only be possible after the roll out of NGA leaving the risk that incumbents exploit *first mover advantages* to *foreclose* the market.

As for the specific remedies which should be imposed by NRAs Wind agrees with the Commission that “*There are a number of possible scenarios for future Next Generation Access (NGA) network roll-out, and competitive outcomes may vary both between and within Member States*”. This means that different NGA context will result in every EU country according to the specific peculiarities of fixed telecommunication infrastructure and market context and that hence the principle “*one size fits all*” cannot be applied also to the specific remedies needed.

Hereafter some examples of main relevant differences among EU countries:

- ⇒ The development and diffusion of fixed telecommunication infrastructures in Eastern European countries are much different from the rest of EU.
- ⇒ Some country specific peculiarities like the possibility to use sewers to facilitate LLU and NGA roll out in France or the historic geographical take up of LLU in Germany or the direct role of municipalities in the roll-out of fixed infrastructures and in the provision services in northern countries.
- ⇒ Existence or not of a widespread cable TV platform like in UK and Belgium which can represent a competitive constrain for TLC incumbents.

As for the Italian situation it should be noted that:

- ⇒ No cable TV infrastructure is present.
- ⇒ Ducts are obsolete and often do not allow *sharing*.
- ⇒ Alternative operators strongly invested on unbundling services

⇒ Telecom Italia already started to roll out NGA in Milan (most interesting city for the provision of ultra broadband service)

Wind believes that the Recommendation even if elaborated at an high level of abstraction can represent for NRAs useful guidelines to develop the specific national remedies required. In this view, Wind proposes that the Recommendation should explicitly require NRA to promptly react to the Recommendation with the definition of country specific remedies.

Notwithstanding the need for the definition of appropriate regulation to stimulate investments on NGA, great attention should be taken to avoid the risk that the transition to NGA brings to emergence of stranded costs for Alternative operators.

In that way Wind agrees with the Commission statement:

“Where competitors have equipment collocated at the SMP operator's sites, they will need a reasonable transition period to decide on their investment and business strategy to cope with the changes. Accordingly before an SMP operator removes existing infrastructure to realize cost savings, NRAs should ensure competitors can continue to provide services by means of a proper migration path. NRAs should ensure that appropriate transitional arrangements are in place, with a view to enabling alternative operators to adjust their business strategies to the changed network structure.”

but invites the Commission to further specify in the Recommendation that “In case the migration path causes stranded investment for Altnets, then the SMP operators will have to restore these investment to Altnets”. Such a statement would inhibit the adoption of *raising rival's cost strategies* by ex monopolist operators which could invest on specific NGA architectures just to reduce alternative operators competitiveness.

Lastly, Wind strongly support ECTA's request to explicitly include in the Recommendation the adoption of the “ladder of investments” principle also for NGA. In this respect, the Recommendation should also stress the crucial relevance of Wholesale Broadband Access solutions that represent the main regulatory tool to allow timely competition on retail NGA services (i.e. pricing and technical characteristic of NGA wholesale bitstream services should be coherent with retail coffers) with the incumbent during the transition phase between copper LLU services and NGA unbundled services.

Specific remarks

Whilst Wind finds most of the aspects of the proposed recommendation positive and agrees with large parts of proposals concerning duct access measures and treatment of VDSL/FTTC deployments, in the following some specific considerations are represented:

1. There is no substantial reasons to make a formalistic distinction between FTTx technologies in the Recommendation once it is clear that the only distinction is with respect to wholesale services needed in each circumstance and not to the wholesale services which shall be available to Altnets (i.e. see figure in page 2 for the entire list). Wind foresees that all the technological solutions available will be

adopted in the deployment of NGA and will coexist in each member in different geographic areas and at different steps of the roll out. In this light, Wind agrees with the “Whereas (8)” but with a necessary specification:

“Where operators deploy fibre networks, the use of concentration points is generally a crucial element of the network topology. Concentration points are the first point at which individual end-user connections are brought to a single point in the network. Access to such concentration points can be crucial for the viability of competition. In this regard, NRAs should ensure that access conditions to the concentration point between SMP operator and alternative operators enables effective competition.”

2. It is important to further remark the relevance of wholesale broadband access. It is already known that most of the Altnets will not be able to invest in NGA because of their lower financial resources but absence of a functional wholesale broadband access service risks of reducing NGA investment opportunity also for larger Alternative operators like Wind (WBA solution are fundamental for time to market retail solution which are need to reach a sufficient level of scale and density economies and hence facilitate investments on NGA) .
3. NGA access and pricing should be coherent both with the WBA and with the need to reward investments. This concept is already expressed in point (9) of “Trasparenza” of which Wind proposes the following rewording
“SMP operators should be mandated to make reference offers for all relevant inputs consistent with the provisions of this Recommendation in accordance with Annex III of the Recommendation. The reference offers should be put in place within six months of the imposition of this obligation unless NGA deployments are already envisaged in which case urgent measures may be required. Inter alia, such reference offers should set out conditions for access to ducts, other civil engineering works and other elements which are not active such as copper and fibre sub loops and full loops, dark fibre (and where relevant copper) backhaul, in-building wiring , or in case of WBA reference offer an unbundled offer of the features available on the NGA network. In this context, the SMP operators should provide information regarding, in particular, duct location and capacity with processes for collection and distribution of such information as specified by the NRA according to market needs. NRAs should specify in the reference offer appropriate ex ante price controls on all necessary inputs referred to above in this article. The price controls for the usage of ducts, other civil engineering works and other elements which are not active, should be based on the methodology set out in Annex I. The price controls for the usage of WBA services must be coherent with the pricing of infrastructure elements in order to foster infrastructural competition. Also NRAs have to adopt price test to guarantee the retail offer’s replicability”.
4. The EU commission should promote a rapid acknowledgment amongst the NRAs of the Recommendation principles, defining a minimum set of detailed rules to be promptly adopted during the roll out of NGA. Those remedies should deal with the hybrid NGA solution that will be initially adopted by incumbents (fibre plus copper architecture, e.g. FTTN/VDSL). In this respect, Wind proposes the following to be added in different part of the Recommendation (i.e. in the whereas (10) and “12” of the “Trasparenza”)

Owing to the development of hybrid networks (fibre plus copper) and in order to enable all competitors to provide and compete on all retail services the following wholesale services should be made available to competitors:

- (i) dark copper segments of primary and secondary access network,*
- (ii) home vertical cabling,*
- (iii) fibre optic sub-segments of access network - dark fibre and not -,*
- (iv) sharing facilities of distribution network equipments – e.g. cabinet, FO signal regenerator,*
- (v) duct and building infrastructure sharing.*

Wind trusts the above comments provide useful insights and remains available to provide further clarifications.

Annex 1, contains Wind additions to the document already developed by ECTA with specific amendments on the text of the Recommendation.

Annex 1 should be considered part of Wind position expressed in this letter which cannot be interpreted on a *stand alone* basis.

Any question regarding these comments may be addressed to:

Vincenzo.Ferraiuolo@mail.wind.it