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Sent: mercredi 22 juillet 2009 16:00
To: INFSO COCOM
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Subject: Fw: Cocom: porocilo in osnutek pisnih stališč za Priporocilo o NGA

To Whom It May Concern:

Please find attached written comments of the Slovenian delegation in respect of Recommendation on NGA:

1. We welcome the Recommendation as an important step in further harmonisation of pan-European approach to NGAs. We further welcome the reference to the autonomy of the NRAs as to setting the remedies on M4 and M5. However, we recommend that this autonomy also be further reflected in the text of the recommendation.

2. Unbundling of NGA network elements in accordance with the principle of technological neutrality today seem to be a necessary tool for both safeguarding competition and encouraging investment in infrastructures, especially if the risks are adequately taken into account. Therefore, the departure from the principle of cost-orientated prices (Articles 23, 24, 37, 38 and Annex III) seems to be unnecessary if the prices include appropriate risk premium. Whereas margin squeeze is prohibited in any case, it should be borne in mind that it may be difficult to monitor in practice, especially as high-speed services are usually offered in bundles with complex pricing structures. Accordingly, where raw infrastructure is in question, cost-orientation with appropriate risk premium may prove to be the best remedy.

3. We have question as to the definition and corresponding obligations in case of 'multiple fibre FTTH', which is defined as a form of fibre deployment in which the investor deploys more fibre lines than needed for its own purposes in both the feeder and the drop segments of the access network in order to sell access to additional fibre lines to other operators on a long-term basis. We are curious how one should determine the existence of this criterion (both in terms of number of fibre loops and in terms of intent to sell). It should be borne in mind that one subscriber or household will typically need one fibre controlled by one operator in order to fully exploit the advanced convergent services. Therefore, if this fibre will actually be offered on the wholesale market as suggested by the Recommendation, the same subscriber will be able to cancel subscription with the investing operator and use the same fibre line with another operator based on fibre loop unbundling. Accordingly, 'multiple' fibre lines are by no means a guarantee of competition and can even be a sign of unnecessary waste of resources.

4. Articles 26 and 42 of the draft Recommendation in connection with Section 2 of Annex III seem to encourage oligopoly market structure and are overly prejudicial as to economic market analysis. One should bear in mind that joint ventures may not always be pro-competitive and may at least in the long run result in foreclosure of the market.

5. Contrary to the established practice is also Art. 41 of the draft Recommendation, which is based on the presumption that fibre unbundling may lead to effective competition without any additional obligations of wholesale bitstream access. Up until now the Commission



encouraged parallel regulation of unbundled local loop and bitstream access on copper networks. It does not seem logical that the situation in relation to fibre networks would be substantially different, especially considering the fact that at this time the fibre networks are rolled out to a much lesser degree compared to copper networks.

6. We also find Sections 7 and 8 of Annex I, which concern the long-term commitments and volume discounts, problematic, because they could provide an excuse for anti-competitive behaviour by the SMP operators, that is prohibited by EU general competition rules. Both practises could be used for the exclusion of competitors from the market as they would enable 1) the favouring of more powerful operators and therefore discrimination of the smaller ones and/or 2) the restriction of competitors in relation to future decisions, which could be detrimental for their future ability to compete in the retail market. Furthermore, it should be borne in mind that any risk reduction for SMP operators (in terms of long-term commitments) increases the risk for (smaller) alternative operators (in case their predictions of future market developments would turn out to be inaccurate).

Sincerely,

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Member of Slovenian Delegation

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