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European Commission
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Brussels, July 24th 2009

Re: Draft Commission Recommendation on regulated access to Next Generation Access Networks.

Dear Madam, Sir,

Belgacom thanks the European Commission for the opportunity to comment on the new and revised draft of the Commission Recommendation on regulated access to Next Generation Access Networks.

First, Belgacom refers to ETNO's contribution on this draft Recommendation. We fully endorse the contribution submitted by ETNO in the context of the current public consultation.

In addition to this, we would like to briefly draw your attention to a few additional points specifically based on the particular local circumstances we experience in Belgium.

Indeed, since a few years already, Belgium has been front runner in NGA investments. Investments in NGA networks are taking place at high speed since quite some time and are carried out by various types of market players, both HFC-based cable television operators and copper-based telecoms operators.

In Belgium, cable television network operators for example already offer bandwidths up to 100MB/s (e.g. Numéricable in certain areas of Brussels) or put forward they will be able to offer 200MB/s based on DOCSIS 3.0.

As a result, concretely, next to FTTx and FTTH networks, also HFC networks of cable television network operators are to be qualified as "next generation access networks".

Therefore, when analyzing NGA networks in the context of the regulatory framework for electronic communications, HFC networks and new technologies deployed on such networks (such as DOCSIS 3.0) should be reviewed in parallel to other NGAs such as FTTH.

In sum, in a context of fierce infrastructure competition between different types of NGA networks as we experience in Belgium, it is essential that all different types of NGA networks are treated in an equal manner. To us, the current draft text of the Recommendation insufficiently takes into account this basic approach towards NGA networks.

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We therefore briefly comment on three particular points in this respect.

1. Draft Recommendation appears biased towards copper network upgrades only

Firstly, the wording of the definition of "Next Generation Access Networks" does not respect the principle of technological neutrality underlying the regulatory framework on electronic communications.

Indeed, even though the definition of "next generation access networks" refers to the upgrade of "both **copper** and **co-axial** access networks" and thus appears to consider different types of historic wired networks on equal footing in the NGA environment, the rest of the draft Recommendation implicitly focuses on NGA as upgrades from **copper** networks only.

See various instances in the document, *inter alia*

- recital 2: "developing regulatory responses to the challenges raised by the transition from **copper** to fibre-based networks";
- recital 9: "adjust existing regulatory obligations to make sure they apply independently of the network technology deployed, be it **copper** or fibre";
- § 28-31: "**copper** sub-loop unbundling", and
- § 32: "wholesale broadband access over VDSL as a chain substitute to existing wholesale broadband access over **copper**-only loops".

This clearly shows that the underlying philosophy of the draft Recommendation as currently conceived does not respect the principle of technological neutrality.

In order to accurately respect this principle, the regulatory framework on NGA should take account of all types of NGA networks on an equal footing without a biased approach in respect of one type of network upgrade. The current regulatory approach towards NGA as set out in the draft Recommendation appears to associate fibre-based NGA networks only with copper-upgraded networks, leaving aside other networks equally qualifying as NGA, for example those networks based on HFC infrastructure.

2. Market definition in NGA context

Secondly, the draft Recommendation sets out that "NRAs should consider wholesale broadband access over VDSL as a chain substitute to existing wholesale broadband access over copper-only loops." (§ 32).

The European Commission thus proposes integrating new technologies/services into currently existing relevant product market definitions merely based on the argument that such new technologies/services would in any event constitute so-called "chain substitutes" for all pre-existing services.

This is not correct. Before one can draw conclusions on the exact scope of the relevant product market definition, a proper demand and supply side substitution analysis is to be carried out, in particular in respect of the regulatory approach towards fully new technologies/services. FTTx networks and the technologies used on such networks (eg VDSL2) and FTTH networks allow offering new types of services that could not be offered before.



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3. Concept of "ducts"

Thirdly, the draft Recommendation sets out that *"Where NRAs find that one or more operators have SMP in Market 4, they should assess the availability of civil engineering infrastructure including ducts owned by the SMP operator for the purpose of allowing alternative providers to deploy NGA networks."* (§ 9).

In the context of "duct access", one should keep in mind that not all kinds of ducts are suitable for third party access and that moreover ducts suitable for such sharing are not always available. Indeed, in some countries such as Belgium, the traditional (copper) network is historically composed of copper cables directly dug into the ground (and not inserted in ducts).

In the absence of such pre-existing ducts, the traditional network architecture can not simply be "re-used" for purposes of optical fiber roll-out.

Sincerely yours,

for Steven Tas,
Dominique Grenson, Senior Regulatory Expert