

**Response to the European Commission consultation on the  
draft Recommendation on Regulated Access to the Next  
Generation Access Networks (NGA)**

**July, 24<sup>th</sup> 2009**



## NGA recommendation

Bouygues Telecom is very satisfied with the overall provisions of the Commission's project, which represent a significant and praiseworthy step forward compared to the up-to-now approach of the fibre-optics deployment in the European boundaries.

Actually, such project now sets the basis of a clear regulation of the NGA networks, on the ground of a true application of the ladder of investment, to allow the development of the fibre access networks together with an effective and loyal competition.

Indeed, it was an illusion to consider that the roll out and the penetration of the NGA Networks could be founded on the sole competition in infrastructures, in particular because of the huge differences between the network operators, in terms of financial capacity as well as competitive advantages.

**Bouygues Telecom, as member of ECTA and of AFORS Telecom in France, fully supports their response to the present consultation, to which has been an active contributor.**

Therefore, the purpose of this personal response is, on one hand, to **highlight what Bouygues Telecom considers as the main stakes or objectives to be addressed**, viewed from a new entrant's eyes, in such regulatory project and, on the other hand, to **bring some additional comments or amendments**, marked up in the Commission's project itself, here attached.

### The main topics of NGA regulation:

- To foster the availability of **the most complete and open ladder of investment** : the recommendation project shall put no restrictions in this matter, as it is a key condition for a true and fair competition, as well as to avoid barriers to entry ; in particular, the discounts according to volumes, if they represent a normal condition for commercial agreements in the open economy, shall be restricted in the regulated sector, otherwise it leads to the eviction of the smaller actors, thus limiting competition at the disadvantage of final consumers.
- **The notion of progressiveness** shall underlie the whole vision and process, on both aspects, time and territory: it would be illusive to consider that all actors are able or will roll out at the same time and at the same speed, and with the same territorial extension or everywhere; the deployment depends exclusively on the capacity of the operators (on all aspects: financial, human resources, organizational, and existing assets). Furthermore, the historical incumbents benefit for huge competitive advantages, such as existing premises everywhere, customer basis and the related cash flows.

- **A strong ex ante regulation is necessary:** this regulation shall apply to all steps of the ladder of investment, including bitstream (wholesale broadband) and unbundling; this means that tariffs are to be cost-oriented, and that the exceptions in case of co investment between two operators or access granted (art 24-25) by one to another shall not be maintained, as they just change a situation of monopoly into a duopoly, which is not precisely guarantying a fair competition for the interests of the consumers. Such strong regulation shall be maintained until as a fair and lasting competition is assessed by the market analysis, on both the wholesale and retail markets.
- **Functional separation of the SMPs** would help much and facilitate the process to meet the objective. A functional separation is the best way to ensure the respect of transparency and non-discrimination obligations and a loyal access at cost oriented (wholesale broadband and unbundling access).
- **NRAs shall audit the current state of fibre penetration,** as the already deployed fibre is not encompassed in the scope of the recommendation; in particular, because the incumbents have financed such deployment with setting aside provisions for network renewal (i.e. their copper network), which are thus included in their tariff calculation and invoiced to their wholesale customers (i.e. other operators and competitors); this meaning that the latter have financially participated to such fibre deployment.
- **The absence of SMP must be determined after a full market analysis,** including the examination of the behavioural aspects of the competition, and not only structural ones.

**Annex: Commission Recommendation mark up by Bouygues Telecom**