

CBI response July 2009

# EU Commission recommendation on regulated access to NGA

## CBI Submission

Marta Costas | Knowledge Economy | CBI  
Email: marta.costas@cbi.org.uk

Next generation broadband will provide a platform for the development of innovative services and a major boost to economic growth across all sectors. The Commission will need to get the regulatory framework right in order to unlock private sector investment in this important infrastructure.

### Introduction

The CBI welcomes the opportunity to input into the European Commission's draft recommendation on regulation of Next Generation Access networks (NGAs). Next generation broadband will provide a significant platform for the development of innovative products and services and a major boost to economic growth across all sectors. It could create one million jobs in Europe, and contribute up to €850bn to the European economy by 2015.<sup>1</sup> This will be particularly important for economic recovery and ensuring the competitiveness of the EU in the coming decades.

Realising this potential will require a range of policy and regulatory responses from governments across the EU. Governments must create a vision for the future of broadband provision in their respective markets. Several countries have already published broadband plans and the Commission is intending to publish an EU wide broadband strategy later this year. Governments also have a role in stimulating the demand for high speed broadband among the public sector, businesses and consumers. Finally the Commission and individual Member States will need to get

the regulatory framework right in order to encourage private sector investment in this important infrastructure.

The regulatory framework has a crucial influence on the provision of telecoms infrastructure. It is vital that it provides certainty and encourages investment whilst ensuring open markets and robust competition. We welcome the Commission's recognition of legal certainty as "vital for all investment undertakings."

Many private companies across the EU are beginning to make investments in high speed broadband. It is therefore important to have a coherent European regulatory framework.

However, we have some concerns with the current draft recommendation and believe that it requires revision in order to achieve these goals. Specifically:

- Preserving competition must remain a vital objective in telecoms regulation. The Commission's recommendation rightly recognises the need to achieve certainty in regulation and to allow companies to make a fair return on risky investments, but this should not be to the detriment of promoting open access and a competitive broadband market across the EU which will deliver the best outcomes for consumers.

<sup>1</sup> World Economic Forum (2009) ICT for Economic Growth: A Dynamic Ecosystem Driving the Global Recovery, pg2.

- In its current form, the Commission’s recommendations are too prescriptive and reduce the flexibility of national regulatory authorities (NRAs) to react to market challenges. The Commission should focus on the outcomes it wishes to achieve and provide NRAs with a range of tools with which to achieve them. NRAs should be able to choose the most appropriate tools depending on the specific characteristics of their markets.
- The recommendation should be technology neutral. Investment in NGA should be led by the market, and the market should determine which technologies are used.
- A clear and transparent plan for the migration from current to next generation networks is necessary but the details should be determined by NRAs.
- The Commission focuses almost solely on risk premiums, but risk-sharing agreements (in particular vertical risk-sharing) could provide a greater degree of innovation and a bigger stimulus to invest in NGA.

### **Economics of NGA investments: The importance of the right regulatory framework**

The capital investments required to provide next generation broadband over the next five to ten years are considerable. In the UK alone the cost of providing universal fibre to the home is estimated to be around £30bn.<sup>2</sup> Investments on this scale are always challenging but in the case of NGA it is amplified by the uncertainty over demand for high speed broadband. The current economic circumstances add to the uncertainty and aggravate this situation in the short term.

Notwithstanding this the private sector is starting to invest in this infrastructure. In the UK alone, BT and Virgin Media have started to roll out next generation networks which will reach between 40% and 50% of the population by 2012. These plans follow similar developments in other European countries.

However, even when it is widely recognised that such investment is necessary for economic growth, concerns remain on whether sufficient demand exists to enable network operators to roll high speed broadband out to the rest of the EU population.

Demand for NGA services has been framed almost exclusively in terms of consumer demand, though small

---

<sup>2</sup>“The costs of deploying fibre-based next-generation broadband infrastructure”, September 2008.

home offices have also been taken into account. Businesses, it is often argued, can already get fibre connections. The CBI believes this viewpoint is too restrictive. As early as 2003, a CBI report on business use and demand for broadband found that, even though businesses could get leased lines (including fibre-optic) for high data transfers, they saw value in development of public broadband provision.<sup>3</sup> Broadband provides a mass basis for engagement with customers in ways that leased lines could never do.

But a 2008 CBI survey of how IT services contribute to UK business competitiveness indicated that while a competitive communications market was considered a major regulatory plus, demand for NGA was currently quite low amongst many companies – the highest being around 25% amongst medium sized ones.<sup>4</sup> The Commission and national governments should therefore give much more consideration than they have hitherto to stimulating demand for high speed broadband.

This demand side stimulation will play an important role in unlocking private sector investment. But even so the high capital costs of NGA investment combined with uncertainty of demand make the economics of investment in NGAs challenging.

Achieving the right regulatory framework in this context is crucial.

### **Competition is vital to deliver an innovative telecoms market and the best outcomes for consumers**

Competition is fundamental to maintain innovation and deliver long-term benefits to consumers. The UK broadband market is one of the most competitive and dynamic in the world, and this competition has resulted in significant benefits to consumers.

Competition provides a great spur to innovation and investment in telecoms as companies seek to offer the best deals and cutting edge services for consumers.

---

<sup>3</sup> Broadband for Business - The Value Proposition in Manufacturing & Retail”, October 2003.

<sup>4</sup> “UK Competitiveness: the role of IT services”, July 2008.

### **The Commission should focus on the outcomes of certainty, a fair return on investment and robust competition**

The main role of the Commission in regulating next generation broadband should be to establish the outcomes that it wishes to achieve in national markets. The broad principles should be to encourage investment in next generation broadband through providing a certain regulatory regime, removing unnecessary barriers to investment and allowing a reasonable return on risk whilst preserving open access and competition which will deliver the best outcomes for consumers.

Ultimately the regulatory framework must deliver two key objectives:

- i) It must achieve certainty in pricing to enable companies to make a return on investment. It is clear that the investments required in NGA are substantial and that a significant degree of risk is involved. It is right therefore that providers should be able to earn a fair return on this investment. However,
- ii) It must preserve competition by enabling open access and non discrimination in pricing.

This outcome can be achieved in a number of ways with a variety of tools depending on the specific circumstances of national markets.

### **Need for regulation is best assessed at national level**

Telecoms markets differ greatly from one member state to another. National regulators have an important role to play in assessing their markets and applying the appropriate regulatory remedies. They must balance the need to provide certainty and to make a reasonable return on a risky investment with the preservation of competition and open markets in telecoms. Inappropriate or misjudged regulatory frameworks could discourage future investments, or permanently weaken competition in the telecoms industry, to the detriment of economic well-being and the interests of end-users.

Because of their closeness to the market, we strongly believe that NRAs are best placed to assess the challenges of their respective markets and react accordingly. The Commission should set out a range of remedies and tools that NRAs can choose to employ, depending on the specific characteristics of their particular market. For instance,

whilst the Commission appears to favour passive remedies it is not clear that this is necessarily the optimal measure to achieve competition. In some cases active remedies, or some combination of passive and active, would be more appropriate. Regulators should be able to select from a range of options based on their own market assessments, whilst the EU should retain the overall role of gatekeeper of the principles of competition and open markets.

We therefore urge the Commission to shift the focus of these recommendations towards greater support for the general principles of competition and open markets, and away from overly detailed regulation .

### **Technology should be driven by markets, not by regulators**

NGA deployment will enable a raft of applications and services of variable nature and bandwidth, from flexible working to telemedicine, which rely on consistent levels of quality of service provision and more complex relationships between consumers and service providers. These new applications and services will exploit a range of technologies including fibre, cable, mobile and satellite, or some combinations of these. These technologies will almost certainly play a major part in bringing high speed applications and services to rural areas, and to meet the demand for increased mobility by consumers in urban areas. But the Commission's draft recommendation effectively restricts debate to the economics of fibre-optic cable.

The decision about the most appropriate technology to deliver next generation broadband should be left to the market. It should not be prejudged either at the European or national level. The regulatory outcomes specified by the Commission should remain constant regardless of the network architecture and technology selected. Similarly the basket of potential remedies that NRAs can deploy should span the range of technologies available.

It is vital that European regulators accept the principle of technological neutrality, allowing markets to determine what technologies to use and what services are best suited to meet the market demands. This will also allow for greater flexibility and adaptation in the long term, which in turn would provide better outcomes for consumers.

### **There must be a certain migration path from current to next generation networks**

One of the key issues in NGA regulation is the migration from current generation to next generation networks. Network operators have a desire to upgrade to high speed broadband in accordance with their business strategies, whereas competitors that have invested within these networks have obvious concerns about their equipment becoming stranded.

In order to accommodate these different interests it is vital that there is a certain and transparent migration plan. Network operators must be able to upgrade their networks to provide new service offerings to customers for the benefit of the wider economy. At the same time competitors must have certainty that their equipment will not be rendered redundant with little notice and must therefore have time to plan for the migration. The Commission should therefore require incumbent operators to disclose any plans to transition from current to next generation broadband with sufficient time for alternative operators to make the necessary commercial arrangements.

However, the exact time period over which migration should take place is best judged by NRAs for each market individually. The Commission's recommendation to impose an EU wide five year notice requirement for all incumbent operators wishing to migrate to next generation broadband may delay migration plans unnecessarily. Specific designation of terms and timeframes should be adopted by the national regulators.

### **The current recommendation is too narrow and should consider vertical as well as horizontal risk-sharing**

Previous CBI submissions suggested that vertical investment partnerships in NGA between service providers and operators were often preferable to horizontal ones between operators. One of the advantages of vertical partnerships is that they would allow a much broader range of investors to enter the market, and a greater variability of services to be offered in differing geographic areas. For instance, in higher density areas joint venture partners might consist of a network operator and a media provider, in a medium density area between a network operator and a large retail outlet, and in a low density area between a network operator and a highway provider. This would facilitate stimulating investment in NGAs through a wide

range of demand drivers and would maximise development of marginal pricing and thus optimise service development.

A potential drawback could be the degree of regulatory complexity that would arise in relation to risk-sharing arrangements and their competitive implications. For instance, a joint venture between a network provider and a media company would be likely to require different regulatory actions/measures - e.g. a possible need for constraints on exclusive content provision and pricing - from those that would be required for a joint venture between a network operator and a highway provider in a different area. But the range of regulatory complexity would possibly decrease over time as initial and short term entrants left and the market became established and more concentrated.

The Commission should give greater consideration to how these new partnerships might emerge and how the regulatory principles may need to adapt to encourage innovation in this area.

### **Conclusion**

The current proposals are too prescriptive given the early stages of investment in next generation broadband, the disparities in telecoms markets through the EU, and the fast-paced changes that often occur in telecoms markets. The Commission should move away from prescribing overly detailed remedies on national regulators, and try to maintain the role of gatekeeper of open markets and competition. This is vital to allow a more flexible and innovative playing field, where new forms of service delivery are allowed to thrive and meet new market demands.



For further information or a copy  
in large text format, contact:

Marta Costas  
Policy Adviser  
Knowledge Economy  
T: +44 (0)20 7395 8121  
E: [marta.costas@cbi.org.uk](mailto:marta.costas@cbi.org.uk)



**INVESTOR IN PEOPLE**

July 2009

© Copyright CBI 2009

The content may not be copied, distributed,  
reported or dealt with in whole or in part  
without prior consent of the CBI.

**CBI**

The CBI helps create and sustain the conditions in  
which businesses in the United Kingdom can compete  
and prosper for the benefit of all.

We are the premier lobbying organisation for UK  
business on national and international issues. We work  
with the UK government, international legislators and  
policymakers to help UK businesses compete effectively.

Our members benefit from our influence, a wealth  
of expertise, business services and events.

**[www.cbi.org.uk](http://www.cbi.org.uk)**