

Ceep reflection document to the European Commission's public consultation
concerning **Draft Recommendation on regulated access to**
Next Generation Access Networks (NGA)

By tackling the issue of the New Generation Networks (NGA), the European Commission is addressing a topic of the utmost importance for the entire European economy. In tomorrow's knowledge-based societies, the **new high speed broadband** becomes key for the development of jobs, growth, innovation and competitiveness of Europe. The timely roll-out of high-speed new generation networks is therefore a major concern for Europe in the globalized world. Investments of billions of euros are needed to provide the necessary world-class communications infrastructure that Europe's consumers and companies need in order to remain competitive and succeed on the world market.

Broadband in Europe has reached maturity and, in the vast majority of countries, an efficient level of competition. Concerning NGA deployment, fibre networks such as FTTH are starting to be deployed by "incumbent" operators and their competitors. The draft Recommendation intends to create **regulatory certainty** throughout Europe and to set up guidelines fostering the necessary heavy investments for the emergence of a new NGA market benefiting overall society. Ceep supports the objective of fostering NGA development.

In Europe there is still a high degree of difference between urban and rural areas in terms of connection to broadband infrastructure. A support for broadband infrastructure in rural areas is crucial in order to create and maintain jobs and in order not to uncouple the rural population from the transfer of knowledge and from the use of new technologies.

Regulatory recommendations should therefore not only refer to already existing infrastructure but should also concentrate on enhancing the incentives to build new broadband infrastructure. This is not only a question of creating an efficient market but also requires financial support for example by the structural funds of the European Union.

Beyond legal certainty however, all investors need **an appropriate regulatory environment**. Such environment recognizes that expected **financial returns** are a **necessary precondition for private investment**. It further accepts that access seekers should not have to consider access services as substitutes for their own investments or risks that any market player needs to assume. Unlike the copper networks, NGA networks will not be deployed under a monopoly – they still need to be deployed and private investment will be necessary to make such deployment possible. Ceep members deem inappropriate adopting a draft Recommendation that essentially refers to and is based on copper networks regulation.

Ceep members consider that the Recommendation should **respect the principle of technological neutrality** and propose a proportionate and gradual set of remedies. Ceep considers that no specific network topology or architectural solution – such as multi-fibre - should be mandated or even encouraged by NRAs. The draft Recommendation should duly consider graduation of remedies according

to the relevant geotypes in line with the approach adopted by the Commission in its recently proposed State Aid Guidelines for broadband networks. The Commission guidance should promote private investment in NGA networks through a consistent approach in both documents.

The draft Recommendation should further adopt a **consistent approach when considering new forms of contracts and the use of margin squeeze test**. The proposed text still fails to tackle key issues that will necessarily emerge regarding price squeeze tests. Legal certainty is insufficient in this regard as the draft Recommendation only restates general principles used in the context of conventional price squeeze tests. In an NGA context, it is necessary to have an appropriate balance between the constraints of a price squeeze test relating to wholesale and retail levels and the need for retail price flexibility allowing adequate value pricing to conciliate service take off and profitability. To find this balance, more **flexibility is needed for access pricing in order to allow risk sharing arrangements** that in effect decrease the fixed costs of the investor (e.g., adequate consideration of the time period for the squeeze test in view of the amortization period).

The Recommendation should refrain from attaching regulatory consequences to specific forms of co-investment and **leave the definition and forms of such co-investment to market forces**. Co-investment could be an interesting option to deploy networks in non dense areas. However, co-investment requires flexibility for contractual negotiations and a standard regulatory regime that is independent from the co-investment modalities.

On the whole, Ceep members express **concern that the draft Recommendation as it stands could slowdown or even stop FTTH investment on the market, for all market players alike**. Significant changes are thus required to make the remedies more gradual and less intrusive into the investor's choices. The extensive access and price control obligations imposed on operators of new NGA network as the standard regulatory solution, as well as the above-mentioned large transposition of the current regulation of copper networks to the NGA environment are not in line with the conclusions of the spring European Council and the preliminary agreement by the European Parliament and Council on the legislative review proposals. The Council conclusions and the agreement aimed at adapting the current regulation to yet-to-be-built NGA networks in order to encourage investment in these networks.

Considering the above, the Recommendation, if adopted in its present form, might miss the target of the stated objectives of innovation, competition and, in particular, investment in super-fast broadband connections playing such a vital role for Europe's economy, while allowing future participation of its citizens in the global information society.