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To: European Commission  
For the attention of the NGN Registry  
1049 Brussels  
Belgium  
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## **Com Hem's response to the Draft Commission Recommendation on regulated access to Next Generation Access Networks (NGA)**

### **Background**

Com Hem is Sweden's leading cable operator offering interactive digital TV services, high speed broadband services as well as IP telephony. By investing in and upgrading its cable network, which in large parts is fibre based with dark fibre and wavelength leases, Com Hem is not only offering its customers high-speed and high-quality services, it also has contributed to the development of competition between the incumbent's copper based access network and alternative access networks. By demanding dark fibre as an important input good in the development of its network, as well as forcing competitors to meet its investments in enhanced capacity, Com Hem fosters the deployment of fibre based networks in Sweden.

### **Executive summary**

Com Hem welcomes the opportunity to comment on the second draft Commission recommendation on regulated access to Next Generation Access Networks. Com Hem shares the Commission's view on the importance of efficient investments, and welcomes the measures taken in the draft recommendation to minimize distortions of investment signals.

On the same note, Com Hem wishes to stress the importance of regulatory consistency as well as regulatory accuracy. Not the least, due account should be taken to both the regulatory costs of the regulatory agency and the additional administrative costs of the operators that are brought about by regulatory decisions.



More, Com Hem emphasizes that the electronic communication market changes rapidly, due to technical innovations combined with novel patterns of consumption and demand. This clearly affects infrastructures, services as well as business models. On such a market, regulatory measures should not aim for a given “final market situation” – since such a situation does not exist – but rather facilitate for markets operators to react to technical and demand-side changes.

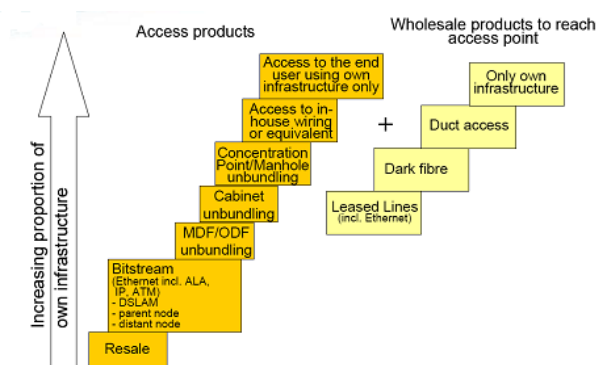
Com Hem also welcomes the fact that the Commission has pointed out the importance, also in NGA, of equal treatment from the SMP operator towards its own downstream arm and to third-party access seekers.

**Com Hem would like to put forward the following more detailed comments on the second draft recommendation concerning NGA:**

- **Important coherence between market 4 and market 5 measures**

Com Hem welcomes the clarifications by the Commission on the relationship between market 4 and market 5 regulatory measures. In recital 44, the Commission makes clear that effective physical access remedies (such as unbundled fibre loop) might render obligations of wholesale broadband access unnecessary. Especially in densely populated areas, physical access might ensure effective competition, which in turn would make market 5 measures superfluous. This principle is confirmed in recital 21, 38 and in article 41.

From Com Hem’s perspective, this clarification is of great value as it clearly connects to and follows the “ladder of investment principle”.





- **Feasibility cannot be taken for granted**

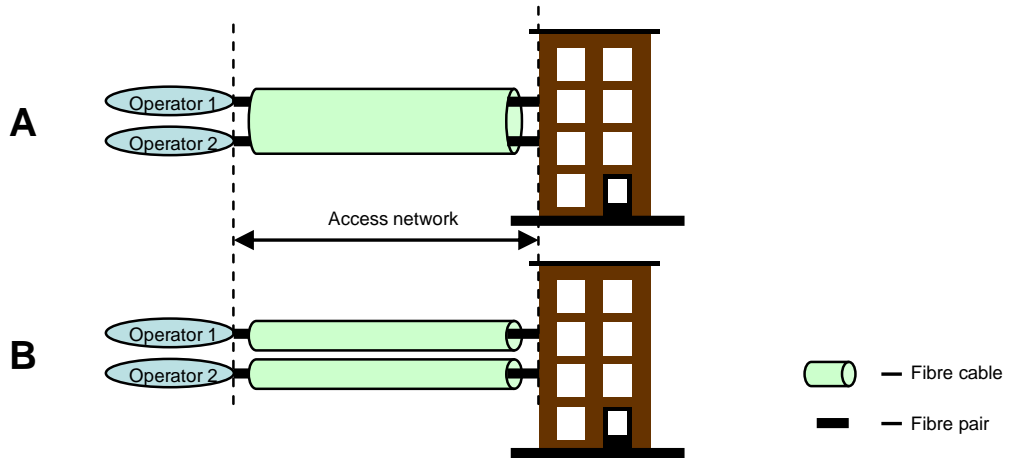
In recital 9, the Commission writes that NRA should make sure that regulatory obligations apply independently of the network technology deployed. On the same note, the Commission writes in recital 22 that obligations imposed are based on the nature of the problem, without regard to the technology or the architecture. According to the Commission, neither technology nor architecture should affect the choice of remedies.

Com Hem questions both the feasibility and proportionality of such a principle. For example, is it attainable to fully unbundle a point-to-multipoint network with sustainable capacity deliverables? How would costs, related to technological and architectural specificities of a network, affect the access price and hence the demand for the regulated product? From Com Hem's perspective, technology and architecture must be taken into account in the choice of remedies.

In order to clarify this Com Hem would like the Commission to define a point-to-multipoint network in a NGA context.

- **The term “parallel network” and the probability of it being deployed**

In several parts of the draft recommendation, the Commission uses the term “parallel access network” as well as the term “multi-fibre line”. Yet, the Commission does not clearly define what constitutes a “parallel access network” – does it refer to an entire access network owned by an alternative operator or an access network of which parts are owned by an alternative operator? Further Com Hem would also like the Commission to clarify below picture.



Can both A and B be parallel access fibre networks?

Can both A and B be multi-fibre lines?

Can both A and B be be co-financed multi-fibre line access network?

More, in recital 10 the Commission argues that the access to civil engineering infrastructure is crucial for the deployment of parallel fibre networks. Yet, in the following recital 11, the Commission emphasizes the very high costs of the deployment of parallel fibre networks, which in turn could imply a highly restricted demand for access to civil engineering infrastructures.

For a better understanding of the two recitals, the Commission's would need to clarify its view on the probability of parallel fibre networks being employed, which in turn would signal the relevance of regulated access to civil engineering infrastructures.

- **The term “listen to all market players”**

In recital 11 as well as in article 10, the Commission writes that the NRA should listen to and consult interested parties and bring the SMP operator and the access seekers together.

Given the seeming importance of such consultation meetings on the decisions to mandate access to civil engineering infrastructure, Com Hem would appreciate further



elaborations on how these consultations are to be carried through and on the rules and requirements that would apply to the participants in such consultations.

- **Review of geographical scope**

In recital 49, the Commission writes that the transition from copper-based to fibre-based networks may necessitate a review of the geographical scope of market 5 or market 5 remedies.

As in its response to the first draft NGA recommendation, Com Hem emphasizes that the issue of geographic aspects of market definitions is addressed in the Commission's recommendation on relevant product and service markets and in the Commission's guidelines on market analysis and assessment of significant market power.

In Com Hem's view, it is unnecessary that the issue of geographical aspects of market definitions is addressed in different recommendations with different scopes. Such a practice might decrease regulatory certainty.

- **The effect on current SMP decisions**

At the time of writing, NRAs throughout the EU are conducting market analyses and are choosing appropriate remedies for the second generation SMP period. Yet, it is unclear what account the NRAs are expected to take to the NGA recommendation in their present decision processes.

Therefore, Com Hem encourages the Commission to clarify the role of the NGA recommendation in the second generation SMP decision processes.