

Subject: Draft Commission Recommendation on regulated access to Next Generation Access Networks (NGA)

Opinion from the European Regional Information Society Association (eris@)

Background

eris@ is a not-for-profit association based in Brussels and registered under Belgian law which acts as a platform for the exchange of experience on Information Society policies and practices –including the use of EU Structural Funds- for public sector bodies operating at the regional level of government across the EU27.

The deployment of high bandwidth telecommunications services is of direct and pressing interest to the eris@ membership. Based on the real life experience of our member regions which have experienced a wide variety of geographic, economic and societal challenges, we contend that access to ubiquitous, affordable and reliable high bandwidth telecommunications services is an essential element in the competitiveness of regions and directly enhances regional public sector bodies' ability to deliver efficient and cost-effective modern public services for the benefit of all.

In a global economy, regions must compete not only with their national or EU neighbours but also with global competitors whether in the Far East, North America or in the emerging markets. This fact has been recognised and addressed by the Commission's initiative to promote economic recovery by means of releasing unspent funds from the CAP to invest in rural and underserved areas including the accelerated deployment of current generation broadband.

Therefore eris@ welcomes this consultation because we consider that the development of a European broadband strategy by the European Commission in close cooperation with stakeholders provides an opportunity to create a framework for the rapid deployment of both NGA and the current generation of high bandwidth telecommunications services across the EU which have the potential to deliver many benefits to citizens and industry. However such services should be ubiquitous and affordable –otherwise there is the risk that the current "broadband gap" will widen and deepen, leaving rural or remote, sparsely populated regions even further behind than they are now compared to large cities and heavily populated mainly urban areas.

The key to ensuring that rural or remote, sparsely populated regions gain access to ubiquitous and affordable services is a regulatory framework that encourages competition and innovation by all relevant market actors including, where appropriate and consistent with State Aid rules, the public sector.

Comment

eris@ supports the contention in the draft Commission Recommendation that regulatory certainty is key to promoting efficient investments. It is clear that operators with Significant Market Power (SMP) will play a central role in determining the speed and geographical scope of NGA deployment. While eris@ believes that these operators should be encouraged to invest in new infrastructures, we do not see the need for “regulatory holidays” or other exclusive measures designed to protect the SMP operators from competition.

SMP operators are entitled to expect a reasonable return on their investment in new infrastructures but that does not mean that they should attempt to squeeze competitors by means of predatory pricing for access to the new networks. In such a case, the main losers would be the citizens and businesses which are denied access to competitive products and inclusive services thus frustrating the objective of EU and national policies designed to promote a dynamic, competitive and inclusive Information Society for all.

Given the difficulties of ensuring affordable access to current generation broadband services delivered primarily by SMP operators, it is clear that the Commission and NRAs must be vigilant to ensure that the SMP operators do not manipulate the markets for NGA – primarily by denying access to alternative suppliers of services. In particular, eris@ believes that the SMP operators must be required to be more transparent about their investment planning so that both regulators and potential new entrants to the market can react in a timely manner to changing market conditions. Clearly a balance should be struck between the legitimate commercial needs of the SMP operators and the wider public interest in ensuring competition in the market. But the onus should be on the SMP operators to publish and update their plans on a regular basis eg annually or more frequently if the markets are changing rapidly, rather than regulators and potential new market entrants having to request such information.

We consider that all new infrastructures should be designed from the bottom up as “open access infrastructure” and we encourage the Commission and NRAs to take the necessary steps to ensure that SMP operators comply with both the spirit and the letter of the law. Therefore we welcome the proposals that SMP operators be required to provide the necessary information – including the location and availability of civil engineering facilities - to enable potential new entrants to make informed decisions about the technical and commercial viability of providing alternative services across the SMP operator’s network. We believe that the NRAs should be resolute in requiring SMP operators to demonstrate that they treat potential new entrants on the same basis as an “in-house” investment. eris@ also encourages the Commission and NRAs to use their powers to facilitate the deployment of multiple fibre lines as proposed in the draft Commission Recommendation.

Given the speed of technological development and the heterogenous nature of existing networks – especially alternative operators, many of whom do not come from a traditional “telecoms” background but who may have ownership of or access to alternative physical infrastructure such as power or water utilities – it is important to

ensure that technical standardisation eg for interconnection, supports the introduction of new products and services designed to facilitate access to the new networks.

eris@ concurs with the proposal in the draft Commission Recommendation that "NRAs should take account of co-operative arrangements ...subject to certain safeguards in order to ensure effective competition." We believe that the experience of providing access to current generation broadband – where the capital investment required is normally much less than NGA – demonstrates the need for innovative and flexible business models, including cooperative arrangements between SMP operators and other private sector actors.

But such cooperative arrangements could also encompass the involvement of the public sector (compliant, of course, with the State Aid rules) eg in the case where the public sector might provide passive infrastructure in so-called "white areas" where there is little or no competition for the SMP operator. The public sector often can amortise civil engineering costs over longer terms than similar private sector investments and in many cases can raise capital more cheaply than private sector actors. Therefore, it is important for NRAs to reflect these lower costs when determining the risk/pricing calculation especially in the case of a public sector authority cooperating with an SMP operator. An added benefit of such Public Private Partnership is that the infrastructure should be operated as an open access resource.



Gareth Hughes
CEO eris@