



**Comments of NHH  
on the Draft Commission Recommendation on regulated access to Next Generation  
Access Networks**

July 23, 2009

NHH welcomes that the Commission has published the Draft Recommendation on regulated access to NGA networks for consultation. In regulators' point of view the current draft shows several improvements which also incorporate the opinions expressed by the regulators.

The current draft has changed favourably compared to the previous version commented by NHH in a way that access to infrastructure is mentioned not as an obligation to be automatically imposed for an SMP operator. The draft is more balanced regarding the application of different wholesale access methods.

It is also welcomed that there is a clearer distinction between the co-investment and the new pricing models, in addition the pricing methodologies are less prescriptive compared to the previous version.

However NHH would like to draw the attention of the Commission to certain elements of the Draft Recommendation which are not clear or impose detrimental provisions for the regulator and the local market.

With reference to our earlier comments regarding the definition of NGA networks, the Draft still implies the fixed access only, in spite of the fact that the definition for NGA includes the coax networks („upgrade of an already copper or co-axial network") as well. The Draft discusses about the FTTN and FTTH solutions only and does not mention the access to CATV networks.

It is important to mention that according to the definition of NGA, if a CATV network operator changes the modems to DOCSIS3 ones, will result in an NGA network<sup>1</sup>.

In case of the access to built infrastructure the preparation of a reference offer is still necessary according to the Commission's standpoint, NHH believes this obligation still contradicts our expectations for more flexibility mentioned earlier. The deadline for making such reference offer is determined still too prescriptively. In the sentence „The reference offer should be in place not later than six months after an NRA has entered into consultation with interested parties" it is not clear what kind of consultation the Draft refers to, i.e. it is necessary to clarify the nature of the consultation, its relation to the Art. 7 procedure. In certain cases the strict six month deadline might be too short to approve a reference offer<sup>2</sup>.

The Draft seems to be too prescriptive in certain fields which are also mentioned by ERG in its earlier opinion. First of all the Draft makes strict assumptions for SMP designation and for imposing certain obligations in case of multi fibre lines installation, joint investment

<sup>1</sup> „In most cases NGAs are the result of an upgrade of an already existing copper or co-axial access network"

<sup>2</sup> On our market 5 (market 12. in the old regime) prices are currently determined by retail minus methodology which will be difficult to apply in a strictly imposed timetable recommended by the Commission, i.e. in a regulatory environment where the wholesale offer precedes any retail activity.



projects or in case of completing other criteria<sup>3</sup>. In NHH's opinion it is doubtful whether the criteria laid down in the Draft serve enough evidence for an NRA to ease an operator from the obligation of cost orientation.

The draft mentions basically two types of point to point network structure, the FTTH and FTTN, however it does not deal with point to multipoint structures such as the GPON solution. In practice, the point to multipoint structure is preferred by some market players, typically incumbent operators due to cost efficiency and access difficulty to the optical loop. For our NRA it would be very important to receive advice as how to approach to a network deployment (for example GPON solution), where unbundled access in technical terms can not be achieved easily.

In Annex 1 (paragraph 3) it is acceptable by the Commission that access prices and costs can be differentiated based on geographic dimensions. It is a question whether the authority should decide on the prices for each ODF. On the Hungarian market prices of RUOs were consistent, it is questionable whether the regulator should differentiate the pricing of RUOs. In this scenario, in lack of infrastructure based competition on certain service areas the consumer prices would not converge but rather deviate from each other.

Regarding the measurement of the investment risk we are of the opinion that the rule, the longer the optical fibre the riskier the investment is, can not be applied automatically. If there are more than one incumbent on the market, they are not in the same start up position in the phase of migration.

Regarding the application of risk premium at installation of different types of access (civil infrastructure, FTTH terminating segment, subloop unbundling) NHH would appreciate a properly elaborated justification.

NHH would welcome if the Commission considered the above opinion and took into account the comments as far as possible during the preparation of the new draft after the public consultation period.

<sup>3</sup> For example: p.13, point 23: NRAs **should not impose** an obligation of **cost-orientation** where the SMP operator has deployed an FTTH network based on multiple fibre lines and has granted effective and fully equivalent access to at least one independent alternative provider.

p.13, point 26: When NRAs in their market analyses find that the conditions set out in Section 2 of Annex III are met, this would normally be **indicative of the absence of SMP** in areas where joint deployment of FTTH networks based on multiple fibre lines takes place.