

24 July 2009

Reaction of the Netherlands to the draft Commission Recommendation on regulated access to Next Generation Networks (NGA) of 12 June 2009

We thank the Commission for redrafting the Recommendation and for giving the opportunity again to react.

1. In general the Netherlands welcome the Recommendation. The purpose indeed is to promote the application of consistent regulatory approaches to NGA in order to (1) provide regulatory certainty to investors and (2) to foster competitive investment and innovation. The Netherlands view this regulatory certainty as absolutely necessary, to incumbents as well as to new alternative operators. The recommendation helps NRAs to find the right balance between regulation and investment in NGN.
2. The focus of the new draft is no longer on duct access only but all possible NRA measures are dealt with in a more balanced way. Another good step forward is the use of risk premiums when regulating fibre access pricing. In general regulation should take into account the risks of investments involved otherwise investment would be stalled.
3. The NGA Recommendation seems to limit the concept of NGN's to the deployment of networks based on optical fibres and sees little impact from competition from other networks. In the Netherlands cable networks, with almost full coverage throughout the country, are an important alternative to optical fibre networks especially for end users. Cable operators are planning to roll out Docsis3.0 to 94% of all cable households before the end of 2009. Cable operators already offer broadband service packages similar to fibre packages, with speeds up to 120Mbps downstream and 10Mbps upstream and are strong players on end user markets.
4. Until now cable networks have not been (fully) included in wholesale markets. However, when cable networks were to pull fibre through to the last mile full infrastructure competition might become a reality and competition would increase. The NRA should take these developments into account when regulating NGA.

Cable operators are already strong players on end user markets but might become full infrastructure competitors. NRAs should take these developments into account when regulating NGA.

5. The Netherlands fully support the underlying general approach regarding co-investment and regulation of the recommendation. Regulatory incentives which encourage investment and competition are important for the development of NGN. NL also underlines the need for a consistent approach throughout the EU. However the Recommendation is too prescriptive, especially with regards to annex 3 about co-

investment. The recommendation should give guidance to NRA's by elaborating the key elements which an NRA should take into account when dealing with co-investment. The recommendation should not try to set out a too detailed picture of the actual regulation because this might predetermine the outcome of the NRA's market analysis based on general market features without taking full account of specific national or regional circumstances adequately.

6. For example in the Netherlands multiple fibre roll out is rather common practice, as two fibres are pulled through to every household connected to fibre. However, this multiple fibre model does not automatically result in more timely and more intense competition on the downstream market, as both fibres may remain under control of one operator (and thus far in the Netherlands, they do).
7. Regulated parties might try to meet the criteria in annex 3 pro forma and abusively claim regulatory forbearance referring to the recommendation. The Netherlands believes that a recommendation should give guidelines but cannot and should not try to provide the necessary regulatory certainty. Only NRAs can and should do this.

The Netherlands suggest to delete annex 3 but to keep and elaborate the underlying general notions regarding co-investment and competition in more qualitative terms. NRAs should explain their approach regarding NGA in detail in order to provide the necessary regulatory certainty to investors and all operators concerned.

8. The Netherlands agree to the underlying philosophy that regulation should aim at promoting infrastructure competition where this is feasible in order to generate as much competition as possible in the production and marketing chain and limit regulation to the minimum necessary. If infrastructure access is effective broadband access regulation is in principle no longer necessary.
9. However, NRAs should take care that regulation is place timely and really effective so that competition is effective and alternative operators in are not lagging behind because of the incumbent's first mover advantage. Full fledged reference offers are essential for equivalent access and should be available within 6 months after access price regulation is imposed (and not after consultation on reference offers has started). During this 6 month waiting period the internal access price, when publicly available, might be regarded as provisional access price for alternative operators. The provisional price should at least pass to squeeze test. If necessary the temporary provisional price should be adjusted afterwards.

In order to ensure equivalent access for alternative operators reference offers should be available timely. As long as reference offers are not yet fully in place provisional measures should ensure equivalent access.