

**The official position of Ministry of Infrastructure
on the Draft European Commission Recommendation
on regulated access to Next Generation Access Networks (NGA)**

1. Works on recommendation should be continued along with discussion on Community Guidelines for application of State aid rules in relation with rapid deployment of broadband networks. Recommendation and guidelines should be coherent, especially in the scope of definitions.
2. Recommendations explicitly points the role of regulator in the process of regulated access to NGA, though due to its detailed and dictatorial character, the role of regulator in making decisions concerning national market appears to be significantly limited.
3. Comments to recital 6 – Recommendation seems to be in contradiction with the basic rules of regulatory framework, which state that determining the SMP should be based on appropriate market analysis (art. 15 and 16 FD), and the recommendation presupposes the results of the analysis and ipso facto could be inconsistent not only with the telecommunications directives but also art. 82 TEC and also undermines the regulatory certainty.
4. Comments to recital 23 and 37 – Statement that NRA should not impose obligation of cost – orientation, if SMP ensures granted effective and fully equivalent access to at least one independent alternative provider of electronic communications services seems to be questionable. One alternative service provider does not determine the symptoms of competitiveness and this could arouse suspicions of collusion between those two entities.
5. Comments to Recommendation 8 – Definition of “multi-fibre FTTH” does not specify how to determine if the operator actually constructed more lines than he actually needs. Moreover, in the document the concept of “multi-fibre lines” is used, which is not sufficiently defined.
6. Comments to Recommendation 7 and 9 – Definition “greenfield sites” requires coherence with document concerning public aid to new generation networks, in which other terminology is to be found. Moreover Recommendation 7 mentions lack of requirements of constructing copper lines on so called “greenfield sites” on which the SMP constructs NGN network. In that case, the NRA is obliged to enable the operator to provide e.g. universal service based on NGA, by utilizing services with similar functionality. Due to lack of definition of “greenfield sites”, that could lead to disputes and disagreements between NRA and operators.
7. Comments to Recommendation 13 – Six month time limit for conducting consultations and to publish offer could be insufficient, especially regarding that the access prices included in the offer will be cost-oriented. In case of conducting an audit concerning results of cost calculation, keeping the 6 month time line is impossible. In the previous version of this document (recommendation 9), the time line was counted from the date of imposition of obligations on SMP.
8. Comments to Recommendation 31 – No definition of “virtual co-location”.
9. Comments to Recommendation 35 and recital 42 – NRA should support the development of standards in telecommunications, but not define specific technical protocols and interfaces.

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10. Comments to Recommendation 43 and recital 47 –Reason, for which the transitional period was determined for 5 years should be further clarified.
11. Comments to Annex I and recital 46 – Definition of “co-investment” should be better explained. Moreover, by retaining some conditions from Annex I, NRA could not impose Bitstream Access regulation.