

Comments on

The Draft Commission Recommendation and Explanatory Note on regulated access to Next Generation Access Networks NGA

1. General remarks

Draft Recommendation in our opinion contains some provisions which may stifle, not incentivise investments into NGAs in Europe. This is not in line with guidance given by Council and European Parliament in the legislative process on telecom review aimed at improving conditions for NGA investment.

Our concerns result from parallel imposition of all available access remedies in the relevant wholesale markets.

Also strict cost-orientation makes it impossible to negotiate better access conditions for long-term contracts on commercial terms and would undermine the NGA business case of the investor who relies on pricing flexibility for new high value added services. Real implementation of risk sharing, i.e. 'new pricing models' taking into account the duration and volume of access contracts, is impossible under the condition of strict cost-orientation. Instead of supporting the fair return of NGA investment, the Draft guarantees a profit margin to an 'efficient competitor' which chooses not to share part of the investment risk by a long-term contract. This undercuts the motivation for the investor and economic feasibility of NGA roll-out. The requirement for cost-orientation has also been criticized by ERG.

Recommendation prefers when an NGA is built using specific ('multi-fibre') architecture and has a specific ownership structure (co-investment). Only in this case the draft foresees an exception to the rigid set of remedies including cost-oriented wholesale tariffs. From our point of view regulation must take account of different technologies and architectures chosen by the investor.

We suggest to describe the demands for specific interfaces and efficient access in details.

Information necessary for evaluation of existence and availability of ducts and other local loop facilities should not be the task of NRA, but the part of reference offer provided by SMP.

NRA should not have the obligation to decide where to locate the distribution point of terminating segment of the access network for the purpose to provide access. Such information should be the part of a reference offer.

We suggest to re-evaluate further possible remedies which should be the part of the SMP reference offer and in this recommendation it is the obligation of NRA (as it is in a suggestion mentioned above)

Of course, the deployments of NGA networks require substantial investments and there is no assumption that these networks would be deployed in entire land as previous networks and infrastructure of incumbent which is regulated by Market 4 and 5. Therefore the Recommendation should talk about the preemption of creating monopoly on fibre on the regional level.

From the regulation point of view it is evident that whole Recommendation sets widespread obligations for SMP operator at including NGA in Markets 4 and 5. But from the investment point of view we can see certain handicap for investment by SMP operator because he will be regulated although new entrants will not come under the regulation measures.

The Recommendation talks that NRA should force the SMP to deploy multiple fibres for possible incoming requirements put forward by other operators. Such obligations should be set with caution as there is a danger of creating monopoly on infrastructure.

The draft should motivate companies to invest into NGA networks. As such, construction investment regarding high - speed and capacity data infrastructure should be strengthened.

To cooperation agreements as well as agreements regarding sharing risk should come 2 operators, while one of them should be a big company firmly established and the other one a newie or a smaller player on the market. However, such formation can lead to duopoly establishment with the possibility of contravention of competition rules. The fact that according to the draft, there is no requirement concerning a guarantee of access to other competitors by the companies providing access to their fiber - optic network based on a fee that would be composed only at the level of admission costs, increases risk. The question is, whether big companies would invest and bear the risk in case that legislation did not create conditions, neither for guaranteeing investment return.

Actually, if prices are not regulated, big players can block the access via inadequate fees. Yet, inadequate regulation discourages investors even more, if they bear complicated commitments regarding access to networks and price control. NGA demands a regulatory approach that invigorates all players on the market to invest and share the risk along with keeping the competition.

Concerning the timeframe and the Slovak NGA investments state at current stage, implementing such regulation is rather inadequate.

The most serious problem is gathering information on planned and concerned investment from the SMP and bigger AOs.

The NRA is required to analyze an entire telecoms value chain. Even if investment would be written - off in a long - term a united regulatory approach should be applied to successive review periods.

This can increase investment risk, and changes regarding regulation can change the return of investments in a short time.

The application of the regulatory principles mentioned in the Recommendation demands considerable change in the national legislation.

2. Regulatory approach

2.3.1 Access to ducts, civil engineering Works and other elements which are not active

Imposing the SMP the obligation of access to existing and new ducts, subscriber lines and elements, which are not active for creating space for the AOs is not problematic. The

Recommendation however assumes that for the imposition of such obligation a vital business plan is essential. The NRA finds problematic to sense its existence.

2.3.2 Transparency

The imposition of the obligation to the SMP to provide information on sites and capacities of ducts. The NRA will define the form of gathering and distributing the information. It is such a complicated problem, that the imposition of obligation does not have to lead to the unbundling of access to ducts. The distribution of information is not in line with the Trade Secrets Act.

2.4 Specific regulatory provisions

2.4.1 (Co-investment in FTTH)

2.4.1.1 In-building wiring

Mutual usage of commercially equivalent physical assets – it is rather unlikely to achieve such situation regarding Slovak conditions.

Access to wholesale infrastructure network (Market 4.)

Access to subscriber lines of the SMP

Imposing the obligation of subscriber-line access, including ducts belonging to the SMP on a non-discriminatory base for cost oriented price achieved by working out the reference offer within 6 months from the day that the NRA starts consultations with the interested parties and according to the national law to impose the obligation to the SMP according which it has to install sufficient capacity for other companies where subscriber lines are being built, is impossible to achieve regarding Slovak conditions.

2.4.2 FTTN

2.4.3 Wholesale Broadband access remedies imposed on Market 5

Migration

The NRAs should ensure to keep informed the AOs about any change regarding the interconnection points at least 5 years in advance. That information is considered as trade secret of each and every company and it is not possible to publish without company approval.

NRAs should support migration from metallic to optic networks. Imposing a strict NGA network usage regulation can lead to aggravated return on investments, or can lead to slower development, as the SMP will lose interest to build networks.

According to Article 5 of Directive 2002/20/EC on acquiring information from the SMP and Article 9 (1) of Directive 2002/19/EC, the NRAs should ensure information flow towards the AOs where the SMP plans to replace existing used metallic access network by optic network. The NRAs should define the format and level of details and ensure the information provided as secret to be respected.

The current statutory text of both articles in both Directives, and their application into national legislation does not make possible to acquire such information, moreover, the NRA can not ensure their confidentiality in case of being provided to the AOs.

2.5 Price calculation

The CAPM is being used in regulatory pricing models.

Regarding the methodology, the risk premium is considered problematic. Defining the risk premium for each investment plan would mean a concrete access to the concrete investment project. At current stage, concerning the Slovak conditions, it is impossible to gain such an overview and access to companies' plans. Refining the risk by a direct statistical and financial comparator method taken from firms outside the electronic communications sector providing comparable services tends to be problematic.