

Comments on the Draft Commission's Recommendation on Regulated Access to Next Generation Access Networks (NGA)

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1. Introduction

Sonaecom welcomes the opportunity to respond to the public consultation on the Commission's draft Recommendation on Next Generation Access Networks (NGA) which is the object of the present consultation.

The objective of this Recommendation is to promote a consistent approach to regulated access to NGA. Sonaecom considers this subject to be of paramount importance and believes that the proposed document to very important step in the promotion of the competitive development of Next Generation Access networks (NGA) in Europe. Under an adequate regulatory approach, NGAs represent a unique opportunity to enable effective and sustainable competition in the broadband market.

This Recommendation in its role of minimizing regulatory uncertainty is of the utmost relevance in a context where the current financial crisis has a profound influence in the operator's investment decisions and many regulators, as in the Portuguese case, are late in providing regulatory decisions regarding NGA.

The set of changes introduced to the previous Draft are a positive evolution towards the promotion of investment and competition in the market. Nevertheless, Sonaecom considers that a number of concerns remain and should be object of further analysis.

In the remainder of this document Sonaecom presents its views on the positive aspects of the Draft Recommendation and the main concerns that arise from proposed text.

2. Competition and Investment

The recommendation should account for the fact the transition to NGA incorporates a high risk re-monopolization of the access network and therefore further importance should have been given regarding non-discrimination instruments to promote competition.

Lack of effective competition is still a very important issue in most retail markets, and the Recommendation should take into account for this reality. Thus, this Recommendation should be regarde a tool for

improving regulatory certainty in order to provide investment incentives and promote competition.

Bearing this in mind and in order to promote market players objectives of moving up on ladder of investment, existing obligations on Market 4 should be maintained and the monitoring of the compliance to these obligations should be further enforced.

In that regard, the requirement that alternative operators should be informed at least five years before any de-commissioning of points of interconnection is an important tool for providing certainty to alternative operators relying on unbundled local loop investments.

However, it should be noticed that the de-commissioning of interconnection points without timely notification and before any regulatory guidance on its terms was provided, is already a reality in many cases. Therefore, the terms of compensations to be applied, whether financial or in terms of specific conditions in accessing relevant network components (which could include, in relevant cases, free access to dark fibre), should be addressed.

Sonaecom also believes that obligations on Markets 4 and 5 should be adapted to accommodate the developments that arise from NGA development, and market analysis revisions must be performed in these markets.

On a very positive side, Sonaecom identifies the broadening of the range of access remedies, namely the access to terminal segments in FTTH networks, or unbundled access to fibre loops in FTTH and FTTN networks.

As mentioned in the response to the previous consultation the existence of a level playing field in what regards to network deployment is of utter relevance and it is of paramount importance that the procedures to access essential infrastructures are the same to all operators.

The recommendation could have gone further in terms of the application of the equivalence principle, not restricting its scope to duct access, but by broadening this principle to any access product where dominance exists, as regards to access to information, technical conditions, provisioning or SLAs.

Additionally, publication and compliance supervision should be enforced, with particular stress to the processes and relevant systems used by dominant operators' subsidiaries vis-à-vis the ones used by their competitors.

Another positive aspect of the Draft is the imposition of a six month period between the availability Wholesale Broadband Access services by the dominant operator to its competitors and the provision of such services to its subsidiaries.

Finally, Sonaecom welcomes the emphasis dedicated on margin squeeze tests as a tool for monitoring non-discrimination, even though considering these should come only as complementary to effective pricing rules. Sonaecom considers that the procedures and principles underlying those tests should be harmonized throughout the EU and the Recommendation could provide detailed guidelines as how these should be carried out.

3. Discounts

Sonaecom considers that the Recommendation should clarify the conditions under which term discounts would not have a discriminatory effect and should only be applied in a context of effective competition and where the concerning services are offered on the basis of equivalence.

Concerning volume discounts, Sonaecom agrees lower charges should be applied once volume targets are achieved, since per unit costs predictably decrease as penetration expands. However, such discounts should only be penetration specific and not applied in an operator basis, in order to ensure that no discrimination exists.

4. Co-operative deals and Multi-Fibre architectures

Sonaecom believes that in contexts where dominant operators enter into deals with another operator, remedies should not be defined concerning these deals, but should only be defined based on proper market analysis carried by NRAs.

As to what regards with multi-operator, Sonaecom believes them to be positive and have the potential to drive the market to effective competition.

Multi-fibre is also in principle a positive architecture as to what concerns with improving competition and should be encouraged, namely regarding multi-operator deals, enabling the participating operators to fully manage their own networks, and in building fibre installation.

Nevertheless, the competitive outcome of multi-operator deals or the deployment of multi-fibre should not be assumed in advance, and proper market analysis should always be carried.