



**swisscom**

# «Swisscom response to the Commission Consultation on the 2nd Draft Recommendation on Regulated Access to Next Generation Access Networks (NGA)»

Following the first public consultation held in Autumn 2008, the Commission services have amended the first draft recommendation on the Regulated Access to Next Generation Access Networks (NGA) based on the numerous contributions received from stakeholders, input received from the European Parliament and the Council, as well as theoretical and empirical evidence on recent developments in the market.

Swisscom is Switzerland's leading telecoms provider; has 5.3 million mobile customers, around 3.7 million fixed lines including 1.7 million broadband connections. 80% of Swisscom's turnover is generated inside Switzerland, the other 20% originating almost exclusively from the European Union.

Despite the fact that Swisscom is not affected by the EU regulation in its core business, we seize the opportunity to participate in the consultation on the draft recommendation on the Regulated Access to Next Generation Access Networks (NGA) and to comment on this topic which is of crucial importance to all operators in Europe. Swisscom has developed a FTTB/H model that might resolve most of the problems raised by the European Commission in the draft NGA recommendation.

Having described the FTTB/H multi-fibre model in our contribution to the first draft NGA recommendation, we will focus on the economic impact and the regulatory approach needed for the successful development of FTTB/H.

## **1. General remarks concerning the second draft of the NGA recommendation**

Investment in fibre local loop plays an important role in boosting economic growth: it represents a few thousand euros investment per household, it is therefore significant. It is essential that the regulatory framework for NGA has as primary objective to:

- > promote private investment into NGA local loop build out, like mobile local loop which has been financed by private funding throughout the European Union
- > foster Innovation of technologies and services
- > encourage competition

In the current economic crisis massive use of public money to support endangered sectors is discussed in the EU to support European economical recovery. Private investment has in the past successfully financed local loop investment (cable and mobile). If the European economy is to recover, it is essential that conditions are put in place that foster private investment in the fibre renewal of the copper local loop. Good regulatory conditions are more efficient in fostering deployment of broadband networks than the injection of public money into the electronic communications sector.

Swisscom welcomes the fact that the draft of the NGA recommendation published by the European Commission clearly confirms the following principles

- > Infrastructure based competition is the preferred competitive structure for broadband fixed access related markets
  - > Demonstrated by the achievements of markets where coaxial cable infrastructure competes with the copper network
  - > Demonstrated by the dynamics of markets where FTTB/H is being deployed by multiple players
- > Multi-fibre is the preferred model to foster infrastructure based competition insofar as
  - > It allows for different architectures and technologies, notably enabling Point to Point architecture which would otherwise not render its full benefits in a single-fibre environment
  - > It preserves the long term innovation capacity of the industry
  - > It creates conditions for sustainable competition in access networks

Swisscom thinks that the current regulatory conditions like they exist today in Switzerland serve the best the abovementioned objectives (investment, innovation, competition). We therefore think that the regulatory system proposed by the European Commission in its draft NGA recommendation could be further improved along its lines, so that deployment of fibre financed by private investment is guaranteed.

In the following, Swisscom will mainly contribute to the debate on the NGA recommendation by giving input of its experience under the current Swiss regulatory regime that has proven particularly favourable to the development of infrastructure competition and the deployment of fibre.

## **2. Benefits of the current Swiss regulatory system**

Switzerland is not part of the European Union. Switzerland therefore did not transpose the telecom package into national law. Even if the regulatory framework is quite “aligned” to the EU framework, there are some fundamental differences between the Swiss and the European regulatory system in relation to the treatment of NGA.

### **1. First of all, the legislator has defined in a conclusive way, the access forms in the Telecommunications Act.**

The Swiss Telecommunications Act foresees that providers of telecommunications services having a dominant position in the market must provide access to other providers in a transparent and non-discriminatory manner at cost-oriented prices. It regulates the following forms of access to facilities and services:

- a. fully unbundled access to the local loop;
- b. fast bit stream access for four years;
- c. rebilling for fixed network local loops;
- d. interconnection;
- e. leased lines;
- f. access to cable ducts, provided these have sufficient capacity.

The Swiss Telecommunications Ordinance foresees inter alia for sub loop unbundling.

### **2. Secondly, the legislator has deliberately limited the access forms to the copper network.**

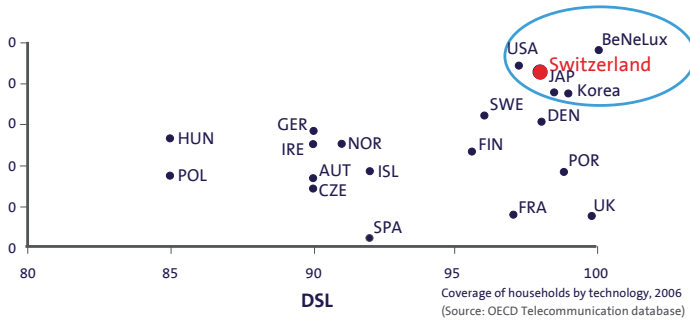
Fully unbundled access to the local loop is defined as the provision of access to the copper local loop for another telecommunications service provider. This includes the utilisation of the entire frequency spectrum of the twisted pair metallic line. Fast bit stream access entails a high-speed connection to the subscriber from the exchange to the building connection on the twisted pair metallic line by a telecommunications service provider. This connection is made available to another provider for broadband services. Fibre regulation (FTTB/H) has been discarded as a consequence of the legislative debate.

### **3. Thirdly, the Swiss regulatory system is characterized by an ex-post regulatory intervention mechanism. This means that the regulator does not intervene on its own initiative but only if providers of telecommunications services do not agree on the access conditions within three months.**

This means that in Switzerland markets are in general not regulated upfront, which encourages the market to develop innovative models.

This current regulatory system has shown its benefits.

**First** of all, the Swiss broadband market is still growing even though by international comparison the number of lines relative to the number of households is already very high, above 70%. Despite a tendency to saturation, the market still grows at approximately 4% per year.



**Secondly**, the Swiss telecommunications market is characterised by an intense infrastructure based competition. Cable has about 80% Broadband-enabled coverage. Around 50 cable network operators offer broadband via cable modem. The market share of cable in the broadband market is 30%. 18% of the DSL market is provided by alternative operators to Swisscom. Cable TV competitors have moved towards a 3Play strategy since 2004. Technology upgrade to DOCSIS 3.0 is planned for. Effective bandwidth of 100/15 Mbps is expected for EOY 2009 in densely-populated areas.

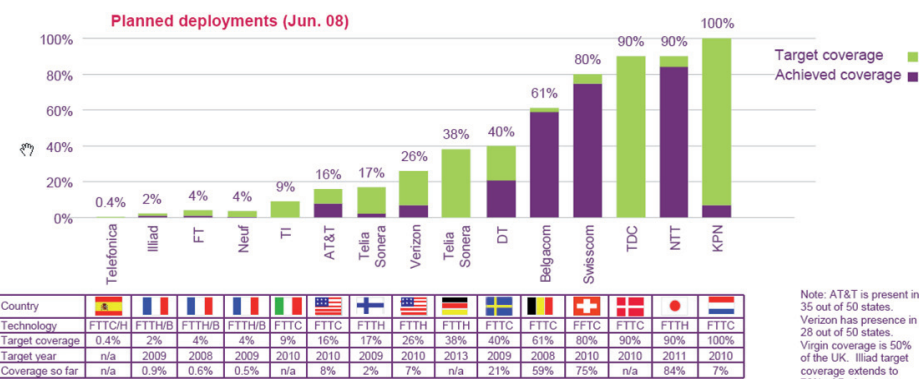
With an eye to the future, Swisscom is investing in expanding the fibre optic local loop network. Swisscom wants to remain competitive over the next fifty years and make sure that Switzerland continues to enjoy one of the best infrastructures in the world. As a result, Switzerland is comparable to countries like the Netherlands and Belgium, where cable penetration is quite high and the DSL coverage (ADSL=98%, FTTC/VDSL=75%) has been developed due to pressure from cable operators which has resulted in infrastructure based competition.)

**Thirdly**, the Swiss telecommunications market is vivified by the emergence of new players. In addition to cable operators, the utility companies have become active. Power suppliers are investing in fibre optics. Zurich electricity company, the first of those new entrants, has already started a local roll-out of FTTB/H in Zurich to reach an effective bandwidth from 100/100 mbps. The budget required approval by the city population (city) which was obtained through ballot. The same applies for other major Swiss cities like Basel, St. Gallen etc.

**Fourthly**, this regulatory framework has led to increased appetite for FTTB/H investment in Switzerland. At a time when state economic stimulus packages are prevalent, Swisscom and the utility companies are investing in FTTB/H. Having reached a FTTC/VDSL roll-out of 75%, Swisscom has started the FTTB/H roll-out 2 years ago and has invested around 600 Mio. Swiss Francs in the last two years. Swisscom is planning to spend 8 bio Swiss Francs for the roll-out of its infrastructure in the next 6 years, 35% of which will go into the FTTB/H roll-out. Some 6,000 jobs outside Swisscom closely depend on more than CHF 1 billion that are invested every year in the Swiss economy.



### Next Generation Access is beginning to be deployed around the world...



Note: AT&T is present in 35 out of 50 states. Verizon has presence in 28 out of 50 states. Virgin coverage is 50% of the UK. Iliad target coverage extends to 70% of Paris

Many large companies and various commercial buildings are currently connected via fibre-optic cable. Swisscom has been expanding its fibre-optic network to include private households since the autumn of 2008. Geneva, Basel and Zurich were first on the list, and they are followed by Berne, Lausanne, St. Gallen and Fribourg in 2009. Finally, according to “The Economist” Switzerland has the world’s best telecommunications infrastructure. As demonstrated by OFCOM, Swisscom sticks to its announced targets for roll-out. With its position as number 2 in terms of investment per GDP (Eurostat), Switzerland shall keep its pole position regarding its telecommunications infrastructure.

### **3. “fibre suisse” – Swisscom’s multi-fibre cooperation concept – enables infrastructure competition, accelerates deployment by reducing the overall costs**

Swisscom is convinced that it is necessary to avoid the establishment of monopolistic bottlenecks that would call for regulatory intervention. We believe that infrastructure based competition is the most sustainable kind of competition for telecommunications, as it conveys the utmost benefits and fosters investments and innovation. It suits particularly well the paradigm of the telecom industry which is uniquely characterised by regular renewal of its most expensive asset: the passive local loop infrastructure (chronologically: copper, cable, mobile, fibre...).

Investment required for FTTB/H is tremendous. 80% of the costs are linked to the introduction of the fibre into the ducts and the in-house cabling. Only 20% of the costs are linked to hardware, this is optics and electronics.

As most of the cost stem from the act of laying cables, Swisscom cooperates with other operators in the area. This reduces the costs and accelerates deployment for all operators that deploy FTTB/H.

Motivated by these considerations, Swisscom established “fibre suisse” based on a simple set of principles:

- > All ducts shall be made available to all network operators on a transparent and non-discriminatory basis.
- > Every provider wishing to build a new network infrastructure lays one fibre-optic cable containing multiple fibres
- > The unused optical fibres are offered to interested network operators for sale or exchange; this in form of IRUs.
- > Network providers with their own ducts cooperate in laying fibre-optic cabling
- > For in-house-cabling, clear common technical standards should be followed.
- > The telecommunications providers, that do not want to invest into the roll-out of FTTB/H, take advantage of the competition between the network operators that differentiate their wholesale offerings based on different technologies.

(For more details of the model and the architecture, please refer to our contribution to the first draft NGA recommendation.)

The benefits of this multiple fibre model are numerous:

- > A multi-fibre architecture as foreseen by Swisscom will foster competition.
- > By sharing part of the deployment costs, the network operators deploying FTTB/H reduce their CAPEX individually,
- > Co operations minimize the OVERALL cost of deploying fibre compared to the case where two cables are deployed independently towards the same building).
- > Reduced roll-out costs per player shall generate positive effects for the consumers.

The multi-fibre architecture combined with the cooperation on the deployment of passive infrastructure allows for two kinds of competition.

- > First of all, a multi-fibre architecture as foreseen by Swisscom encourages infrastructure competition between different operators. In a multi-fibre architecture, cooperation on the passive infrastructure permits competition between the operators on higher layers in the network. The multi-fibre architecture allows operators to differentiate themselves and compete on their respective fibres. In a single-fibre architecture model, this competition is not as easily possible.
- > Secondly, the concept allows for service based competition. As the different network operators differentiate their wholesale offerings, they compete with their wholesale services. The telecommunications providers that do not want to invest into the roll-out of FTTB/H, take advantage of the competition between the network operators who invested in the multi fibre cooperation model.

In this way, «fibre suisse» promotes the competition regarding technology and services. It furthers the traditional competition between network operators but also between service providers. The biggest winners are the customers, because thanks to «fibre suisse» they can choose from a number of network providers and service providers. Variety, innovation and attractive prices are thus guaranteed.

#### **4 Recommendations for the EU ex-ante regulatory regime and the NGA recommendation**

**When commenting on the NGA recommendation, the regulatory regime in the EU has to be taken as given. As mentioned in section 2, Switzerland has an ex-post regulatory regime and has discarded fibre (FTTB/H) from the sector-specific regulation. Swisscom would like to repeat here that these Swiss regulatory conditions have proven particularly beneficial for the development of infrastructure competition and the deployment of fibre BB infrastructure. By commenting on the EU NGA recommendation, it should by no means be inferred that we endorse an ex-ante regulatory regime that allows regulating markets upfront.**

In the following we will try to contribute by showing possibilities to create similar favourable conditions as found in Switzerland under the EU ex-ante regime even if we think that the current Swiss regulatory conditions will remain a superior solution than the integration of the elements proposed here in the EU ex-ante regulatory regime.

##### **4.1 Exclusion of fibre from sector-specific regulation**

###### **- because FTTB/H leads to newly emerging markets**

Switzerland has discarded fibre (FTTB/H) from the sector-specific regulation, which has proven particularly beneficial for the development of infrastructure competition and the deployment of fibre BB infrastructure. If such conditions had to be created under the EU regulatory framework, FTTB/H had to be excluded from the scope of relevant markets.

This exclusion of FTTB/H is also possible in the EU regulatory framework. Recital 7 of the recommendation on relevant markets foresees: “Newly emerging markets should not be subject to inappropriate obligations..... The purpose of not subjecting newly emerging markets to inappropriate obligations is to promote innovation as required by Article 8 of the Directive 2002/21/EC.”

Swisscom thinks that the Commission should consider that FTTB/FTTH has not yet obtained more than 1 to 2% of the BB market in most of the European countries and still has to be deployed. FTTB/H is therefore an emerging market that should not be subject to “inappropriate obligations”.

We reckon that recital 7 of the recommendation on relevant markets foresees: “Incremental upgrades to existing network infrastructure rarely lead to a new or emerging market.”

At this stage we would like to remind what FTTB/H means in practice: FTTB means the new deployment of a fibre loop between the ODF and the optical point in the house of the customer. FTTH means in addition to this the laying of fibre cables from the optical point in the house till the plug in the apartment. Therefore this deployment – contrary to FTTC - cannot be considered as “an incremental upgrade of an existing network”, but is a complete renewal of the access network. This new access network will trigger off new and emerging markets with new services. These services will be distinct from the ones offered over FTTC.

Swisscom suggests that the draft NGA recommendation addresses the question of emerging markets in the light of the fact that FTTB/H is a complete renewal of the local loop and will lead to new markets.

###### **- because one can learn lessons from the mobile sector**

When treating FTTB/H as an emerging market and excluding it from the ex-ante regulatory regime, similar conditions would be created to the ones that allowed the mobile sector to grow in the 80s/90s.

The mobile sector created its networks in the 80s. It is only with the Commission recommendation on relevant markets of 11 February 2003 that the mobile sector has been subjected to sector-specific regulation. The mobile sector was not subject to sector-specific regulation for more than 10 years. It led to high coverage and high penetration rates in a very short time. Mobile has been a success story because it has not been interfered with by regulation for a long time.

The fact that the mobile sector had not been subject to sector-specific regulation did not lead to competition problems in the market. Once the market analysis in market 15 was applied, most of the regulators came to the conclusion that the market was competitive. In the end, the Commission must have also come to this conclusion, as it withdrew market 15 from the list of relevant markets in the 2007 Recommendation on relevant markets.

Swisscom suggests that the Commission allows the FTTB/FTTH market to become as much of a success-story as the mobile sector in the 90s with rapid take-up and high competition and abstains from interfering in the sector up-front/before its general deployment.

**- because the relevant time horizon of deployment is longer than the ex-ante regulatory assessment of markets**

If FTTB/H was subject to ex-ante regulation, the market would be assessed on a regular basis by the national regulatory authorities. In most of the countries this means an analysis every 2 to 3 years. This could lead in practice to a situation where FTTB/H is considered an emerging market in one year, but is subject to ex-ante regulation in year three or four. This legal uncertainty is counterproductive for business decisions concerning the roll-out of FTTB/H.

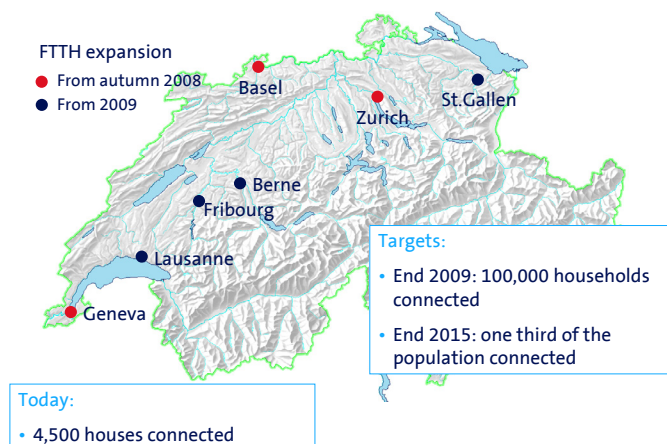
This legal uncertainty does not exist under the Swiss regulatory regime. But also in the ex-ante regulatory regime, it seems to us, that Recital 12 of the Recommendation on relevant markets provides for the possibility to give legal certainty “Even when a market is characterised by high barriers to entry, other structural factors in that market may mean that the market tends towards an effectively competitive outcome within the relevant time horizon.” It is therefore key for the deployment of fibre to happen that the Commission or the regulator has some consideration for the definition of the “relevant time horizon”. The recommendation on relevant markets considers “technological developments” as factors influencing market dynamics and alludes to a reasonable “relevant time horizon”.

In light of the experience with “fibre suisse”, Swisscom thinks that the time for deployment of the fibre loop and the negotiation of cooperation is relevant for determining market dynamics. In an ex-ante regime, the regulator’s consideration of the “relevant time horizon” should match the market players’ time horizon of deployment of the fibre loop.

**4.2 If fibre - at a remote future point- should no longer be excluded from sector-specific regulation....**

Swisscom thinks that for the reasons mentioned above, FTTH/B should be excluded from sector-specific regulation for a significant period of time, until healthy competition has established itself. If, at a remote point in time in the future, for some reason the European Commission felt the need to regulate the markets linked to FTTB/H, we would suggest that, when analysing markets 4 and 5, the regulator should...

**- look at it regionally**

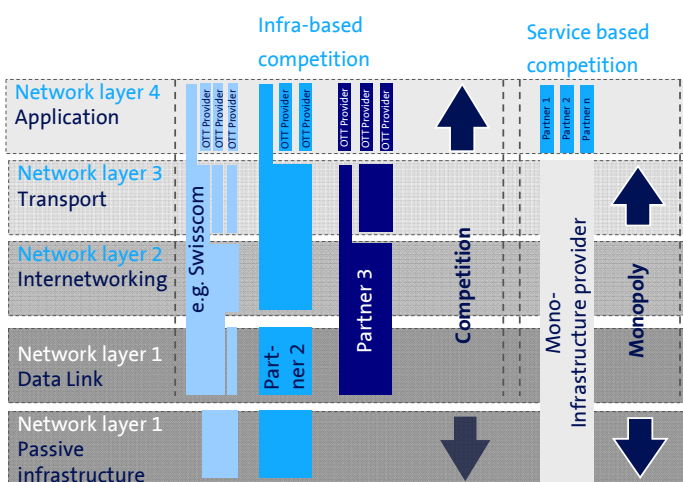


As mentioned in Swisscom’s contribution to the first NGA draft recommendation, Swisscom would like to express its agreement with the European Commission that sub-national markets would have to be looked at when analysing for example markets 4 and 5 whenever this is appropriate. Considering the fact that FTTB/H will be deployed mainly in cities in the first step, a one-size-fits-all approach to national market analysis does not seem to be justified in any case. Market dynamics concerning FTTB/H are different than for the rest of the xDSL deployment and this would have to be taken into account. In the Swiss market, the first movers

in the FTTH market are the utility companies. This seems to echo the situation in Sweden and Denmark. Under certain circumstances, a national approach to market definition may fail to capture adequately the competitive constraints operating on supply in a particular geographic area. Swisscom welcomes the Commission's consideration of sub-national markets.

**- have a deep look into market dynamics created by cable and multi fibre**

We would suggest that when analysing markets 4 and 5, the regulator, when confronted with a multi-fibre cooperation framework, enables both facilities-based and service-based competition. In a multi-fibre cooperation framework as well as in a single-fibre framework there will be a potential for conventional facilities-based competitors like cable operators (DOCSIS 3.0) and mobile operators (LTE). However, a multi-fibre cooperation framework with, for example, four fibres leaves place for up to three additional facilities-based competitors.



“fibre suisse” allows not only for infrastructure-based competition but also for service-based competition. As the different network operators differentiate their wholesale offerings, they compete with their services. The telecommunications providers that do not want to invest into the roll-out of FTTH take advantage of the competition between the network operators who invested in the multi fibre cooperation model.

In a multi-fibre cooperation framework access to the fibre network can be granted by two or more cooperation partners whereas in a single-fibre framework the traditional question remains whether and under what conditions access to the network of the incumbent should be enforced.

We note that the Commission has analysed the multi-fibre model in an isolated way. With DOCSIS 3.0. and reduction of cable cells size, cable proves to be an effective substitute to FTTH/H. The presence of cable and the entry of new players combined with the multi-fibre cooperation model creates a very dynamic and competitive market. This leads us to the conclusion that when analysed in a context of cable, it is highly likely that the multi-fibre cooperation framework increases the probability that the criteria for ex-ante regulation will not be fulfilled, i.e. that an ex-ante regulation will not ever be necessary.

**4.3 If market analysis comes to the conclusion that there is need for remedies ...**

Swisscom thinks that for the reasons mentioned before, FTTH/B should be excluded from sector-specific regulation. If for some reasons, in a remote future, the European Commission recommends the imposition of remedies according to Directive 2002/19/EC Articles 9-13, we would suggest that the following considerations are taken into account when dealing with a FTTH/H deployment model à la “fibre suisse”:

**- some fundamental reflections should be made before their imposition**

Economics of remedies should match the status of NGA deployment. Whereas a copper network is fully utilised, remedies on fibre should take into account the degree of utilisation of the network. If remedies are imposed on a network that is not fully utilised, the quota of underutilisation of newly constructed networks would have to be taken into account. This means that remedies that have been imposed on the copper network can not be transposed 1:1 onto FTTH/H networks.

**- the regional character of cooperation negotiations should be taken into account when considering transparency obligations**

Directive 2002/19/EC Art 9 foresees that national regulatory authorities may impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

The multi-fibre cooperation framework foresees that infeasible rights of use (IRUs) are granted on the extra fibres that are deployed by the SMP operator. Regional cooperation differs fundamentally from interconnection issues. Regions differ with respect to costs and other characteristics, such as topology or existing duct networks. A cooperation agreement in one region does not directly affect other regions. Therefore a transparency obligation would not contain a value added to the market.

Moreover in practice, the negotiations on the cooperation / IRUs of the extra fibre are conducted regionally. As the cost structures are different, agreements will be different from one region to another. A kind of reference offer for the IRUs would not be able to reflect the different cost structures in the different regions.

**- some consideration should be made when envisaging non-discrimination obligations**

Directive 2002/19/EC Art 10 foresees that national regulatory authorities may impose non-discrimination obligations, in relation to interconnection and/or access.

It is not likely that an operator deploying multi-fibre FTTH consents to the extra cost of investing in extra capacity without seeking to recover this investment through seriously marketing the extra fibre loops.

In addition, in a multi-fibre cooperation framework, once cooperations have been established, there is the choice between more than one supplier. Therefore, anticompetitive discrimination is unlikely to be an issue. In order to recover the investment costs in extra capacity operators have an incentive to seriously market the extra fibre loops.

**- the impact of access obligations on the negotiations on IRUs should be taken into account**

Directive 2002/19/EC Art 12 foresees that a national regulatory authority may impose obligations on operators to meet reasonable requests for access. According to the draft NGA recommendation, NRAs should impose on the SMP operator access to the unbundled fibre loop (cf. Annex III, part 1).

As mentioned above, existing networks like copper are fully utilised. The NGA networks are not to be utilised fully for a long time. Single line unbundling, which is a commonly implemented remedy in copper networks, is inappropriate for fibre. If access had to be given to single unbundled FTTB/H lines, the rental price of the unbundled line would need to bear the cost of underutilisation. This creates almost insurmountable pricing problems. As the unbundled single line is attached to a captured customer when FTTB/H investment has to cover complete districts where service penetration will be very low for years, single line fibre unbundling massively reduces the risk carried by the unbundler and increases the risk carried by the investor into the network. As such it not only drastically reduces investment incentives, but because of the pricing issue, makes the business case of a fibre unbundler very difficult.

Therefore, single line unbundling is inappropriate as a remedy until the FTTB/H has reached a high (close to 100%) utilisation level.

Therefore alternatives to the unbundling/rental of individual lines need to be developed. These include the possibility for the alternative operator to rent whole areas rather than single lines. "Unbundling" models, whereby new entrants have to commit to investment rather than leases and engage themselves for –even – a portion of a given area, help mitigate that tension and provide potentially an acceptable compromise by all parties between the amount to be invested and fairness of access conditions to the newly and underutilised infrastructure.

This is the solution that "fibre suisse" is bringing to this problem. "fibre suisse" offers the access seeker the possibility to invest in one fibre of a multi-fibre network in a certain area. This model is economically more interesting for access seekers than a line per line unbundling model and avoids the establishment of monopolistic market structures.

When assessing the need to impose an access obligation in form of unbundling, the NRA would need to assess if this remedy is proportionate. All participants in the markets would need to be taken into account. The presence of cable has to be taken into account.

In addition to that and in view of the fact that the multi-fibre cooperation model foresees the possibility for the access seeker to invest in access lines of particular areas, the proportionality of the access obligation concerning the degree of dominance – which in a multi-fibre model is lower than in a single-fibre model - would have to be assessed.

The proportionality also would need to be assessed in view of the fact that “fibre suisse” has as a principle (cf. above):

- > The telecommunications providers that do not want to invest into the roll-out of FTTB/H take advantage of the competition between the network operators that do differentiated wholesale offerings based on different technologies.
- > The multi-fibre model is designed in such a way that the parties to the cooperation model will compete on the wholesale level. Therefore the multi-fibre model will allow the emergence of a sustainable competitive market at the wholesale as well as at the retail level and would therefore be in the end-user’s interest. The choice at retail level is potentially increased compared to a single-fibre architecture because of the competition at the wholesale level between the different investors of the multi-fibre deployment.  
In summary: Swisscom holds the position that in an ex-ante regulatory system the imposition of an access obligation in form of line per line unbundling
- > can be improved by an investment sharing model that foresees that all the cooperating partners make some kind of wholesale offering
- > would have to be tested against its proportionality.

In case of disproportional remedies the multi-fibre architecture risks to develop in a sub-optimal form. The potential of increased facilities-based competition could thus be weakened.

We understand that the 2nd draft NGA recommendation foresees the case where a line per line remedy would not be applied. Swisscom thinks that remedies should be adapted to country/area covered as well as market maturity.

Such circumstances as described in Annex 3 Section 2 of the proposed recommendation (having four operators in a multi-fibre environment to renounce declaring an operator as SMP) will not happen in the first phase of deployment. During the first few years of any given fibre roll-out this constellation does not happen. This most likely leads to the situation where one of the operators that took the risk to invest is declared SMP and has single-line unbundling imposed on him. In the long term this effectively deters him to invest and creates a disadvantage towards the other co-investors.

In smaller countries, these prerequisites mentioned in Annex 3 Section 2 are not fulfilled even after a long period of time because of the smaller economic scale.

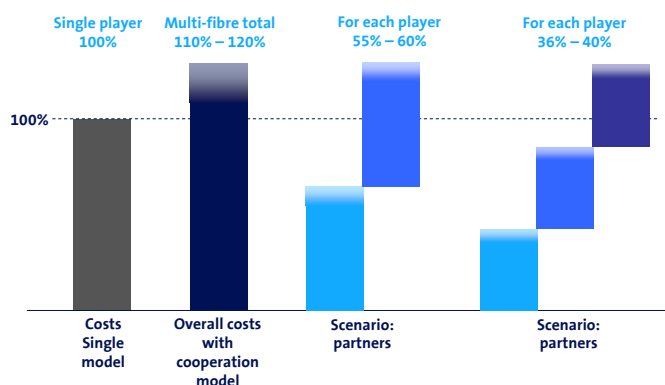
**- some consideration should be taken into account when price control and cost accounting obligations are premeditated**

As mentioned above, connecting only the clients who effectively ask for FTTB/H is not a viable technical and economical option. As in the first phase of its deployment, utilisation of NGA networks will remain low (well under 20% for years), the resulting “cost per line” for the operator who has invested is therefore a multiple of the cost per line calculated by division of the investment by the number of installed lines. If competitors can get access through cost-oriented unbundling to leasing prices which do not take that occupation factor into account, then the investing operator stands de facto – and for the entire life of its investment at a very significant cost disadvantage (in fact between 1 to 5 and 1 to 10) - against its competitors. Investing in NGA under those circumstances depends on the risk premium and other factors.

This is the scenario for any FTTB/H deployment.

In a “fibre suisse” model, the cooperation partners will each launch a wholesale offer on its own fiber. Both operators will directly compete on the wholesale level and – at least indirectly – on the retail level as well.

INVESTMENT IN FIBRE NETWORK PER PLAYER (illustrative split)



To deploy multiple fibre costs 10% more than single fibre. Swisscom, instead of investing 100%, invests 110%. In the case of Fribourg for example, as Swisscom shares the 110 with a co-investor, the CAPEX reduce for example to 55% to Swisscom. Swisscom calculates the dark fibre access product (ULL) and the bit stream access product on the basis of the 55%. Therefore an alternative operator ends up with a lower unbundling price in a “multi-fibre – co-investment” model than a regulated “single-fibre - non cooperation model”, where the basis for regulation is 100%.

However, if the agreement in the commercial negotiations between the co-investors does turn out to be unequal, the pricing of the wholesale access products is eventually adapted accordingly depending on the degree of utilisation of the network. The regulator cannot anticipate the negotiation results between the co-investors and therefore would distort the competition between the infrastructure-based competitors when intervening in some form of price control. The regulator also does not have detailed knowledge of the utilisation of the networks of the different operators.

As the co-investment scheme is agreed by negotiations, the price a regulator – as external to the agreement – might fix, does not reflect the eventual cost distribution between the parties and the cost structure of the investing parties. In the worst case, the regulator might eventually fix a price that might be higher than a voluntary offer of one of the wholesalers of the multi-fibre agreement, as its price is fixed according to the cost distribution between the parties, the inoccupation factor and the competitive pressure from its co-investors.

In its current form, Annex 3-Section 1 of the NGA Recommendation assumes that the co-investor into the NGA is a competing electronic communication service provider. Dark-fibre providers, which do not offer electronic communication services, may act as co-investors, provide competitive access to the infrastructure, but not compete in the retail market. We therefore question the need to restrict the conditions to some kind of competition on the “downstream market”.

Providing layer 2 and above services requires sophisticated and expensive interconnection mechanisms which are not affordable by local players. Imposing the above restriction will deter both potential investors from financing the roll-out of a local NGA network.

In summary: Swisscom holds the position that in an ex-ante regulatory system, the imposition of cost orientation obligation for fibre unbundling and fibre BSA in a multi-fibre cooperation model

1. is not in the interest of consumers, as they might end up with higher prices
2. can distort the negotiations between the investing parties.

Swisscom therefore would advise the Commission to rethink the regulatory intervention mechanism put forward in some of the scenarios involving a multi-fibre deployment.

#### Disclaimer

This communication contains statements that constitute «forward-looking statements». In this communication, such forward-looking statements include, without limitation, statements relating to our financial condition, results of operations and business and certain of our strategic plans and objectives.

Because these forward-looking statements are subject to risks and uncertainties, actual future results may differ materially from those expressed in or implied by the statements. Many of these risks and uncertainties relate to factors which are beyond Swisscom’s ability to control or estimate precisely.

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