

**UNI-Europa contribution to the European Commission's revised draft
Recommendation on regulated access to Next Generation Access Networks
(July 2009)**

As a trade union federation representing some one million telecom workers across Europe, UNI-Europa welcomes the opportunity to contribute to the second consultation on the European Commission's revised draft recommendation on Next Generation Access Networks. We would like to underline the importance of consulting and involving trade unions as industry stakeholders in the legislative process in general.

It is obvious that development of fibre networks is an important aspect for the future of the European telecom industry both in terms of its competitiveness and the creation of employment. Consequently, an appropriate regulatory climate has to be created that encourages the investment and innovation that is required. UNI-Europa welcomes therefore the objective of the revised draft recommendation to enhance legal (regulatory) certainty and to promote investment.

Some of UNI-Europa's concerns raised during the first public consultation have been considered in the revised draft recommendation, but we would like to point out several aspects that the European Commission still fails to address in its draft Recommendation. If the Recommendation is to play its role as part of the Commission's European broadband strategy, it needs to have much more of a strategic focus on the issues that will drive, or else undermine, investment in broadband and, arguably, less concern over the minutiae of regulated access..

Regulatory framework:

- The uncertainty around demand for NGA services, the high costs of fibre roll-out and the current economic situation should be seriously considered when assessing the prospects and the potential for NGA networks in general. The Commission needs to look hard at the draft Recommendation and ask itself whether its detailed direction and competition orientation is really, given these uncertainties, aimed at the encouragement and promotion of investment in NGA and innovation for which it has specific regard.
- At this time, with some national regulators promoting the upgrade to copper-based broadband networks and communication providers committing significant investment to Next Generation Networks, there is a strong case for ensuring that the approach to regulation seeks to ensure that the return on existing investment in copper is maximised.
- The Commission does not seize the opportunity to limit ex-ante regulation and to define the conditions and circumstances under which regulatory measures are necessary. Instead, the recommendation favours more detailed and asymmetric regulation focusing on the incumbents and limiting the latitude of NRAs regarding the choice of remedies.
- NRAs should have more options to decide about appropriate remedies and be able to base their decisions on their respective national situations. The draft Recommendation remains currently too prescriptive as regards remedies, particularly the approach to pricing; it needs to focus more on the creation of a European-wide framework within which NRAs can operate. The draft Recommendation and explanatory note do not allow for a more differentiated approach and rather discourage incumbents without whose commitment investments on a larger scale will be impossible.

- The public sector is likely to be involved in the roll-out of NGA networks from the perspective of addressing market failure and encouraging investment in NGA to be made on a nationwide basis in their areas for which they are responsible. They thus have a key role in terms of demand aggregation, encouraging of investors and ensuring equitable access for all socio-economic groups. NRAs should liaise regularly with public authorities and network investors to monitor trends in the rolling-out of networks, to map progress and to encourage early intervention where there are signs of market failure.
- Public sector involvement is also likely on the basis that governments are likely to want to encourage investment in infrastructure projects as a means of assisting economies emerge from recession. The Recommendation needs to pay attention to this aspect and consider what impact any such demands would have on the approach to regulation that it outlines.

Investment and predictability:

- UNI-Europa welcomes the fact that the European Commission recognises the need for access prices that reflect the costs effectively borne by operators and which take into account the level of investment risk, especially with regard to the high risk of investment in fibre.
- Any imposition of further physical access obligations should have full cognisance of the need for SMP operators to make a reasonable rate of return from their investment which should include compensation for investment risk. Investment in fibre is, to a commercial operator, a more risky investment than the one originally made as regards the copper-based infrastructure. NRAs should be clear about such obligations from the outset, so that these are predictable, and should take into full consideration, before mandating them, their impact on the desire of SMP operators to make such investment.
- Investment can be encouraged through incentives such as risk premiums, first-mover-advantages or the coupling of risk premiums with geographic obligations in order to enable operators to build networks in less populated areas. In the absence of clear legal provisions, a sectoral agreement based on a fair and adequate return for risk model, which is based on upstream prices, could be an alternative. UNI-Europa welcomes that NRAs should take account of co-operative investment arrangements for the deployment of fibre networks and access pricing schemes that diversify the risk of the investment.
- Providing for planning security for communications providers increases investment confidence and consequently has an impact on the preservation and creation of jobs. Without technological innovation, we will lose tens of thousands of jobs in Europe in the next five to ten years at a time when economies are already struggling with rapidly rising unemployment.

Digital divide:

- The Recommendation focuses almost exclusively on the establishment of a competitive framework for NGAs. This is, however, likely initially to lead to market failure in several areas, for example in rural or under-developed areas, and to an over-concentration of NGA networks in more urban regions. The Recommendation needs openly to acknowledge this and address what NRAs should do in response. We believe that NRAs should, in conjunction with appropriate public authorities and operators, develop policies and projects to deal with those who are likely to be excluded from coverage because they do not live in an area which is attractive to NGA network investors. NRAs should take an early lead in addressing possible market failures as soon as possible and consider the social implications of geographical variations as regards fibre roll-out.

Passive assets and physical access obligations:

- Existing street furniture (street cabinets) may have physical space limitations. Therefore, co-location can only take place where physical space limitations permit. Consequently, it would be wise not to over-state a reliance on access to civil engineering as providing a solution for Market 4 remedies.
- There is a serious oversight in the draft Recommendation concerning the integrity of the passive network and safety issues with regard to the general public and the workforce. The experience of service providers using contract utility vendors, whose labour force is poorly trained and equipped, raises the question of safety and health risks. It is important to give consideration to the standards required to be met in order to allow other operators access to the passive assets.
- The substantial investment required from the pre-planning to build of a sub loop co-locator facility will delay considerably NGA rollout and raise the question of unrecoverable sunk costs.
- Missing from the Recommendation entirely is any reference to the need for NRAs to ensure that operators of fibre-based networks provide back-up power facilities so as to ensure the operability and reliability of the communications network in times of power failure. This is not necessary with copper networks since the copper pair facilitates an electrical charge to the networks but this feature is missing from fibre-based networks.
- In order to ensure balanced competition, access obligations should not be limited to SMP operators but should be equally imposed on other network providers. This would additionally create more choice for alternative operators requesting infrastructure services on a wholesale level from other providers.