

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p><b>Definitions</b></p> <p>8. For the purpose of this Recommendation, the following definitions apply:</p> <p>"Next generation access (NGA) networks" (NGAs) mean wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over already existing copper networks. In most cases NGAs are the result of an upgrade of an already existing copper or co-axial access network.</p> <p>"Civil engineering infrastructure" means physical local loop facilities <b>deployed by an electronic communications operator</b> to host local loop cables such as copper wires, optical fibre and co-axial cables. It typically refers, but is not limited to, subterranean or above-ground assets such as sub-ducts, ducts, manholes and poles.</p> <p>"Duct" means an underground pipe or conduit used to house (fibre, copper or coax)cables of either core or access networks.</p> <p>"Manholes" means holes, usually with a cover, through which a person may enter an underground utility vault used to house an</p>	<p>Wind proposes the following re-wording in order to increase regulatory certainty and avoid disputes or formal reading of the Recommendation:</p> <ul style="list-style-type: none"> <li>▪ Civil engineering infrastructures should also include: <ol style="list-style-type: none"> <li>1. infrastructures deployed by companies not operating in the electronic communication markets.</li> <li>2. vertical cabling</li> </ol> </li> <li>▪ Terminating segment should not be limited to the segment connecting the “first distribution point”</li> <li>▪ FTTH should explicitly include FTTB to avoid any dispute.</li> <li>▪ Co-investments in FTTH should explicitly refer to a separate company with transparent and non discriminatory transaction with interested parties.</li> </ul>	<p><b>Definitions</b></p> <p>8. For the purpose of this Recommendation, the following definitions apply:</p> <p>"Next generation access (NGA) networks" (NGAs) mean wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over already existing copper networks. In most cases NGAs are the result of an upgrade of an already existing copper or co-axial access network.</p> <p>"Civil engineering infrastructure" means physical local loop facilities <del>deployed by an electronic communications operator</del> to host local loop cables such as copper wires, optical fibre and co-axial cables. It typically refers, but is not limited to, subterranean or above-ground assets such as sub-ducts, ducts, <u>vertical cabling, in-house wiring</u>, manholes and poles.</p> <p>"Duct" means an underground pipe or conduit used to house (fibre, copper or coax)cables of either core or access networks.</p> <p>"Manholes" means holes, usually with a cover, through which a person may enter an</p>
---	--	--

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>access point for making cross-connections or performing maintenance on underground electronic communications cables</p> <p>The "Metropolitan Point of Presence" (MPoP) means the point of inter-connection between the access and core networks of an NGA operator. It is equivalent to the Main Distribution Frame (MDF) in the case of the copper access network. All NGA subscribers' connections in a given area (usually a town or part of a town) are centralised to the MPoP on an Optical Distribution Frame (ODF). From the ODF, NGA loops are connected to the core network equipment of the NGA operator or of other operators, possibly via intermediate backhaul links where equipment is not collocated in the MPoP.</p> <p>The "distribution point" means an intermediary node in an NGA network from where one or several fibre cables coming from the MPoP (the feeder segment) are split and distributed to connect to end-users' premises (the terminating or drop segment). A distribution point generally serves several buildings or houses. It can be located either at the base of a building (in case of multi-dwelling units), or in the street. A</p>		<p>underground utility vault used to house an access point for making cross-connections or performing maintenance on underground electronic communications cables</p> <p>The "Metropolitan Point of Presence" (MPoP) means the point of inter-connection between the access and core networks of an NGA operator. It is equivalent to the Main Distribution Frame (MDF) in the case of the copper access network. All NGA subscribers' connections in a given area (usually a town or part of a town) are centralised to the MPoP on an Optical Distribution Frame (ODF). From the ODF, NGA loops are connected to the core network equipment of the NGA operator or of other operators, possibly via intermediate backhaul links where equipment is not collocated in the MPoP.</p> <p>The "distribution point" means an intermediary node in an NGA network from where one or several fibre cables coming from the MPoP (the feeder segment) are split and distributed to connect to end-users' premises (the terminating or drop segment). A distribution point generally serves several buildings or houses. It can be located either at the base of a building (in case of multi-dwelling units), or in the street. A</p>
---	--	--

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>distribution point hosts a distribution frame mutualising the drop cables, and possibly un-powered equipment such as optical splitters. The "terminating segment" means the segment of an NGA access network which connects an end-user's premises to the first distribution point. "FTTH" or "fibre-to-the-home" is an access network consisting of optical fibre lines in both the feeder and the drop segments of the access network, i.e. connecting a customer's premises (the home or in multi-dwelling units the apartment) to the MPoP by means of optical fibre.</p> <p>"Multiple fibre FTTH" is a form of fibre deployment in which the investor deploys more fibre lines than needed for its own purposes in both the feeder and the drop segments of the access network in order to sell access to additional fibre lines to other operators, notably in the form of indefeasible rights of use (IRU).</p> <p>"Co-investment in FTTH" means an arrangement between providers of electronic communications services with a view to deploying FTTH networks in a joint manner, in particular in less densely populated areas. Co-investment covers different legal arrangements.</p>		<p>distribution point hosts a distribution frame mutualising the drop cables, and possibly un-powered equipment such as optical splitters. The "terminating segment" means the segment of an NGA access network which connects an end-user's premises to the first distribution point. "FTTH" or "fibre-to-the-home" is an access network consisting of optical fibre lines in both the feeder and, usually, the drop segments (explicitly includes FTTB solutions) of the access network, i.e. connecting a customer's premises (the home or in multi-dwelling units the apartment) to the MPoP by means of optical fibre.</p> <p>"Multiple fibre FTTH" is a form of fibre deployment in which the investor deploys more fibre lines than needed for its own purposes in both the feeder and the drop segments of the access network in order to sell access to additional fibre lines to other operators, notably in the form of indefeasible rights of use (IRU).</p> <p>"Co-investment in FTTH" means an arrangement between providers of electronic communications services with a view to deploying FTTH networks in a joint manner, in particular in less densely populated areas. Co-investment covers</p>
---	--	--

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p><b>but typically co-investors</b> will build network infrastructure and share physical access to that infrastructure.</p>		<p>different legal arrangements, but typically co-investors will build network infrastructure and share physical access to that infrastructure <u>via a different company to assure transparent economic transaction with all access seeking parties, including the co- investors.</u></p>
<p><b>Access to wholesale physical network infrastructure (Market 4)</b>  <b>Access to civil engineering infrastructure of the SMP operator</b>            9. Where NRAs find that one or more operators have SMP in Market 4, <b>they should assess the availability of civil engineering infrastructure including ducts owned by the SMP operator</b> for the purpose of allowing alternative providers to deploy NGA networks. NRAs should use their powers under Article 5 of Directive 2002/21/EC to ensure that the SMP operator provides all appropriate information for the purposes of access, in particular on duct location and duct capacity.</p>	<p>Wind proposes a different wording in order to try to extend the regulation to duct of other undertakings (municipalities and others..).</p>	<p><b>Access to wholesale physical network infrastructure (Market 4)</b>  <b>Access to civil engineering infrastructure of the SMP operator</b>            9. <del>Where NRAs find that one or more operators have SMP in Market 4, they should</del> assess the availability of civil engineering infrastructure including ducts owned by the SMP <u>(in M4 or M5)</u>operator for the purpose of allowing alternative providers to deploy NGA networks. NRAs should use their powers under Article 5 of Directive 2002/21/EC to ensure that the SMP operator provides all appropriate information for the purposes of access, in particular on duct location and duct capacity. <u>Where possible, Member States should impose a similar obligation on other undertakings (municipalities and public utility companies) in order to further facilitate NGA roll out.</u></p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>10. When NRAs establish that such infrastructure can be used to deploy NGA networks, they should consult interested parties, in particular the SMP operator and potential access seekers, to assess the demand for access and the cost of access provision, as well as to establish operating procedures and parameters.</p>		<p>10. <del>When NRAs establish that such infrastructure can be used to deploy NGA networks, they</del> should consult interested parties, in particular the SMP operator and potential access seekers, to assess the demand for access and the cost of access provision, as well as to establish operating procedures and parameters.</p>
<p>11. NRAs should, in accordance with market demand, mandate access to civil engineering infrastructure. Access should be provided in accordance with the principle of equivalence as set out in Annex II.</p>	<p>Access should be compulsory since it should not foreclose new entrants in a long term perspective</p>	<p>11. NRAs should, <del>in accordance with market demand</del>, mandate access to civil engineering infrastructure. Access should be provided in accordance with the principle of equivalence as set out in Annex II.</p>
<p>12. NRAs should ensure that access to existing civil engineering infrastructure is provided at cost-oriented prices in accordance with Annex I.</p>	<p>Cost orientation should be extended also to newly built infrastructures.</p>	<p>12. NRAs should ensure that access to existing <u>or newly built</u> civil engineering infrastructure is provided at cost-oriented prices in accordance with Annex I.</p>
<p>13. NRAs should mandate a reference offer for access to wholesale physical network infrastructure. The reference offer should be in</p>		<p>13. NRAs should mandate a reference offer for access to wholesale physical network infrastructure. The reference offer should be in</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>place as soon as possible and in any case not later than six months after an NRA has entered into consultation with interested parties.</p>		<p>place as soon as possible and in any case not later than six months after an NRA has entered into consultation with interested parties.</p>
<p>14. NRAs should, in accordance with market demand, encourage, or, where legally possible under national law, oblige the SMP operator, when building civil engineering infrastructure, to install sufficient capacity for other operators to make use of these facilities.</p>	<p>Wind proposes to directly introduce an obligation to provide access at cost oriented prices also to newly built civil engineering.</p>	<p>14. NRAs should, in accordance with market demand, encourage, or, where legally possible under national law, oblige the SMP operator, when building civil engineering infrastructure, to install sufficient capacity for other operators to <del>make use of</del> <u>access to</u> these facilities <del>on a cost oriented basis.</del></p>
<p><i>Access to the terminating segment in the case of FTTH</i></p> <p>15. Where an SMP operator deploys fibre-to-the-home (hereafter FTTH), NRAs should, in addition to mandating access to civil engineering infrastructure, mandate access to the terminating segment of the access network of the SMP operator, including wiring inside buildings. For this purpose, NRAs should oblige the SMP operator to provide detailed information on its access network architecture and, following consultation with potential access seekers on viable access points, determine where the distribution point of the terminating segment of the access</p>		<p><i>Access to the terminating segment in the case of FTTH</i></p> <p>15. Where an SMP operator deploys fibre-to-the-home (hereafter FTTH), NRAs should, in addition to mandating access to civil engineering infrastructure, mandate access to the terminating segment of the access network of the SMP operator, including wiring inside buildings. For this purpose, NRAs should oblige the SMP operator to provide detailed information on its access network architecture and, following consultation with potential access seekers on viable access points, determine where the distribution point of the terminating segment of the access network should be for the</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>network should be for the purpose of mandating access. In making such determination, NRAs should take into account the fact that any distribution point will need to host a sufficient number of end-user connections to be commercially viable for the access seeker.</p>		<p>purpose of mandating access. In making such determination, NRAs should take into account the fact that any distribution point will need to host a sufficient number of end-user connections to be commercially viable for the access seeker.</p>
<p>16. NRAs should oblige the SMP operator to complement the reference offer as soon as possible for access to its civil engineering infrastructure with a reference offer for access to the terminating segment of the NGA network and to provide access to the distribution points in accordance with the principle of equivalence as set out in Annex II.</p>		<p>16. NRAs should oblige the SMP operator to complement the reference offer as soon as possible for access to its civil engineering infrastructure with a reference offer for access to the terminating segment of the NGA network and to provide access to the distribution points in accordance with the principle of equivalence as set out in Annex II.</p>
<p>17. NRAs should ensure that access to the terminating segment is provided at cost oriented prices in accordance with Annex I.</p>		<p>17. NRAs should ensure that access to the terminating segment is provided at cost oriented prices in accordance with Annex I.</p>
<p>18. NRAs should, in accordance with market demand, encourage, or, where legally possible under national law, oblige the SMP operator to deploy multiple fibre lines in the terminating segment.</p>		<p>18. NRAs should, in accordance with market demand, encourage, or, where legally possible under national law, oblige the SMP operator to deploy multiple fibre lines in the terminating segment.</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p><i>Unbundled access to the fibre loop in the case of FTTH</i></p> <p>19. Where the SMP operator deploys FTTH, NRAs should, in addition to the above remedies, mandate unbundled access to the fibre loop. Such remedy should be accompanied by appropriate measures assuring co-location and backhaul. Access should be given at the most appropriate point in the network, which is normally the Metropolitan Point of Presence (MPoP).</p>	<p>Wind requests that:</p> <ul style="list-style-type: none"> <li>▪ Access is provided in accordance with the principle of equivalence.</li> <li>▪ MPoP should be located in one of the current local exchange where alternative operators are already co-located in order to minimize migration costs.</li> </ul>	<p><i>Unbundled access to the fibre loop in the case of FTTH</i></p> <p>19. Where the SMP operator deploys FTTH, NRAs should, in addition to the above remedies, mandate unbundled access to the fibre loop. Such remedy should be accompanied by appropriate measures assuring co-location and backhaul.</p> <p><u>Access should be provided in accordance with the principle of equivalence as set out in Annex II.</u></p> <p>Access should be given at the most appropriate point in the network, which is normally the Metropolitan Point of Presence (MPoP) <u>that should coincide with one of the local exchanges where Alternative operators are already co-located to minimize interconnection costs.</u></p>
<p>20. NRAs should mandate unbundled access to the fibre loop irrespective of the network architecture and technology implemented by the SMP operator.</p>	<p>Wind strongly agrees with this principle which, also in a forward looking perspective, can enforce unbundlable architecture.</p>	<p>20. NRAs should mandate unbundled access to the fibre loop irrespective of the network architecture and technology implemented by the SMP operator.</p>
<p>21. The existing LLU reference offer should be complemented as soon as possible to include unbundled access to the fibre loop.</p> <p>Directive 2002/19/EC, Annex II sets a</p>		<p>21. The existing LLU reference offer should be complemented as soon as possible to include unbundled access to the fibre loop.</p> <p>Directive 2002/19/EC, Annex II sets a</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>minimum list of conditions that must be part of the reference offer for LLU. The reference offer should be in place as soon as possible.</p>		<p>minimum list of conditions that must be part of the reference offer for LLU. The reference offer should be in place as soon as possible.</p>
<p>22. <b>Except in cases as set out below</b>, the price of access to the unbundled fibre loop should be cost-oriented. <b>NRAs should take into account any additional and quantifiable investment risk</b> incurred by the SMP operator when setting the price of access to the unbundled fibre loop. In principle, <b>this risk should be reflected in a premium included in the cost of capital for the relevant investment</b>. For this purpose, NRAs should also assess pricing schemes <b>proposed by the SMP operator</b> to diversify the risk of investment. NRAs should agree to such schemes provided they do not have discriminatory or exclusionary effect. Criteria for assessing such pricing schemes and for setting a risk premium are set out in Annex I.</p>	<p>Recommendation should acknowledge that in certain countries due to simple industrial economy reasons like absence of alternative networks (i.e. cable) only the ex monopolist operator can investment in NGA benefiting from the substitution of the copper access network and without destroying value, so without any risk.</p> <p>Other relevant cases are when Incumbent choose a FTTx infrastructure that doesn't allow ULL, excluding so Alt net.</p>	<p>22. <del>Except in cases as set out below</del>, the price of access to the unbundled fibre loop should be cost-oriented. NRAs should take into account any <u>eventual (in certain countries due to simple industrial economy reasons like absence of alternative networks only the ex monopolist operator can investment in NGA benefiting from the substitution of the copper access network and without destroying value, so without any risk)</u> additional and quantifiable investment risk incurred by the SMP operator when setting the price of access to the unbundled fibre loop. In principle, this risk should be reflected in a premium included in the cost of capital for the relevant investment. For this purpose, NRAs should also <u>define</u> assess pricing schemes <del>proposed by the SMP operator</del> to diversify the risk of investment. NRAs should <del>agree to assure that</del> such schemes <del>provided they</del> do not have discriminatory or exclusionary effect. Criteria for assessing such pricing schemes and</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

		<p>for setting a risk premium are set out in Annex I.</p>
<p>23. NRAs should not impose an obligation of cost-orientation where the SMP operator has deployed an FTTH network based on multiple fibre lines and has granted effective and fully equivalent access to at least one independent alternative provider of electronic communications services competing on the downstream market.</p>	<p>In Wind view the reduction of wholesale obligations in case of SMP investing or granting equivalent access to only one Alternative operator should be deleted from the Recommendation since:</p> <ol style="list-style-type: none"> <li>1. Allows a collusive duopoly or a incumbent pick competitors strategy;.</li> <li>2. Has no sound economic basis.</li> <li>3. Warrants SMP operators an extraordinary and unjustified power in negotiating the agreement with Altnets since only the first joining the SMP would benefit from it (i.e. Altnets would front a “prisoner dilemma”).</li> </ol>	<p><del>23. NRAs should not impose an obligation of cost-orientation where the SMP operator has deployed an FTTH network based on multiple fibre lines and has granted effective and fully equivalent access to at least one independent alternative provider of electronic communications services competing on the downstream market.</del></p>
<p>24. NRAs should not impose an obligation of cost-orientation where the SMP operator has jointly with at least one other provider of electronic communications services competing on the downstream market deployed an FTTH network based on multiple fibre lines in accordance with the conditions set out in Section 1 of Annex III.</p>	<p>In any case, in order not to impose a cost orientation NRA should decide <b>only after a public consultation</b> and <b>assessment</b> of the conditions included in the <b>agreement</b> that allow a <b>fully equivalent access</b> at least with one</p>	<p><del>24. NRAs should not impose an obligation of cost-orientation where the SMP operator has jointly with at least one other provider of electronic communications services competing on the downstream market deployed an FTTH network based on multiple fibre lines in accordance with the conditions set out in Section 1 of Annex III.</del></p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

	<p>alternative provider, verifying terms and conditions and the observations received by interested parties.</p>	
<p>25. <del>In the absence of an obligation of cost-orientation, NRAs, at the request of an operator enjoying rights of access or on their own initiative, should verify the SMP operator's pricing behaviour by applying a properly specified margin-squeeze test. NRAs should specify in advance the imputation test, the parameters for the margin-squeeze test and the remedial mechanisms in case of established margin-squeeze.</del> NRAs should ensure that a sufficient margin remains between wholesale and retail prices to allow for market entry by an efficient competitor.</p>	<p>Margin squeeze test must be conducted ex ante on all the SMP</p>	<p>25. <del>In the absence of an obligation of cost-orientation, NRAs, at the request of an operator enjoying rights of access or on their own initiative,</del> should verify the SMP operator's pricing behaviour by applying a properly specified margin-squeeze test. NRAs should specify in advance the imputation <u>and replicability</u> test, the parameters for the margin-squeeze test and the remedial mechanisms in case of established margin-squeeze. NRAs should ensure that a sufficient margin remains between wholesale and retail prices to allow for market entry by <u>an efficient</u> competitor.</p>
<p>26. When NRAs in their market analyses find that the conditions set out in Section 2 of Annex III are met, this <b>would normally</b> be indicative of the absence of SMP in areas where joint deployment of FTTH networks based on multiple fibre lines takes place in accordance with the conditions set out in this Section. NRAs should monitor whether these conditions will continue to be met</p>	<p>See comments on the Section 2.</p>	<p>26. When NRAs in their market analyses find that the conditions set out in Section 2 of Annex III are met, this <b>would normally</b> be indicative of the absence of SMP in areas where joint deployment of FTTH networks based on multiple fibre lines takes place in accordance with the conditions set out in this Section. NRAs should monitor whether these conditions will continue to be met</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>throughout the period covered by the market review, and whether they result in effective competition on the downstream market, and review their decision not to impose cost orientation if necessary.</p>		<p>throughout the period covered by the market review, and whether they result in effective competition on the downstream market, and review their decision not to impose cost orientation if necessary.</p>
<p><del>27. In case of anti-competitive co-ordinated behaviour by providers of electronic communications services having access to or joint control of an FTTH network based on multiple fibre lines, NRAs should, notwithstanding the recommendations in paragraphs 23 and 24, impose cost-oriented access.</del></p>	<p>Already foreseen by the market analysis process.</p>	<p><del>27. In case of anti-competitive co-ordinated behaviour by providers of electronic communications services having access to or joint control of an FTTH network based on multiple fibre lines, NRAs should, notwithstanding the recommendations in paragraphs 23 and 24, impose cost-oriented access.</del></p>
<p><i>Access obligations in the case of FTTN</i> 28. Where the SMP operator deploys fibre-to-the-node (FTTN), NRAs should, in addition to mandating access to civil engineering infrastructure, assess the demand from potential access seekers for unbundled access to the copper sub-loop as well as the SMP operator's cost in providing such access, including street cabinet co-location.</p>	<p>Demand must be assessed with a public consultation.</p>	<p><i>Access obligations in the case of FTTN</i> 28. Where the SMP operator deploys fibre-to-the-node (FTTN), NRAs should, in addition to mandating access to civil engineering infrastructure, assess the demand, with a public consultation from potential access seekers for unbundled access to the copper sub-loop as well as the SMP operator's cost in providing such access, including street cabinet co-location.</p>
<p>29. NRAs should impose an obligation to meet</p>	<p>Must become an obligation to grant access.</p>	<p>29. NRAs should impose an obligation to</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p><del>reasonable requests</del> for unbundled access to the copper sub-loop.</p>		<p><del>meet reasonable requests</del><u>provide access at cost oriented prices</u> for unbundled access to the copper sub-loop.</p>
<p>30. A copper sub-loop unbundling remedy <u>should be supplemented by backhaul measures, including fibre and Ethernet backhaul where appropriate, and by ancillary remedies</u> ensuring its effectiveness and viability, such as non-discriminatory access to facilities for co-location, or in their absence, virtual co-location.</p>		<p>30. A copper sub-loop unbundling remedy should be supplemented by backhaul measures, including fibre and Ethernet backhaul where appropriate, and by ancillary remedies ensuring its effectiveness and viability, such as non-discriminatory access to facilities for co-location, or in their absence, virtual co-location.</p>
<p>31. When NRAs impose copper sub-loop unbundling, the SMP operator should be required to complement the existing LLU reference offer with all necessary items. <u>The price of access to all items should be cost-oriented</u> in accordance with Annex I.</p>		<p>31. When NRAs impose copper sub-loop unbundling, the SMP operator should be required to complement the existing LLU reference offer with all necessary items. The price of access to all items should be cost-oriented in accordance with Annex I.</p> <p><u>NRA should impose to the SMP operator equivalent access to copper sub-segment elements in the distribution network including access to internal building copper wiring. NRA should mandate the SMP operator to allow the availability to alternative providers of all the information of the copper distribution network census, including grid references, available spare capacity and</u></p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
Highlighted in red = text to be radically changed in order to safeguard competition		
Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.		
Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.		

		<u>technical solutions to host alternative providers apparatus in all the segments of the distribution network.</u>
<p><b>Wholesale broadband access (Market 5)</b>            32. Where SMP is found on Market 5, wholesale broadband access remedies <b>should be maintained or amended</b> for existing services and their chain substitutes. NRAs should consider wholesale broadband access over VDSL as a chain <b>substitute</b> to existing wholesale broadband access over copper-only loops.</p>	<p><b>The Recommendation should acknowledge the different role played in the transitory phase by NGA bitstream products.</b>            In that period, WBA will be fundamental to warrant sustainable competition at retail level on new services and allow for a progressive migration of customer onto the new network as the copper network is progressively dismantled. In many cases, all the other wholesale products (unbundling offer, wholesale offer for terminating segments and access to ducts and civil engineering) will not play a relevant role during early years of NGA roll out due to the relevance of operative complexities and information asymmetry as well as reduced scale economies.            M5 obligation must be integrated</p> <p>Must be introduced both offers (existing ones + VDSL offers)</p>	<p><b>Wholesale broadband access (Market 5)</b>            32. Where SMP is found on Market 5, wholesale broadband access remedies should be maintained <del>or and</del> amended for existing services and their chain substitutes. NRAs should consider wholesale broadband access over VDSL as <u>an chain-substitute-integration</u> to existing wholesale broadband access over copper-only loops.</p>
33. NRAs should oblige the SMP operator to make new wholesale broadband access products	A safety regarding <b>effective usability</b> of WBA offers should be introduced to grant replicability	33. NRAs should oblige the SMP operator to make new wholesale broadband access

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p><b>available in principle</b> at least six months before the SMP operator or its retail subsidiary markets its own corresponding NGA retail services.</p>	<p>of retail offers and WBA should also be subject to the principle of equivalence.</p>	<p>products <del>available in principle</del> <u>that should be operative</u>- at least six months before the SMP operator or its retail subsidiary markets its own corresponding NGA retail services. <u>Access should be provided in accordance with the principle of equivalence as set out in Annex II.</u></p>
<p>34. NRAs <b>should mandate the provision of different wholesale products</b> that best reflect in terms of bandwidth and quality the technological capabilities inherent in the NGA infrastructure so as to enable alternative operators to compete effectively, including for business grade services.</p>	<p>Added reference to SLA</p> <p>Proposal to add also television services.</p>	<p>34. NRAs should mandate the provision of different wholesale products that best reflect in terms of bandwidth and quality <u>(including SLA)</u> the technological capabilities inherent in the NGA infrastructure so as to enable alternative operators to compete effectively, including for business grade services <u>and IPTV services (HD included)</u>.</p>
<p>35. NRAs should cooperate with each other in order to define appropriate technical specifications for wholesale broadband access products provided over NGAs and provide information to international standards bodies in order to facilitate the development of relevant industry standards.</p>		<p>35. NRAs should cooperate with each other in order to define appropriate technical specifications for wholesale broadband access products provided over NGAs and provide information to international standards bodies in order to facilitate the development of relevant industry standards.</p>
<p>36. NRAs should <b>in principle</b> impose <b>cost orientation on mandated wholesale broadband</b></p>	<p>Wind stresses that a “retail minus” approach may help addressing the costing solution during</p>	<p>36. NRAs should <del>in principle</del>-impose cost orientation on mandated wholesale broadband</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p><b>access</b> products in accordance with Annex I, taking into account differences in bandwidth and quality of the various wholesale offers.</p>	<p>the first transitional period when cost orientation is hard to define and determine in order to safeguard competition from market foreclosure and pre-emption retail anticompetitive strategies.</p>	<p>access products in accordance with Annex I, taking into account differences in bandwidth and quality of the various wholesale offers. <u>During overlay of NGA and traditional copper network period, where cost definition is hardly definable, a retail minus principle should be adopted.</u></p>
<p>37. NRAs <b>should not impose an</b> obligation of cost orientation where the SMP operator has deployed an FTTH network based on multiple fibre lines and has granted effective and fully equivalent access to at least one independent alternative provider of electronic communications services competing on the downstream market.</p>	<p>In Wind view the <b>reduction of wholesale obligations</b> in case of SMP investing or granting equivalent access to only one Alternative operator should be deleted from the Recommendation since:</p> <ol style="list-style-type: none"> <li>1. <b><u>Allows a collusive duopoly</u></b> or a incumbent picks competitors strategy;.</li> <li>2. <b><u>Has no sound economic basis.</u></b></li> <li>3. Warrants SMP operators an extraordinary and unjustified power in negotiating the agreement with Altnets since only the first joining the SMP would benefit from it (i.e. <b><u>Altnets would front a “prisoner dilemma”</u></b>).</li> </ol>	<p><del>37. NRAs should not impose an obligation of cost orientation where the SMP operator has deployed an FTTH network based on multiple fibre lines and has granted effective and fully equivalent access to at least one independent alternative provider of electronic communications services competing on the downstream market.</del></p>
<p>38)NRAs should not impose an obligation of cost orientation where the SMP operator has jointly with at least one other provider of electronic communications services competing</p>	<p>In Wind view the <b>reduction of wholesale obligations</b> in case of SMP <b>investing or granting equivalent</b> access to <b>only one Alternative operator should be deleted</b> from</p>	<p><del>38)NRAs should not impose an obligation of cost orientation where the SMP operator has jointly with at least one other provider of electronic communications services competing</del></p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>on the downstream market deployed an FTTH network based on multiple fibre lines in accordance with the conditions set out in Section 1 of Annex III.</p>	<p>the Recommendation since:</p> <ol style="list-style-type: none"> <li>1. Allows a <b>collusive duopoly</b> or a <b>incumbent picks competitors</b> strategy;</li> <li>2. Has <b>no sound economic basis</b>.</li> <li>3. Warrants SMP operators an extraordinary and unjustified power in negotiating the agreement with Altnets since only the first joining the SMP would benefit from it (i.e. <b>Altnets would front a “prisoner dilemma”</b>).</li> </ol> <p>In any case, in order not to impose a cost orientation NRA should decide <b>only after a public consultation</b> and <b>assessment</b> of the conditions included in the <b>agreement</b> that allow a <b>fully equivalent access</b> at least with one alternative provider, verifying terms and conditions and the observations received by interested parties.</p>	<p><del>on the downstream market deployed an FTTH network based on multiple fibre lines in accordance with the conditions set out in Section 1 of Annex III.</del></p>
<p>39) In the absence of an obligation of cost-orientation, NRAs, at the request of an operator enjoying rights of access or on their own initiative, should verify the SMP operator's</p>	<p>In Wind view, it is correct to insert the concept of margin squeeze but:</p> <ul style="list-style-type: none"> <li>• It shouldn't be limited just to no cost orientation cases</li> </ul>	<p>39) <u>In addition to margin squeeze obligations imposed during the market analysis process, in</u> <del>the</del> the absence of an obligation of cost-orientation, NRAs, at the request of an operator</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>pricing behaviour by applying a properly specified margin-squeeze test. NRAs should specify in advance the imputation test, the parameters for the margin-squeeze test and the remedial mechanisms in case of established margin-squeeze. NRAs should ensure that a sufficient margin remains between wholesale and retail prices to allow for market entry by an efficient competitor. NRAs should monitor whether these conditions will continue to be met throughout the period covered by the market review, and whether they result in effective competition on the downstream market, and review their decision not to impose cost orientation if necessary.</p>	<ul style="list-style-type: none"> <li>• It should be integrated with market analysis process</li> <li>• It should be insert the concept of replicability test</li> </ul>	<p>enjoying rights of access or on their own initiative, should verify the SMP operator's pricing behaviour by applying a properly specified margin-squeeze test. NRAs should specify in advance the imputation <u>and replicability</u>-test, the parameters for the margin-squeeze test and the remedial mechanisms in case of established margin-squeeze. NRAs should ensure that a sufficient margin remains between wholesale and retail prices to allow for market entry by an efficient competitor. NRAs should monitor whether these conditions will continue to be met throughout the period covered by the market review, and whether they result in effective competition on the downstream market, and review their decision not to impose cost orientation if necessary.</p> <p><u>NRA will define the FTTx imputation and margin-squeeze test after a public consultation that defines terms and conditions, including proper margins to compete for alternative providers.</u></p>
<p>40)NRAs should analyse whether an obligation of cost orientation on mandated wholesale broadband access is necessary to achieve</p>	<p>Wind propose to introduce, as an alternative to appropriate cost orientation, the “retail minus” approach. Such approach, especially during the</p>	<p>40)NRAs should analyse whether an obligation of cost orientation on mandated wholesale broadband access is necessary to achieve</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>effective competition in case functional separation or other forms of separation have proved effectively to guarantee equivalence of inputs. In the absence of cost orientation NRAs should monitor the SMP operator's pricing behaviour by applying a properly specified margin-squeeze test as set out in paragraphs 25.</p>	<p>first few years, until the parameters needed for an appropriate and competition effective cost orientation methodology are not consolidated, could at least safeguard from foreclosure strategies.</p> <p>As regard with the concept of “other forms of separations” Wind propose leave in the recommendation just the reference to the functional one.</p>	<p>effective competition in case functional separation <del>or other forms of separation have</del> proved effectively to guarantee equivalence of inputs. In the absence of cost orientation NRAs should monitor the SMP operator's pricing behaviour by applying a properly specified margin-squeeze test as set out in paragraphs 25. <u>In cases where it is too early for appropriately evaluating the costs (parameters for demand and operative costs are not consolidated), NRA should adopt a retail minus approach. A retail minus could for example be adopted during the migration period.</u></p>
<p>41)Where NRAs consider that there is effective access to the unbundled fibre loop of the SMP operator's network and that such access <del>is likely to result</del> in effective competition on the downstream market, NRAs normally <del>should not impose</del> an obligation of wholesale bitstream access.</p>	<p>With respect to fibre ULL access, this should not just “hypothetically” but effectively be granting competition and the exemption from wholesale bitstream access obligation should not apply during the transitory period</p>	<p>41)Where NRAs consider that there is effective access to the unbundled fibre loop of the SMP operator's network and that such access <del>is likely to result</del> in effective competition on the downstream market, NRAs normally should not impose an obligation of wholesale bitstream access.</p>
<p><b>Migration</b> 42)When NRAs in their market analyses find that the conditions set out in Section 2 of Annex III are met, this would normally be indicative of the absence of SMP in areas where joint deployment of FTTH networks based on</p>		<p><b>Migration</b> 42)When NRAs in their market analyses find that the conditions set out in Section 2 of Annex III are met, this would normally be indicative of the absence of SMP in areas where joint deployment of FTTH networks based on</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>multiple fibre lines takes place in accordance with these conditions. NRAs should monitor whether these conditions will continue to be met throughout the period covered by the market review, and whether they result in effective competition on the downstream market.</p>		<p>multiple fibre lines takes place in accordance with these conditions. NRAs should monitor whether these conditions will continue to be met throughout the period covered by the market review, and whether they result in effective competition on the downstream market.</p>
<p>43)Existing SMP obligations in relation to markets 4 and 5 should continue and should not be undone by changes to the existing network architecture and technology, unless agreement is reached on an appropriate migration path between the SMP operator and operators currently enjoying access to the SMP operator's network. In the absence of such agreement, NRAs should ensure that alternative operators are informed no less than five years before any de-commissioning of points of interconnection such as the local loop exchange. This period may be less than five years if fully equivalent active access is provided at the point of interconnection.</p>	<p>In Wind view, it is important to indicate when the 5 years period will begin to avoid a strategy by incumbents to announce false closures to chill LLU investment. It should therefore be clarified that the 5 years period should be triggered only once the SMP operator can demonstrate that NGA deployment is in place and NGA access services are effectively available to Altnets.</p> <p>The Recommendation should therefore advise that existing access obligations on market 4 and 5 should not deteriorate in terms of quality or economic competitiveness until cost effective NGA wholesale access products and a fully functioning and transparent migration process are in place.</p>	<p>43)Existing SMP obligations in relation to markets 4 and 5 should continue and should not be undone by changes to the existing network architecture and technology, unless agreement is reached on an appropriate migration path between the SMP operator and operators currently enjoying access to the SMP operator's network. <u>Existing access obligations on market 4 and 5 should not deteriorate in terms of quality or economic competitiveness until cost effective NGA wholesale access products and a fully functioning and transparent migration process are in place.</u> In the absence of such agreement, NRAs should ensure that alternative operators are informed no less than five years, <u>starting from when wholesale access services needed for migration are available</u>, before any de-commissioning of</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

		<p>points of interconnection such as the local loop exchange. This period may be less than five years if fully equivalent active access is provided at the point of interconnection.</p>
<p>44)NRAs should put in place a transparent framework for the migration from copper to fibre-based networks. NRAs should ensure that the systems and procedures put in place by the SMP operator, including operating support systems, are designed so as to facilitate the switching of alternative providers to NGA-based access products.</p>	<p>Wind highlights that it is of the outmost importance to explicitly request that migration procedures should be cost effective and should not hinder service experience for final consumers</p>	<p>44)NRAs should put in place a transparent framework for the migration from copper to fibre-based networks. NRAs should ensure that the systems and procedures put in place by the SMP operator, including operating support systems, are designed so as to facilitate the switching of alternative providers to NGA-based access products. <u>Migration should be cost effective and should not hinder service experience for final consumers.</u></p>
<p>45)NRAs should use their powers under Article 5 of Directive 2002/21/EC to obtain information from the SMP operator concerning any network modification plans that are likely to affect the competitive conditions in a given market. <b>Where the SMP operator envisages to replace part of its existing copper access network with fibre and plans to de-commission currently used points of interconnection, NRAs should under Article 9(1) of Directive 2002/19/EC ensure that undertakings enjoying access to the SMP operator's network receive</b></p>	<p>Wind propose to extend the request of information transparency not just <i>to replace part of its existing copper access network with fibre and plans to de-commission currently used points of interconnection</i>, but also with respect to any investments in NGA roll out.</p>	<p>45)NRAs should use their powers under Article 5 of Directive 2002/21/EC to obtain information from the SMP operator concerning any network modification plans that are likely to affect the competitive conditions in a given market. Where the SMP operator envisages <u>to invest in NGA roll out to replace part of its existing copper access network with fibre and plans to de-commission currently used points of interconnection</u>, NRAs should under Article 9(1) of Directive 2002/19/EC ensure that undertakings enjoying access to the SMP</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>all necessary information in timely fashion to adjust their own networks and network extension plans accordingly. NRAs should define the format and level of detail of such information, and ensure that strict confidentiality of the information disclosed is respected.</p>		<p>operator's network receive all necessary information in timely fashion to adjust their own networks and network extension plans accordingly. NRAs should define the format and level of detail of such information, <del>and ensure that strict confidentiality of the information disclosed is respected.</del></p>
<p>46)Where sub-national geographic markets or remedies have been identified in Market 5 that depend on access products in Market 4, which may become redundant owing to NGA deployment, such segmentations or remedies should be reviewed.</p>	<p>Wind notes that the analysis of remedies (modify or removal) is already entrusted into the market analysis process and the NGA Recommendation should avoid any overlapping with such consistent and well functioning regulatory framework.</p>	<p><del>46)Where sub-national geographic markets or remedies have been identified in Market 5 that depend on access products in Market 4, which may become redundant owing to NGA deployment, such segmentations or remedies should be reviewed.</del></p>
<p>47)This Recommendation is addressed to the Member States.</p>		<p>47)This Recommendation is addressed to the Member States.</p>
<p><b>ANNEX I</b>  <b>Pricing principles and risk</b>  <b>1. COMMON PRINCIPLES FOR THE PRICING OF NGA ACCESS</b>  Under Article 8 (2) of Directive 2002/21/EC, NRAs are to promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services inter alia by encouraging efficient investment in</p>		<p><b>ANNEX I</b>  <b>Pricing principles and risk</b>  <b>1. COMMON PRINCIPLES FOR THE PRICING OF NGA ACCESS</b>  Under Article 8 (2) of Directive 2002/21/EC, NRAs are to promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services inter alia by encouraging efficient investment in</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>infrastructure. In determining the cost base used for cost-orientation obligations, pursuant to Article 13 (1) of Directive 2002/19/EC, NRAs should consider whether duplication of the relevant NGA access infrastructure is economically feasible and efficient. Where this is not the case, the overriding aim is to create a genuine level playing field between the downstream arm of the SMP operator and alternative network operators. A consistent regulatory approach may therefore imply that NRAs use different cost bases for the calculation of cost-oriented prices for replicable and non-replicable assets, or at least adjust the parameters underpinning their cost methodologies in the latter case.</p>		<p>infrastructure. In determining the cost base used for cost-orientation obligations, pursuant to Article 13 (1) of Directive 2002/19/EC, NRAs should consider whether duplication of the relevant NGA access infrastructure is economically feasible and efficient. Where this is not the case, the overriding aim is to create a genuine level playing field between the downstream arm of the SMP operator and alternative network operators. A consistent regulatory approach may therefore imply that NRAs use different cost bases for the calculation of cost-oriented prices for replicable and non-replicable assets, or at least adjust the parameters underpinning their cost methodologies in the latter case.</p>
<p>In cases where investment into NGAs depends for its profitability on uncertain factors such as assumptions of significantly higher ARPUs or increased market shares, NRAs should assess whether the cost of capital should reflect the higher risk of investment relative to investment into current networks based on copper. Such a risk premium should be estimated in line with section 6 below. In case a higher risk premium is justified, additional mechanisms serving to</p>	<p>Wind propose to clarify that “risk sharing” approach “should not be used for undermining competition at retail level” referring to discount schemes.</p>	<p>In cases where investment into NGAs depends for its profitability on uncertain factors such as assumptions of significantly higher ARPUs or increased market shares, NRAs should assess whether the cost of capital should reflect the higher risk of investment relative to investment into current networks based on copper. Such a risk premium should be estimated in line with section 6 below. In case a higher risk premium is justified, additional mechanisms serving to</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>allocate the investment risk between investors and access seekers could also be used, such as long-term access pricing or volume discounts. Such pricing mechanisms should be reviewed by the NRA in accordance with the criteria set out in sections 7 and 8 below.</p>		<p>allocate the investment risk between investors and access seekers could also be used, such as long-term access pricing or volume discounts. Such pricing mechanisms should be reviewed by the NRA in accordance with the criteria set out in sections 7 and 8 below- <u>since should not be used for undermining competition at retail level.</u></p>
<p>The price of access to physical network infrastructure should not be a geographical average in the presence of substantial cost differences between various areas.</p>	<p>It should be explicitly specified that, in any case, equality of input should be granted between internal transactions within the SMP operator and third party access.</p>	<p>The price of access to physical network infrastructure should not be a geographical average in the presence of substantial cost differences between various areas. <u>In any case equality of input should be granted between internal transactions within the SMP operator and third party access.</u></p>
<p>In order to enforce cost-orientation obligations, NRAs should impose accounting separation pursuant to Article 11 of Directive 2002/19/EC. Separated accounts for the NGA infrastructure and/or service elements to which access is mandated should be set up in such a manner that the NRA can (i) identify the cost of all relevant assets for the determination of access prices (including depreciation and valuation changes) and (ii) monitor effectively whether the SMP operator grants access under the same conditions and prices to other market</p>	<p>Wind highlights the relevance of accounting separation remedies to monitor compliance with cost orientation and equal access obligation.</p>	<p>In order to enforce cost-orientation obligations, NRAs should impose accounting separation pursuant to Article 11 of Directive 2002/19/EC. Separated accounts for the NGA infrastructure and/or service elements to which access is mandated should be set up in such a manner that the NRA can (i) identify the cost of all relevant assets for the determination of access prices (including depreciation and valuation changes) and (ii) monitor effectively whether the SMP operator grants access under the same conditions and prices to other market participants as to its</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>participants as to its own downstream arm. Such monitoring should include the performance of margin-squeeze tests. Costs should be allocated on the basis of objective criteria amongst the various wholesale and retail products which rely on such inputs, to avoid double counting.</p>		<p>own downstream arm. Such monitoring should include the performance of margin-squeeze tests. Costs should be allocated on the basis of objective criteria amongst the various wholesale and retail products which rely on such inputs, to avoid double counting.</p>
<p>NRAs should estimate the incremental costs required to provide access to the facilities concerned. Such costs relate to the ordering and provisioning of access to civil engineering infrastructure or fibre; operating and maintenance costs for IT systems; and operating costs associated with wholesale product management. These costs should be allocated on a proportionate basis between all undertakings enjoying access, including the downstream arm of the SMP operator.</p>	<p>It is necessary to avoid that the wording “proportionate basis” will be used to justify arbitrary anticompetitive allocations.</p> <p>In Wind view, the costs should be proportionally allocated to all wholesale service/products provided irrespective of the operator enjoying access, including the downstream arm of the SMP operator.</p>	<p>NRAs should estimate the incremental costs required to provide access to the facilities concerned. Such costs relate to the ordering and provisioning of access to civil engineering infrastructure or fibre; operating and maintenance costs for IT systems; and operating costs associated with wholesale product management. These costs should be allocated <u>to all wholesale service/products provided irrespective of the operator on a proportionate basis between all undertakings</u> enjoying access, including the downstream arm of the SMP operator.</p>
<p><b>2. PRICING OF ACCESS TO CIVIL ENGINEERING INFRASTRUCTURE</b>  Access to existing civil engineering infrastructure of the SMP operator on Market 4 should be mandated at cost-oriented prices. NRAs should</p>	<p>As a matter of fact for all investments done in the past, irrespective of the cost accounting methodology, the regulated costs should not overestimate the costs effectively borne by the SMP operator (e.g. the application to assets with historical cost amortization of a current cost</p>	<p><b>2. PRICING OF ACCESS TO CIVIL ENGINEERING INFRASTRUCTURE</b>  Access to existing civil engineering infrastructure of the SMP operator on Market 4 should be mandated at cost-oriented prices. NRAs should</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>regulate access prices to civil engineering infrastructure consistently with the methodology used for pricing access to the unbundled local copper loop. NRAs should however ensure that access prices reflect the costs effectively borne by the SMP operator. NRAs should in particular take into account actual lifetimes of the relevant infrastructure and possible deployment economies of the SMP operator. Access prices should capture the proper value of the infrastructure concerned, including its depreciation.</p> <p>When setting the price for access to civil engineering infrastructure, NRAs should not consider the risk profile to be different from that of copper infrastructure.</p>	<p>accounting methodology).</p>	<p>regulate access prices to civil engineering infrastructure consistently with the methodology used for pricing access to the unbundled local copper loop. NRAs should however ensure that access prices reflect <i>and do not in any case exceed</i> the costs effectively borne by the SMP operator. NRAs should in particular take into account actual lifetimes of the relevant infrastructure and possible deployment economies of the SMP operator. Access prices should capture the proper value of the infrastructure concerned, including its depreciation.</p> <p>When setting the price for access to civil engineering infrastructure, NRAs <del>should not consider the risk profile to be different from</del> <i>should consider the risk profile to be generally lower than</i> that of copper infrastructure.</p>
<p><b>3. PRICING OF ACCESS TO THE TERMINATING SEGMENT IN THE CASE OF FTTH</b></p> <p>NRAs should set prices for access to the distribution point consistently with the methodology set for pricing access to the unbundled local copper loop. NRAs should ensure that access prices reflect the costs</p>	<p>Wind remarks that the risk premium should take into account also the <i>positive</i> impact on the SMP business of NGAN and not only the <i>negative</i> impact. To do this we insert the positive impact to avoid the overestimation of <i>higher risk premium</i>.</p>	<p><b>3. PRICING OF ACCESS TO THE TERMINATING SEGMENT IN THE CASE OF FTTH</b></p> <p>NRAs should set prices for access to the distribution point consistently with the methodology set for pricing access to the unbundled local copper loop. NRAs should ensure that access prices reflect the costs</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>effectively borne by the SMP operator, including, where appropriate, a higher risk premium to reflect any additional and quantifiable risk incurred by the SMP operator.</p>		<p>effectively borne by the SMP operator, including, where appropriate, a higher risk premium to reflect any additional and quantifiable risk incurred by the SMP operator. <i><u>This higher risk premium should be established taking also into account that in some countries, due to simple industrial economy reasons, no investment in NGA can take place without the inclusion of the ex monopolist operator and without incorporating the operative benefits coming from the substitution of the copper access network with a fibre one. In such cases the risk would clearly be particularly low.</u></i></p>
<p><b>4. PRICING OF ACCESS TO FIBRE AT THE MPOp IN THE CASE OF FTTH (UNBUNDLED FIBRE LOOP)</b>  When setting access prices to the unbundled fibre loop, NRAs should include a higher risk premium to reflect any additional and quantifiable investment risk incurred by the SMP operator.  The risk premium should be estimated in accordance with the methodology set out in section 6 below.</p>		<p><b>4. PRICING OF ACCESS TO FIBRE AT THE MPOp IN THE CASE OF FTTH (UNBUNDLED FIBRE LOOP)</b>  When setting access prices to the unbundled fibre loop, NRAs should include a higher risk premium to reflect any additional and quantifiable investment risk incurred by the SMP operator.  The risk premium should be estimated in accordance with the methodology set out in section 6 below.</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>Under the principle of non-discrimination, the price charged to the SMP operator's downstream arm should be the same as the price charged to third parties.</p>		<p>Under the principle of non-discrimination, the price charged to the SMP operator's downstream arm should be the same as the price charged to third parties.</p>
<p><b>5. PRICING OF ACCESS TO THE COPPER SUB-LOOP IN THE CASE OF FTTN</b></p> <p>NRAs should impose cost-based access to all items necessary to allow sub-loop unbundling, including backhaul measures and ancillary remedies, such as non-discriminatory access to facilities for co-location, or in their absence, virtual co-location.</p> <p>Regulated access prices should not be higher than the cost incurred by an efficient operator.</p> <p>For this purpose, NRAs may consider to evaluate these costs using bottom-up modelling or benchmarks, where available.</p> <p>When setting the price for access to the copper sub-loop, NRAs should not consider the risk profile to be different from that of existing copper infrastructure.</p>		<p><b>5. PRICING OF ACCESS TO THE COPPER SUB-LOOP IN THE CASE OF FTTN</b></p> <p>NRAs should impose cost-based access to all items necessary to allow sub-loop unbundling, including backhaul measures and ancillary remedies, such as non-discriminatory access to facilities for co-location, or in their absence, virtual co-location.</p> <p>Regulated access prices should not be higher than the cost incurred by an efficient operator.</p> <p>For this purpose, NRAs may consider to evaluate these costs using bottom-up modelling or benchmarks, where available.</p> <p>When setting the price for access to the copper sub-loop, NRAs should not consider the risk profile to be different from that of existing copper infrastructure.</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p><b>6. CRITERIA FOR SETTING THE RISK PREMIUM</b>  The return on capital allowed ex ante for investment into NGA networks should strike a balance between on the one hand providing adequate incentives for undertakings to invest (implying a sufficiently high rate of return) and promoting allocative efficiency, sustainable competition and maximum consumer benefits on the other (implying a rate of return that is not excessive). <b>To do so, NRAs should, where justified, include over the pay-back period of the investment a supplement reflecting the systematic risk of the investment in the WACC calculation currently performed for setting the price of access to the unbundled copper loop.</b> The calibration of revenue streams for calculating the WACC should take into account all dimensions of capital employed, including appropriate labour costs, building costs, <b>anticipated efficiency gains</b> and the terminal asset value, in accordance with Recital 20 of Directive 2002/19/EC. Systematic risk should be estimated on the basis of future NGA penetration scenarios. <b>Factors such as existing broadband penetration, demand for additional bandwidth, consumers' willingness</b></p>	<p>Wind highlights the need to avoid the possibility that <i>“including a supplement reflecting the systematic risk of the investment <b>in the WACC calculation”</b></i> leads to insert this supplement directly in the WACC formula with a consequent unavoidable lever effect.</p> <p>What Wind propose is a more transparent approach whereby the x% supplement is transparently added</p> <p>:</p> $\text{WACC NGA} = \text{WACC COPPER} + X\%$ <p>Moreover, if the NGA network will be developed only by the SMP, there will be no risks for the SMP but only the copper network switch off.</p>	<p><b>6. CRITERIA FOR SETTING THE RISK PREMIUM</b>  The return on capital allowed ex ante for investment into NGA networks should strike a balance between on the one hand providing adequate incentives for undertakings to invest (implying a sufficiently high rate of return) and promoting allocative efficiency, sustainable competition and maximum consumer benefits on the other (implying a rate of return that is not excessive). To do so, NRAs should, where justified, include over the pay-back period of the investment a supplement reflecting the systematic risk of the investment <i>after</i> the WACC calculation currently performed for setting the price of access to the unbundled copper loop. <i>In particular this adjusted WACC should be calculated by the NRAs adding an appropriate percentage to the WACC currently determined for setting the price of access to the unbundled copper loop.</i> The calibration of revenue streams for calculating the WACC should take into account all dimensions of capital employed, including appropriate labour costs, building costs, anticipated efficiency gains and the terminal asset value, in accordance with Recital 20 of</p>
---	---	---

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>to pay, the degree of infrastructure-based competition and the likelihood of alternative operators migrating their clients to fibre loops should be taken into account and properly weighed against other factors such as new wholesale revenues – including captive sales - from physical infrastructure access, revenues from migration charges, and revenues from connection charges to access points, backhaul and co-location.</p> <p>In particular, criteria such as the existence of economies of scale (especially if the investment is undertaken in urban areas only), high retail market shares, control of essential infrastructures, OPEX savings, proceeds from the sale of real estate as well as privileged access to equity and debt markets are likely to mitigate the risk of NGA investment for the SMP operator. The above considerations apply in particular to investment into FTTH. Investment into FTTN, on the other hand, which is a partial upgrade of an existing access network, normally has a significantly lower risk profile than investment into FTTH. In particular, there is less uncertainty involved about the demand for</p>		<p>Directive 2002/19/EC.</p> <p>Systematic risk should be estimated on the basis of future NGA penetration scenarios. Factors such as existing broadband penetration, demand for additional bandwidth, consumers' willingness to pay, the degree of infrastructure-based competition and the likelihood of alternative operators migrating their clients to fibre loops should be taken into account and properly weighed against other factors such as new wholesale revenues – including captive sales - from physical infrastructure access, revenues from migration charges, and revenues from connection charges to access points, backhaul and co-location.</p> <p>In particular, criteria such as the existence of economies of scale (especially if the investment is undertaken in urban areas only), high retail market shares, control of essential infrastructures, OPEX savings, proceeds from the sale of real estate as well as privileged access to equity and debt markets are likely to mitigate the risk of NGA investment for the SMP operator. The above considerations apply in particular to investment into FTTH. Investment into FTTN, on the other hand, which is a partial upgrade of</p>
---	--	--

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>bandwidth to be delivered via VDSL, and overall capital requirements are lower. Therefore, while regulated prices for WBA based on VDSL should take account of any investment risk involved, such risk should not be presumed to be of a similar magnitude as the risk attaching to FTTH based wholesale access products. NRAs should give due consideration to these factors when calculating any risk premium for WBA based on VDSL and, in this case, should not in principle approve of the pricing schemes set out in sections 7 and 8 below. NRAs should publicly consult on their methodology to determine the risk premium.</p>		<p>an existing access network, normally has a significantly lower risk profile than investment into FTTH. In particular, there is less uncertainty involved about the demand for bandwidth to be delivered via VDSL, and overall capital requirements are lower. Therefore, while regulated prices for WBA based on VDSL should take account of any investment risk involved, such risk should not be presumed to be of a similar magnitude as the risk attaching to FTTH based wholesale access products. NRAs should give due consideration to these factors when calculating any risk premium for WBA based on VDSL and, in this case, should not in principle approve of the pricing schemes set out in sections 7 and 8 below. NRAs should publicly consult on their methodology to determine the risk premium.</p>
<p><b>7. CRITERIA TO ASSESS LONG-TERM ACCESS PRICING IN CASE OF FTTH</b> Access prices adjusted for risk based on long-term access may vary as a function of time over which access commitments are made. Long-term access contracts with defined minimum volume requirements would be priced at a lower level than short term access contracts. Long-term</p>	<p>In Wind view, volume and long term discounts should not be needed in those cases where do not exist other operators with comparable independent access networks.</p> <p>In other cases, in order to avoid strategic</p>	<p><b>7. CRITERIA TO ASSESS LONG-TERM ACCESS PRICING IN CASE OF FTTH.</b> <i>NRAs should consider that Volume and long term discount should only be available during the transitory period (coexisting copper and fibre access network) or in case of overlapping NGA infrastructures.</i> <i>In any case NRA should openly consult on such</i></p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>access prices should only reflect the reduction of risk for the investor and therefore cannot be lower than the cost-oriented price to which no higher risk premium reflecting the systematic risk of the investment is added. Under long-term contracts, entrants would acquire full control of physical assets, also offering them the possibility to engage in secondary trading. Short-term contracts would be available without long commitments and thus normally be priced higher, with access prices reflecting the option value attaching to the flexibility of such form of access which benefits the access seeker.</p> <p>Long-term access pricing may however be abused by the SMP operator over time to sell its retail services at prices lower than those for its regulated wholesale services (since it would charge its own downstream retail arm low long-term commitment prices), thereby in effect foreclosing the market. Furthermore, alternative providers with smaller customer bases and unclear business perspectives face higher levels of risk. They are unable to commit to purchasing a large number of fibre lines over a long period. They will thus have to stagger their investment</p>	<p>anticompetitive behaviours (i.e. SMP to formally apply the <u>same</u> discount to its downstream arms due to its great volumes and long term commitments) NRAs should carefully monitor such discount schemes. In this sense, Wind requires that discounts should undergo a national public consultation (Wind requests that the long term access pricing and volume discount should be effectively reachable by Alternative operators).</p> <p>Moreover, to ensure the equality of treatment between the OLOs and the SMP downstream arms, the Volume discounts and Long term commitment should be transparently communicated in the Reference Offer.</p>	<p><i><u>criteria or other criteria to safeguard competition due to the relevant differences from operators and market context in different EU countries.</u></i></p> <p><i><u>Moreover Volume discounts and Long term commitment should be transparently communicated in the Reference Offer and to be considered compliant with competition, thresholds for Long term access pricing and Volume discount should be effectively reachable by Alternative operators.</u></i></p> <p>Access prices adjusted for risk based on long-term access may vary as a function of time over which access commitments are made. Long-term access contracts with defined minimum volume requirements would be priced at a lower level than short term access contracts. Long-term access prices should only reflect the reduction of risk for the investor and therefore cannot be lower than the cost-oriented price to which no higher risk premium reflecting the systematic risk of the investment is added. Under long-term contracts, entrants would acquire full control of physical assets, also offering them the possibility to engage in secondary</p>
---	--	---

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>and purchase regulated access at a later stage.</p> <p>For these reasons, long-term access pricing would be acceptable only if NRAs ensure, in the framework of ex ante price controls, that the following conditions are met:</p> <ul style="list-style-type: none"> <li>- Long-term commitment prices only reflect the reduction of risk for the investor; and</li> <li>- There is a sufficient margin between wholesale and retail prices to allow for market entry by an efficient competitor in the downstream market.</li> </ul>		<p>trading. Short-term contracts would be available without long commitments and thus normally be priced higher, with access prices reflecting the option value attaching to the flexibility of such form of access which benefits the access seeker.</p> <p>Long-term access pricing may however be abused by the SMP operator over time to sell its retail services at prices lower than those for its regulated wholesale services (since it would charge its own downstream retail arm low long-term commitment prices), thereby in effect foreclosing the market. Furthermore, alternative providers with smaller customer bases and unclear business perspectives face higher levels of risk. They are unable to commit to purchasing a large number of fibre lines over a long period. They will thus have to stagger their investment and purchase regulated access at a later stage.</p> <p>For these reasons, long-term access pricing would be acceptable only if NRAs ensure, in the framework of ex ante price controls, that the following conditions are met:</p> <ul style="list-style-type: none"> <li>- Long-term commitment prices only reflect the reduction of risk for the investor; and</li> <li>- There is a sufficient margin between wholesale</li> </ul>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
		<p>and retail prices to allow for market entry by an efficient competitor in the downstream market.</p>
<p><b>8. CRITERIA TO ASSESS VOLUME DISCOUNTS IN CASE OF FTTH</b></p> <p>Access prices adjusted for risk based on volume discounts reflect the fact that investment risk decreases with the total number of fibre loops already sold in a given area. Investment risk is closely tied to the number of fibre loops which remain unused. The higher the share of used fibre loops, the lower the risk. Access prices could therefore vary in accordance with volume purchased. Such volume discounts should only reflect the reduction of risk for the investor and therefore cannot result in access prices which are lower than the cost-oriented price to which no higher risk premium reflecting the systematic risk of the investment is added. While the SMP operator is liable to have a significant share of the overall downstream market, in some areas the distribution of market shares between the SMP operator and alternative operators might be more balanced. A</p>		<p><b>8. CRITERIA TO ASSESS VOLUME DISCOUNTS IN CASE OF FTTH</b></p> <p><i>NRAs should consider that Volume and long term discount should only be available during the transitory period (coexisting copper and fibre access network) or in case of overlapping NGA infrastructures.</i></p> <p><i>In any case NRA should openly consult on such criteria or other criteria to safeguard competition due to the relevant differences from operators and market context in different EU countries.</i></p> <p><i>Moreover Volume discounts and Long term commitment should be transparently communicated in the Reference Offer and to be considered compliant with competition, thresholds for Long term access pricing and Volume discount should be effectively reachable by Alternative operators.</i></p> <p>Access prices adjusted for risk based on volume discounts reflect the fact that investment risk</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>more balanced distribution would increase the likelihood of a higher risk premium which is adjusted for volume discounts resulting in higher investment and efficient competitive outcomes.</p> <p>Volume discounts should only be accepted by NRAs provided the following conditions are met:</p> <ul style="list-style-type: none"> <li>- Volume discounts are calculated per MPoP and are made available in a non discriminatory fashion to all access seekers in that area; and</li> <li>- Volume discounts only reflect the reduction of risk for the investor; and</li> <li>- There is a sufficient margin between wholesale and retail prices to allow for market entry by an efficient competitor.</li> </ul>		<p>decreases with the total number of fibre loops already sold in a given area. Investment risk is closely tied to the number of fibre loops which remain unused. The higher the share of used fibre loops, the lower the risk. Access prices could therefore vary in accordance with volume purchased. Such volume discounts should only reflect the reduction of risk for the investor and therefore cannot result in access prices which are lower than the cost-oriented price to which no higher risk premium reflecting the systematic risk of the investment is added. While the SMP operator is liable to have a significant share of the overall downstream market, in some areas the distribution of market shares between the SMP operator and alternative operators might be more balanced. A more balanced distribution would increase the likelihood of a higher risk premium which is adjusted for volume discounts resulting in higher investment and efficient competitive outcomes.</p> <p>Volume discounts should only be accepted by NRAs provided the following conditions are met:</p> <ul style="list-style-type: none"> <li>- Volume discounts are calculated per MPoP and</li> </ul>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
		<p>are made available in a non discriminatory fashion to all access seekers in that area; and</p> <ul style="list-style-type: none"> <li>- Volume discounts only reflect the reduction of risk for the investor; and</li> <li>- There is a sufficient margin between wholesale and retail prices to allow for market entry by an efficient competitor.</li> </ul>
<p><b>Annex II</b>  <b>Application of the principle of equivalence for access to the civil engineering Infrastructure of the SMP operator for the purpose of rolling out NGA networks</b></p> <p><b>1. PRINCIPLE OF EQUIVALENCE</b>  Access to civil engineering infrastructure of the SMP operator can represent an important input for the deployment of NGA networks. In order to create a level playing field among entrants and the SMP operator, it is important that such access is provided on a strictly equivalent basis. NRAs should require the SMP operator to provide access to its civil engineering infrastructure under the same conditions to internal and to third-party access seekers. In particular the SMP operator should share all</p>	<p>Wind agrees with the need that access to civil engineering infrastructure is provided by SMP operator but highlights that such an obligation can only help the deployment of Alternative operators NGA network on a very selected basis due to the relevance of scale economies. Accordingly the principle of equivalence should also be applied to other relevant wholesale services such as FTTH unbundling and WBA</p>	<p><b>Annex II</b>  <b>Application of the principle of equivalence for access to the civil engineering Infrastructure of the SMP operator for the purpose of rolling out NGA networks</b></p> <p><b>1. PRINCIPLE OF EQUIVALENCE</b>  Access to civil engineering infrastructure of the SMP operator, <u>FTTH unbundling and WBA</u> can <u>jointly</u> represent an important input for the deployment of NGA networks <u>and to allow for infrastructured competition- by facilitating FTTx unbundling, backhauling and direct connection of specific corporate buildings and business areas.</u> In order to create a level playing field among entrants and the SMP operator, it is important that such access is provided on a strictly equivalent basis. NRAs should require</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>necessary information pertaining to infrastructure characteristics, and apply the same procedures for access ordering and provisioning. Reference offers and service level agreements are instrumental to ensuring a proper application of the principle of equivalence. Conversely, it is important that any asymmetric knowledge the SMP operator possesses of the rollout plans of third-party access seekers is not used by the SMP operator to gain undue commercial advantage.</p>		<p>the SMP operator to provide access to its civil engineering infrastructure under the same conditions to internal and to third-party access seekers. In particular the SMP operator should share all necessary information pertaining to infrastructure characteristics, and apply the same procedures for access ordering and provisioning. Reference offers and service level agreements are instrumental to ensuring a proper application of the principle of equivalence. Conversely, it is important that any asymmetric knowledge the SMP operator possesses of the rollout plans of third-party access seekers is not used by the SMP operator to gain undue commercial advantage.</p>
<p><b>2. INFORMATION ON THE CIVIL ENGINEERING INFRASTRUCTURE AND THE DISTRIBUTION POINTS</b>  The SMP operator should provide third-party access seekers with the same level of information on its civil engineering infrastructure and distribution points as is available internally. This information should cover the organisation of the civil engineering infrastructure as well as the technical characteristics of the different elements of</p>	<p>Wind stresses the relevance that Alternative operators access the civil engineering infrastructure and ducts of the SMP operator under the same economic and operational conditions available internally (i.e. <b><u>equal of access and equality of input should apply</u></b>)</p>	<p><b>2. INFORMATION ON THE CIVIL ENGINEERING INFRASTRUCTURE AND THE DISTRIBUTION POINTS</b>  The SMP operator should provide third-party access seekers with the same level of information on its civil engineering infrastructure and distribution points as is available internally. This information should cover the organisation of the civil engineering infrastructure as well as the technical characteristics of the different elements of which</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>which the infrastructure consists. Where available, the geographical location of these elements, including ducts, poles and other physical assets (e.g. maintenance chambers) should be provided, as well as the available space in ducts. The geographical location of distribution points and a list of connected buildings should also be provided. The SMP operator should specify all intervention rules and technical conditions relating to access and use of its civil engineering infrastructure and distribution points, and of the different elements the infrastructure consists of. <b>The same rules and conditions should apply to third-party access seekers as to internal access seekers.</b> The SMP operator should provide the tools for ensuring proper information access, such as easily accessible directories, data bases or web portals. Information should be regularly updated, so as to take account of the infrastructure's evolution and development and of further information collected, <b>in particular on the occasion of fibre deployment projects by the SMP operator or other access seekers.</b></p>		<p>the infrastructure consists. Where available, the geographical location of these elements, including ducts, poles and other physical assets (e.g. maintenance chambers) should be provided, as well as the available space in ducts. The geographical location of distribution points and a list of connected buildings should also be provided. The SMP operator should specify all intervention rules and technical conditions relating to access and use of its civil engineering infrastructure and distribution points, and of the different elements the infrastructure consists of. The same rules and conditions should apply to third-party access seekers as to internal access seekers. The SMP operator should provide the tools for ensuring proper information access, such as easily accessible directories, data bases or web portals. Information should be regularly updated, so as to take account of the infrastructure's evolution and development and of further information collected, in particular on the occasion of fibre deployment projects by the SMP operator or other access seekers.</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p><b>3. ORDERING AND PROVISIONING OF ACCESS</b>  The SMP operator should implement the procedures and tools necessary for ensuring efficient access and use of its civil engineering infrastructure and distribution points, and the different elements the infrastructure consists of. In particular, the SMP operator should provide third party access seekers with end-to-end ordering, provisioning and fault management systems equivalent to those provided to internal access seekers. This should include measures aimed at de-congestion currently used ducts. Requests for information, access and use of the civil engineering infrastructure, the distribution points and the different elements the infrastructure consists of by third-party access seekers should be processed within the same delays as equivalent requests by internal access seekers. The same level of visibility on the progress of the requests should also be provided, and negative answers should be objectively justified.  The information systems of the SMP operator should keep track records of the handling of requests which should be available to the NRA.</p>		<p><b>3. ORDERING AND PROVISIONING OF ACCESS</b>  The SMP operator should implement the procedures and tools necessary for ensuring efficient access and use of its civil engineering infrastructure and distribution points, and the different elements the infrastructure consists of. In particular, the SMP operator should provide third party access seekers with end-to-end ordering, provisioning and fault management systems equivalent to those provided to internal access seekers. This should include measures aimed at de-congestion currently used ducts. Requests for information, access and use of the civil engineering infrastructure, the distribution points and the different elements the infrastructure consists of by third-party access seekers should be processed within the same delays as equivalent requests by internal access seekers. The same level of visibility on the progress of the requests should also be provided, and negative answers should be objectively justified.  The information systems of the SMP operator should keep track records of the handling of requests which should be available to the NRA.</p>
--	--	--

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p><b>4. SERVICE LEVEL INDICATORS</b></p> <p>In order to ensure that access and use of the civil engineering infrastructure of the SMP operator is provided on an equivalent basis, service level indicators should be defined and calculated for both internal and third-party access seekers. Service level indicators should measure the responsiveness of the SMP operator to perform those actions necessary to provide access to its civil engineering infrastructure. Target service levels should be agreed with access seekers. Service level indicators should include delays for replying to requests for information on availability of elements of infrastructure, including ducts, poles, other physical assets (e.g. manholes), or distribution points; delays for replying to a request for feasibility to use elements of infrastructure; a measure of responsiveness to handle requests for access and use of elements of infrastructure; a measure of responsiveness for fault resolution processes. The calculation of the service level indicators should be performed at regular, fixed intervals and submitted to third-party access seekers. The NRA should control that service levels</p>		<p><b>4. SERVICE LEVEL INDICATORS</b></p> <p>In order to ensure that access and use of the civil engineering infrastructure of the SMP operator is provided on an equivalent basis, service level indicators should be defined and calculated for both internal and third-party access seekers. Service level indicators should measure the responsiveness of the SMP operator to perform those actions necessary to provide access to its civil engineering infrastructure. Target service levels should be agreed with access seekers. Service level indicators should include delays for replying to requests for information on availability of elements of infrastructure, including ducts, poles, other physical assets (e.g. manholes), or distribution points; delays for replying to a request for feasibility to use elements of infrastructure; a measure of responsiveness to handle requests for access and use of elements of infrastructure; a measure of responsiveness for fault resolution processes. The calculation of the service level indicators should be performed at regular, fixed intervals and submitted to third-party access seekers. The NRA should control that service levels delivered</p>
---	--	---

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p>delivered to third-party access seekers are equivalent to those delivered internally by the SMP operator. The SMP operator should commit to adequate compensation in case of failure to comply with target service levels agreed with third-party access seekers.</p>		<p>to third-party access seekers are equivalent to those delivered internally by the SMP operator. The SMP operator should commit to adequate compensation in case of failure to comply with target service levels agreed with third-party access seekers.</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p><b>5. REFERENCE OFFER</b>  The different items required to provide equivalent access to the civil engineering infrastructure of the SMP operator should be published in a reference offer. At a minimum, the reference offer should contain the relevant procedures and tools for retrieving civil engineering asset information; describe the access and usage conditions to the different elements which make up the civil engineering infrastructure; describe the procedures and tools for access ordering, provisioning and fault management; and <b>fix target service levels and the penalties for breach of those service levels.</b>  Internal access provision should be based on the same terms and conditions as contained in the reference offer provided to third-party access seekers.</p>	<p>Wind invites the Commission to require that the Reference offer contains at a minimum <b><u>relevant information on the costs associated with the access to civil engineering infrastructure and ducts.</u></b></p>	<p><b>5. REFERENCE OFFER</b>  The different items required to provide equivalent access to the civil engineering infrastructure of the SMP operator should be published in a reference offer. At a minimum, the reference offer should contain the relevant procedures and tools for retrieving civil engineering asset information; describe the access and usage conditions to the different elements which make up the civil engineering infrastructure; describe the procedures and tools for access ordering, provisioning and fault management; <u>a list of the costs associated with accessing civil engineering infrastructure and ducts,</u> and fix target service levels and the penalties for breach of those service levels. Internal access provision should be based on the same terms and conditions as contained in the reference offer provided to third-party access seekers.</p>
--	--	---

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
<p><b>6. MONITORING BY THE NRA</b>  NRAs should ensure that the principle of equivalence is effectively applied. For this purpose they should make sure that a reference offer for access to civil engineering infrastructure is provided to third party access seekers in due time. Also in addition to service level reports, NRAs should ensure that SMP operators keep track of all elements necessary to monitor compliance with the equivalence of access requirement. This information should allow NRAs to run regular controls, verifying that the required level of information is provided to third party access seekers by the SMP operator and that the procedures for access ordering and provisioning are correctly applied.  In addition, NRAs should ensure that a fast-track ex-post procedure is available to settle disputes.</p>		<p><b>6. MONITORING BY THE NRA</b>  NRAs should ensure that the principle of equivalence is effectively applied. For this purpose they should make sure that a reference offer for access to civil engineering infrastructure is provided to third party access seekers in due time. Also in addition to service level reports, NRAs should ensure that SMP operators keep track of all elements necessary to monitor compliance with the equivalence of access requirement. This information should allow NRAs to run regular controls, verifying that the required level of information is provided to third party access seekers by the SMP operator and that the procedures for access ordering and provisioning are correctly applied. In addition, NRAs should ensure that a fast-track ex-post procedure is available to settle disputes.</p>
<p><b>7. ASYMMETRY OF INFORMATION</b>  The incumbent has prior knowledge of third-party access seekers' deployment plans. To prevent such information from being used to gain undue competitive advantage, the SMP operator in charge of operating the civil</p>		<p><b>7. ASYMMETRY OF INFORMATION</b>  The incumbent has prior knowledge of third-party access seekers' deployment plans. To prevent such information from being used to gain undue competitive advantage, the SMP operator in charge of operating the civil</p>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>engineering infrastructure should not share such information with its downstream retail arm.</p> <p>NRAs at a minimum should ensure that those persons involved in the retail arm activities of the SMP operator may not participate in company structures of the SMP operator responsible, directly or indirectly, for managing access to civil engineering infrastructure.</p>		<p>engineering infrastructure should not share such information with its downstream retail arm. NRAs at a minimum should ensure that those persons involved in the retail arm activities of the SMP operator may not participate in company structures of the SMP operator responsible, directly or indirectly, for managing access to civil engineering infrastructure.</p>
<p><b>Annex III</b>  <b>Regulated access to the unbundled fibre loop in case of co-investment into FTTH</b>  <b>1. CONDITIONS UNDER WHICH COST-ORIENTATION IS NOT JUSTIFIED</b>  NRAs should impose on the SMP operator access to the unbundled fibre loop, but should not impose an obligation of cost-orientation where, in a relevant market or specific part thereof, the following conditions are met:</p> <ul style="list-style-type: none"> <li>- The SMP operator has jointly with at least one other provider of electronic communications services competing on the downstream market deployed an FTTH network; and</li> <li>- The co-investors deploy multiple fibre lines; and</li> <li>- The co-investment project is not exclusive -</li> </ul>	<p>In Wind view the <b>reduction of wholesale obligations</b> in case of SMP <b>investing or granting equivalent</b> access to <b>only one Alternative operator should be deleted</b> from the Recommendation since:</p> <ol style="list-style-type: none"> <li>1. Allows a <b>collusive duopoly</b> or a <b>incumbent pick competitors</b> strategy;.</li> <li>2. Has <b>no sound economic basis</b>.</li> <li>3. Warrants SMP operators an extraordinary and unjustified power in negotiating the agreement with Altnets since only the first joining the SMP would benefit from it (i.e. <b>Altnets would front a “prisoner dilemma”</b>).</li> </ol>	<p><del><b>Annex III</b></del>  <del><b>Regulated access to the unbundled fibre loop in case of co-investment into FTTH</b></del>  <del><b>1. CONDITIONS UNDER WHICH COST-ORIENTATION IS NOT JUSTIFIED</b></del>  <del>NRAs should impose on the SMP operator access to the unbundled fibre loop, but should not impose an obligation of cost-orientation where, in a relevant market or specific part thereof, the following conditions are met:</del></p> <ul style="list-style-type: none"> <li><del>-The SMP operator has jointly with at least one other provider of electronic communications services competing on the downstream market deployed an FTTH network; and</del></li> <li><del>-The co-investors deploy multiple fibre lines; and</del></li> <li><del>-The co-investment project is not exclusive-</del></li> </ul>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>timely notice should be given to the NRA and potentially interested parties, and these parties should be allowed to participate on the same terms and conditions; and</p> <ul style="list-style-type: none"> <li>- All co-investors enjoy equivalent access to the jointly deployed infrastructure (the non-SMP operator(s) on the same terms and conditions as the SMP operator).</li> </ul>		<p><del>timely notice should be given to the NRA and potentially interested parties, and these parties should be allowed to participate on the same terms and conditions; and</del></p> <p><del>—All co-investors enjoy equivalent access to the jointly deployed infrastructure (the non-SMP operator(s) on the same terms and conditions as the SMP operator).</del></p>
<p><b>2. CONDITIONS UNDER WHICH THE ABSENCE OF SMP WOULD NORMALLY BE INDICATED</b></p> <p>Joint deployment of FTTH networks by several co-investors under the following conditions would normally be indicative of absence of SMP:</p> <ul style="list-style-type: none"> <li>- At least three operators in addition to the operator having been designated SMP at the time of the market review or, in markets where an alternative operator competes at retail level on the basis of its own network (such as a cable operator), at least two operators in addition to the operator having been designated SMP at the time of the market review, jointly deploy and control FTTH networks; and</li> <li>- The FTTH networks are based on multiple</li> </ul>	<p>Wind agrees that a joint deployment by 3 co-investors plus the SMP operator can be indicative of absence of SMP but only if:</p> <ol style="list-style-type: none"> <li>1. <b><u>The co-investor</u></b> are effectively competing on the downstream market <b><u>jointly representing at least 50% of the competitive fringe</u></b> in the retail broadband access market. (to avoid that agreement signed with “sleeping alternative operator” can destroy real competition) AND</li> <li>2. <b><u>The possibility for an operator to enter also in a second phase</u></b> into the investment (paying a reasonable higher fee compared to early investors) <b><u>is safeguarded</u></b>.</li> <li>3. <b><u>The joint agreement is transparently and publicly offered</u></b> to all interests operators</li> </ol>	<p><b>2. CONDITIONS UNDER WHICH THE ABSENCE OF SMP WOULD NORMALLY BE INDICATED</b></p> <p>Joint deployment of FTTH networks by several co-investors under the following conditions would normally be indicative of absence of SMP:</p> <ul style="list-style-type: none"> <li>- At least three operators in addition to the operator having been designated SMP at the time of the market review or, in markets where an alternative operator competes at retail level on the basis of its own network (such as a cable operator), at least two operators in addition to the operator having been designated SMP at the time of the market review, jointly deploy and control FTTH networks; and</li> </ul>

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p>		
<p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p>		
<p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		

<p>fibre lines; and - Each co-investor enjoys equivalent and cost-oriented access to the joint infrastructure (the non-SMP operator(s) on the same terms and conditions as the SMP operator); and</p> <ul style="list-style-type: none"> <li>- The co-investors are effectively competing on the downstream market; and</li> <li>- The co-investors install sufficient duct capacity for third parties to use and grant cost oriented access to such capacity; and</li> <li>- The co-investors enable third parties currently enjoying unbundled access to the local loop to migrate to comparable NGA wholesale products in case of de-commissioning of currently used points of interconnection.</li> </ul>	<p><b><u>under the surveillance of the Authority</u></b> and a reasonable time is left to formulate intentions</p>	<ul style="list-style-type: none"> <li>- The FTTH networks are based on multiple fibre lines; and - Each co-investor enjoys equivalent and cost-oriented access to the joint infrastructure (the non-SMP operator(s) on the same terms and conditions as the SMP operator); and</li> <li>- The co-investors are effectively competing on the downstream market <u>jointly representing at least 50% of the unbundled lines; and</u></li> <li>- <u>The joint agreement is transparently and publicly offered to all interests operators under the surveillance of the Authority and a reasonable time is left to formulate intentions; and</u></li> <li>- <u>The possibility for an operator to enter also in a second phase into the investment (paying a reasonable higher fee compared to early investors) is safeguarded; and</u></li> <li>- The co-investors install sufficient duct capacity for third parties to use and grant cost oriented access to such capacity; and</li> <li>- The co-investors enable third parties currently enjoying unbundled access to the</li> </ul>
---	--	--

ORIGINAL TEXT	WIND COMMENT	REVISED TEXT
<p>Highlighted in red = text to be radically changed in order to safeguard competition</p> <p>Highlight in yellow = text to be modified in order to avoid misinterpretation or to improve effectiveness of the Recommendation.</p> <p>Highlight in green = text to be confirmed for its high relevance on promoting NGA investments and safeguarding competition.</p>		
		<p>local loop to migrate to comparable NGA wholesale products in case of de-commissioning of currently used points of interconnection</p>