



EUROPEAN COMMISSION  
IMPACT ASSESSMENT BOARD

Brussels, D(2010)

16 AVR. 2010

## Opinion

**Title**                    **DG INFSO/COMP - Staff Working Document on:  
Commission Recommendation on regulated access to Next  
Generation Access Networks**

**(draft version of 22 March 2010)**

### **(A) Context**

Directive 2002/21/EC on a common regulatory framework for electronic communication networks and services allows Member States' national regulatory authorities (NRAs) to impose - after due market analysis - ex-ante regulatory obligations on operators with significant market power, in order to stimulate competition and address market failures. Some NRAs have already adopted obligations concerning Next Generation Access Networks (NGA) and notified the regulatory measures to the Commission under the so-called "Article 7 procedure". No consistent regulatory approach has emerged yet. Under Article 19 of the Directive, the Commission may, taking the utmost account of the opinion of BEREC, issue Recommendations defining common principles to be followed by NRAs to ensure the consolidation of the internal market.

### **(B) Overall assessment**

**The Board is of the view that the report does not currently provide sufficient information to support the proposed Recommendation. It needs to be redrafted in a way which is more accessible to non-expert readers. A clear baseline scenario explaining how the problems defined are expected to develop without a common approach needs to be presented. The report should provide a more thorough analysis of the content of the Recommendation reflecting the full range of available choices for possible remedies. It should explain how an appropriate balance between competition and investment would be achieved, and present the likely impacts of each component of the Recommendation on the incumbent and alternative operators. In addition, the positions of the main stakeholders where they diverge more significantly should be presented.**

**DG INFSO presented a significant amount of this information during the meeting with the IAB, but given the fundamental nature of the issues, the IAB invites DG INFSO to resubmit a new version of the report, on which it will issue a new opinion.**

### **(C) Main recommendations for improvements**

**(1) Present a baseline scenario and an overview of the NGA market competition situation.** The report should present a baseline scenario which can function as the benchmark to assess the impacts of the various options. The baseline should describe how the problems identified are likely to develop in the future without the adoption of the Recommendation defining a common approach, i.e. with the Article 7 procedure as the only instrument available. It should clarify whether the revised Framework Directive 2009/140/EC would provide additional instruments that could help to achieve a harmonised regulatory approach by NRAs, and if so explain why it is not considered as sufficient. Further details about the 'toolbox of remedies' available to NRAs should be provided; and different types of access obligations should be explained better. The report should also provide information about the current situation in the NGA market (dominant positions of the incumbent operators, the difficulties that alternative operators are facing to enter the market, possible conflicts of interests, etc).

**(2) Provide a more thorough analysis of the content of the Recommendation. Explain how a balance between competition and investment would be achieved.** In addition to the analysis of the appropriate policy instruments, the report should be clearer about the actual content of the preferred option, the Recommendation. It should explain which regulatory measures will be available to NRAs (access, pricing, transparency, migration etc) and provide a more thorough and accessible analysis of these elements and possible combinations thereof. It should clarify whether the Recommendation imposes new remedies and/or modifies the application of existing remedies so that they can be used in an NGA setting. The report should be clearer about how the Recommendation would in practice achieve an appropriate balance between investment incentives and fostering competition, and explain in this context the likely impacts of the Recommendation for the incumbent and alternative operators.

**(3) Be clearer about the positions of the main stakeholders.** The report should explain the positions of the main stakeholders (incumbent and alternative operators and NRAs) where they diverge more significantly, and explain how the Recommendation takes them into account.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

### **(D) Procedure and presentation**

The report does not refer to internal consultation carried out. It should clarify whether other services were consulted.

In spite of the very technical nature of the subject, an effort should be made to draft the report in a way which is more accessible to the non-expert. The description of options should be separated from their assessment. A complete glossary of financial terms and abbreviations should be provided.

<b>(E) IAB scrutiny process</b>	
Reference number	INFSO (COMP)/2008/010
External expertise used	No
Date of Board Meeting	14 April 2010