



EUROPEAN COMMISSION  
IMPACT ASSESSMENT BOARD

Brussels,  
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## Opinion

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

**(Resubmitted draft: version of 26 April 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 revised version of the report has been improved on the basis of the Board's first opinion. In particular, the report explains which remedies are available to NRAs and provides a more thorough analysis of the content of the preferred option, the Recommendation. It would, however, benefit from further details about the adverse effects on competition and investment that result from the absence of a common approach to access to NGA. It should also be clearer about how the balance between competition and investment will be achieved on the basis of the Recommendation, and indicate whether the fact that NRAs could still deviate from the Recommendation in the light of national circumstances would have an impact on the degree of regulatory certainty being sought. The report should be neutral when presenting the discarded options, and explain clearly how the positions of key stakeholders are taken into account by the Recommendation.**

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

**(1) Strengthen the baseline scenario by providing further details on expected adverse effects on competition and investment.** While the revised report explains that the existing guidance via the notification process of the "Article 7 procedure" is not sufficient to prevent regulatory inconsistency in the single market; it should be clearer about the adverse effects on competition and investment which are expected to occur in the absence of common EU guidance to NRAs on regulated access to next generation networks. In this context, the report should indicate to what extent the level of commercial investments already announced (table 1) has been affected by the lack of regulatory certainty and the absence of common guidance.

**(2) Be clearer about how the Recommendation will achieve the balance between competition and investment.** The report should still be clearer about how the Recommendation would in practice achieve an appropriate balance between investment incentives and fostering competition, and explain to what extent the fact that NRAs can deviate from the Recommendation will have impact on the regulatory certainty which is being sought.

**(3) Present the discarded options in a more neutral fashion.** Instead of stating upfront that options 1 and 2 are problematic (section 5), the report should be more neutral when presenting these options. It should first assess them on the basis of their performance in achieving the policy objectives defined. Based on this assessment, it should then conclude on the suitability of the options.

**(4) Be clearer about how the positions of the stakeholders are taken into account in the Recommendation.** The revised report presents a summary of the positions of NRAs and incumbent and alternative operators. It should however be clearer about how these positions are taken into account by the Recommendation, by providing further explanations of the overview table 4.

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

The report has been redrafted in a way which is more accessible to non-expert readers.

Given that DG INFSO has already launched the inter-service consultation, it needs to ensure that the second opinion of the Board and the final report are available to other services before the consultation closes.

### **(E) IAB scrutiny process**

Reference number	INFSO (COMP)/2008/010
External expertise used	No
Date of Board Meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 16/04/2010.