

OTE is pleased to contribute to the public consultation launched by ERG on the issue of Regulatory Principles of NGA. With its commitment in making investments, promoting innovative solutions and services in the Greek market, OTE S.A. (Hellenic Telecommunications Organization) the incumbent telecommunications provider in Greece and together with its subsidiaries the leading group of companies nationwide, is deeply concerned with ERG's current thinking and suggested regulatory implications for the roll-out of Next Generation Access networks.

NGA networks, defined as FFTB and FTTC, have been present in the business market for some years providing high-speed connections to business customers. The relevant retail and wholesale market that has been defined in the current Recommendation is that of leased lines and terminating segments of leased lines respectively. The NGA network roll-out, under discussion in the current consultation, already planned by different operators in Europe and worldwide such as the U.S., will provide high-speed broadband access for consumers and small businesses. These networks will create an enabling environment for **new** high-speed applications and services. There are many applications and services envisaged for this NGA "future", the most prominent and foreseeable being that of IPTV. The applications and services that will be offered over these NGA networks is the most crucial parameter that needs to be identified, in order to define a relevant retail and wholesale market. OTE believes that the relevant wholesale market cannot be Market 11 with a slight "twist", the removal of the word "metallic". In order to support this argument let's take for example the service of IPTV. IPTV service is competing services such as satellite TV, cable TV or any form of subscription TV. In this case in order to define the retail market, demand-side and supply-side substitutability should be carried out, taking into account all available relevant subscription-TV platforms and pricing schemes¹. Having defined the relevant retail market, under the new regulatory framework, the 3 criteria cumulatively are to be applied in order to identify if such a market is susceptible to ex ante regulation. Such an analysis, defining relevant retail market or markets is missing from the consultation document.

Moreover according to the Commission staff working document public consultation on a draft Commission Recommendation on Relevant Product and Service Markets, "the market analyses carried out by NRAs have to be forward-looking and markets are defined prospectively. Their definitions take account of expected or foreseeable technological or

¹ In the Commission staff working document public consultation on a draft Commission Recommendation on Relevant Product and Service Markets, the LLU wholesale market is examined in the context of a relevant retail market: "*LLU allows alternative operators to provide retail access and voice services at a fixed location, as well as wholesale origination and termination services at a fixed location. Generally, however, alternative operators primarily invest in LLU to provide data services (mainly broadband Internet access), with voice services as a possible addition. Therefore, LLU was in the initial Recommendation and is also in this draft revised Recommendation primarily examined in the context of data services*".

economic developments over a reasonable horizon linked to the timing of the next market review”. Taking into account that:

- NGA roll-out might take a considerable time in order to become a reality,
- NGA roll-out will not immediately phase out existing copper networks therefore fibre will be an alternative access network to the existing copper access network and
- the lifespan of the next Recommendation,

it is rather premature to suggest the inclusion of such a market in the Recommendation.

A parameter that should also be considered in the set of assumptions of such an analysis, since the consultation deals only with assumptions and not actual NGA roll-out deployments, is that initially the NGA roll-out will happen in highly competitive areas. Currently there is no certainty on the profitability of a nation wide deployment and on the time such an investing decision will be made. Such a decision will depend on the NGA roll-out plans of private investors and the outcome of the initial NGA roll-out. This implies that there will be different geographical relevant retail markets that should be examined within the boundaries of the respective geographical limits and not nationwide.

The foremost and probably most critical point that needs to be addressed in the discussion on the regulatory principles of NGA networks is the correlation between investment and regulation. Most recently there have been a number of studies and articles that examine the need for more or less ex ante regulation and these have been influenced by the underinvestment figures over the last years in Europe. In US the assessment of underinvestment has shown evidence that it is related to strict unbundling regulation, which has led to deregulation, where in 2003 FCC affirmed that “Incumbent LECs do not have to offer unbundled access to newly deployed or “greenfield” fibre loops or to the packet-switching features, functions, and capabilities of their hybrid loops”. This has shown an increase in investment figures.

NGA networks will facilitate high-speed applications already known or new and will provide end users with more choices not only in terms of pricing but in terms of new innovative services. On the other hand NGA roll-out, as demonstrated in the consultation document, requires heavy investment with high risk, and regulatory uncertainty makes this investment more risky. Investment does not need to happen only by former monopolies, i.e. incumbent operators. Regulators apply ex ante remedies to legacy copper access infrastructure that have been developed when incumbents were monopolies and as such these networks are being regulated. To bring NGA to an end customer requires investment from an operator, irrespective of if this is an incumbent or an alternative operator. The only advantage of an incumbent that could be raised as an argument is incumbents existing ducts. But in order to make a concrete conclusion on obligations on duct sharing, all existing ducts and any other facilities that could be used for NGA roll-out should be considered and all obligations should

be symmetrical and not only imposed on SMPs. Limiting facilities to ducts only used for electronic communication services is clearly a disproportionate remedy.

To conclude OTE considers that it must be a priority for regulators to support the deployment of NGA networks for the advancement of society and include this to their regulatory objectives.

Therefore the approach taken by ERG to propose ex ante remedies to such a new and emerging alternative broadband platform, that will bring new services to the end users and promote innovation in the society as a whole, can be considered precarious since it will deter investors from taking timely investing decisions and could leave Europe lagging behind the rest of the world.