



EUROPEAN
COMMISSION

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ANNEX 1

ANNEX

to the

**Commission Recommendation
on the regulatory promotion of Gigabit connectivity**

ANNEX I

Application of non-discrimination obligations pursuant to point [26] of the Recommendation

Key performance indicators ('KPIs')

- (1) KPIs should measure performance in relation to at least the following key elements in the provision of regulated wholesale services:
 - (a) ordering process;
 - (b) Service provision;
 - (c) quality of service, including faults;
 - (d) fault repair times; and
 - (e) migration between different regulated wholesale inputs (excluding one-off bulk migrations).
- (2) National regulatory authorities ('NRAs') should impose KPIs for each of the key elements listed in point 1 in the provision of regulated wholesale services. KPIs should allow for comparison between services provided internally to the downstream retail arm, of the significant market power ('SMP') operator and services provided externally to third-party access seekers.
- (3) The specific details of KPIs imposed by the NRA in accordance with point 2 of this Annex can be agreed between the SMP operator and third-party access seekers
- (4) In determining the KPIs, the NRA should take account of existing performance measurements, even when only used by the SMP operator for internal purposes.
- (5) The process of monitoring KPIs should be fully transparent. To ensure that potentially discriminatory behaviour in the provision of regulated wholesale services is discovered early, and to ensure transparency, NRAs should publish KPIs at least every quarter, in an appropriate form either on the NRA's website or on the website of an independent third party designated by the NRA.
- (6) NRAs should ensure that the KPIs are regularly audited either by the NRA itself or by an independent auditor.

Service level agreements ('SLAs') and Service level guarantees ('SLGs')

- (7) NRAs should require the SMP operator to implement corresponding SLAs alongside KPIs.
- (8) NRAs should require the SMP operator to provide corresponding SLGs in case of a breach of the SLAs.
- (9) NRAs should ensure that penalty payments for failure to fulfil SLGs are, in principle, made without undue delay and follow a pre-determined process for payment and billing. The level of such penalties should be sufficiently dissuasive to ensure that the SMP operator complies with its delivery obligations.
- (10) Penalties for failure to meet KPIs should be proportional, but should be high enough to be dissuasive. To determine whether penalty is sufficiently dissuasive, NRAs should consider whether a breach of wholesale obligations by the SMP operator would cause the alternative operator that uses the wholesale access product problems at retail level. If so, the penalty should be high enough to cover the retail indemnity.

(11) In particular if significant problems have arisen in the past, NRAs should monitor any delays in the payment of penalties so as to ensure their dissuasive effect.