

Reflections on NGA regulation

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Victoria Gerus
Regulatory Affairs Manager



Presentation slides only; not a full record of remarks made

European Telecommunications Network Operators' Association

DAE investment challenge for fast and ultra-fast internet access, or NGA, is great

Target date	Universal coverage EU citizens having access to:	Penetration/inclusion
2013	Basic broadband (speed not defined) [2MB – Estimated cost: €11-14b]	No target
2020	Fast broadband \geq 30 MB [Estimated cost: €38-58b]	50% households \geq 100 MB [Estimated cost: €181-268b]



Source: European Commission (Sept. 2010)

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Disincentives to invest abound

“Today they [SMP telcos] know that as soon as they invest in fibre networks, they will start facing increased competitive pressure from the same rivals (mostly, having purchased bitstream access), rivals from the wireless world, rivals in the applications world – the latter being able to fully free-ride on this magnificent new fibre network. Would you invest in this situation?”

A. Renda, p.17

Disincentives compounded by recent developments on USO

- COCOM Working Document providing guidance on exploiting ‘functional internet access’ discretion to mandate universal broadband
- Oct. 6th Court of Justice ruling on ‘undue burden’ concept in compensation determinations



Source: A. Renda for NEREC (Oct. 2010); ETNO

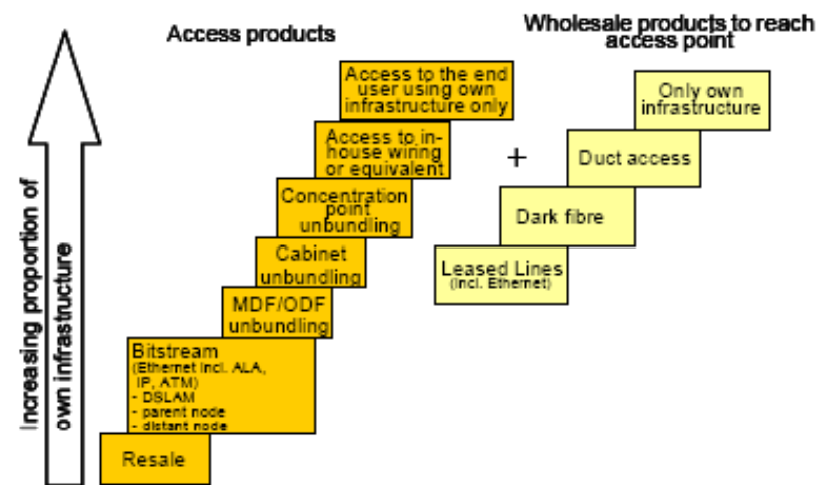
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Recommendation rests on the 'ladder of investment' approach

ILLUSTRATIVE

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.

... where the SMP operator deploys FTTH, NRAs should in principle mandate unbundled access to the fibre loop.



Source: BEREC (March, May 2010); Commission Recommendation (Sept. 2010)

Has the ladder become a crutch?

“However, regulation has created a whole industry based on bitstream and unbundling, and this forms a powerful interest group bent on protecting its position. Giving access to comprehensive wholesale products that fully reflect the technological capabilities inherent in the NGA infrastructure will weaken the incentives of third parties to make investments in physical infrastructure. Third party operators whose strategy is to invest would also have to consider that they will have to negotiate in the shadow of a regulated product. This is likely to adversely affect their incentive to invest (in addition to the fact that they too will have access to the regulated bitstream product).”

M. Cave and T. Shortall, p. 14



Source: M. Cave and T. Shortall for NEREC (Oct. 2010)

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Regulated returns provide some incentive

EXAMPLE

Commission Recommendation on regulated access to NGA

Recital 23: “The cost of capital of the SMP operator for the purpose of setting access prices should reflect the higher risk of investment relative to investment into current networks based on copper.”



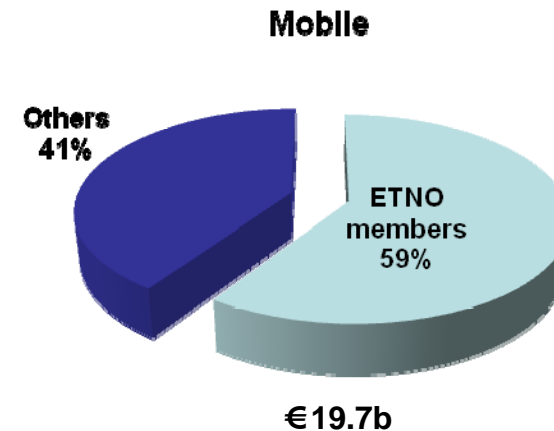
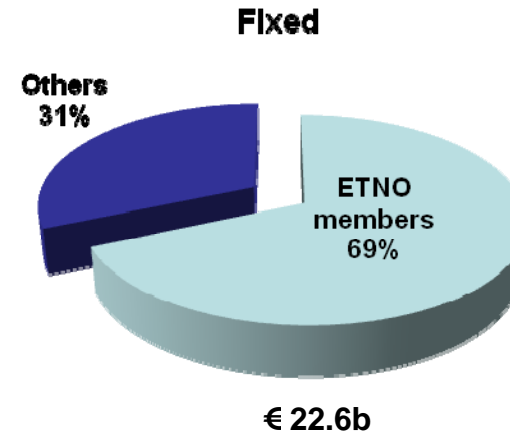
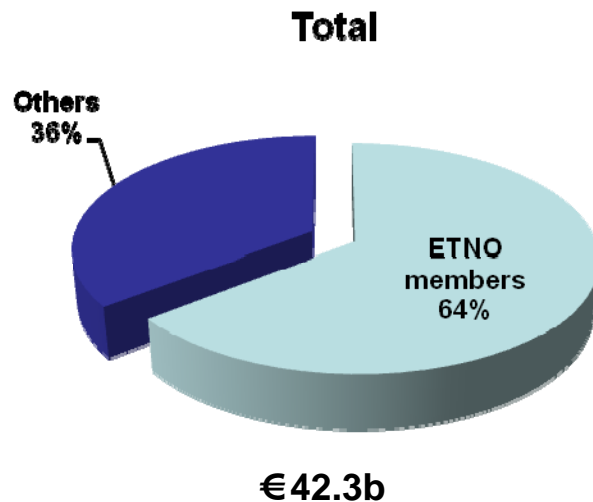
Country	Regulated rate of return on capital (nominal pre-tax rate)
Austria	10.48%
Belgium	9.61%
Denmark	7.70%
Finland	8.70-10.46%
France	10.4%
Germany*	7.19%
Greece	10.4%
Ireland	10.21% (average)
Italy	9.36%
Netherlands*	7.1%
	Risk premium: x (for fibre, undisclosed) + 3.5% (for future regulatory risk)
Portugal	11.3%
Spain	9.74%
Sweden	8.2%
UK	10.1% - access network 11% - other services



* Real
Source: Cullen International (Apr. 2010)

ETNO member are investing cautiously but still account for 64% of industry capex

2009 CAPEX in European networks



Source: IDATE for ETNO "1st Yearly Economic Report" (forthcoming Nov. 2010)

‘Limiting the damage’: Renda view

“NGA deployment is going to be postponed and delayed until the following cumulative conditions are met:

- (i) Access policy is revised in the direction of requiring more substantial investment on the side of new entrants (e.g., sharing of passive infrastructure only);
- (ii) Rules that apply to neutrality and diversity in the whole Internet ecosystem are clarified and shaped in the direction of a level-playing field for all players at all levels;
- (iii) Industry consolidation is promoted to ensure that European network operators are given a sufficiently large market that warrants investment in new infrastructure Brussels is requesting of them.”

A. Renda, p.20



Source: A. Renda for NEREC (Oct. 2010)

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‘Limiting the damage’: Cave & Shortall view

“On balance, competition has been favoured over investment . . . The long term impact on competition, both the structure and depth, may be weaker as a result.”

“In order to restore incentives, regulators might seek to commit to access pricing policies which encourage investment by competitors.”

“We therefore conclude the NGA Recommendation has failed in respect of delivering certainty and the unfortunate result may even be the creation of several different forms of uncertainty in an NGA context. The Commission could act so as to allay much of that uncertainty by clarifying the apparent contradiction. We believe that the appropriate way to proceed is to allow the existing remedies in place to run their course before revision.”

M. Cave and T. Shortall, pp.14-18

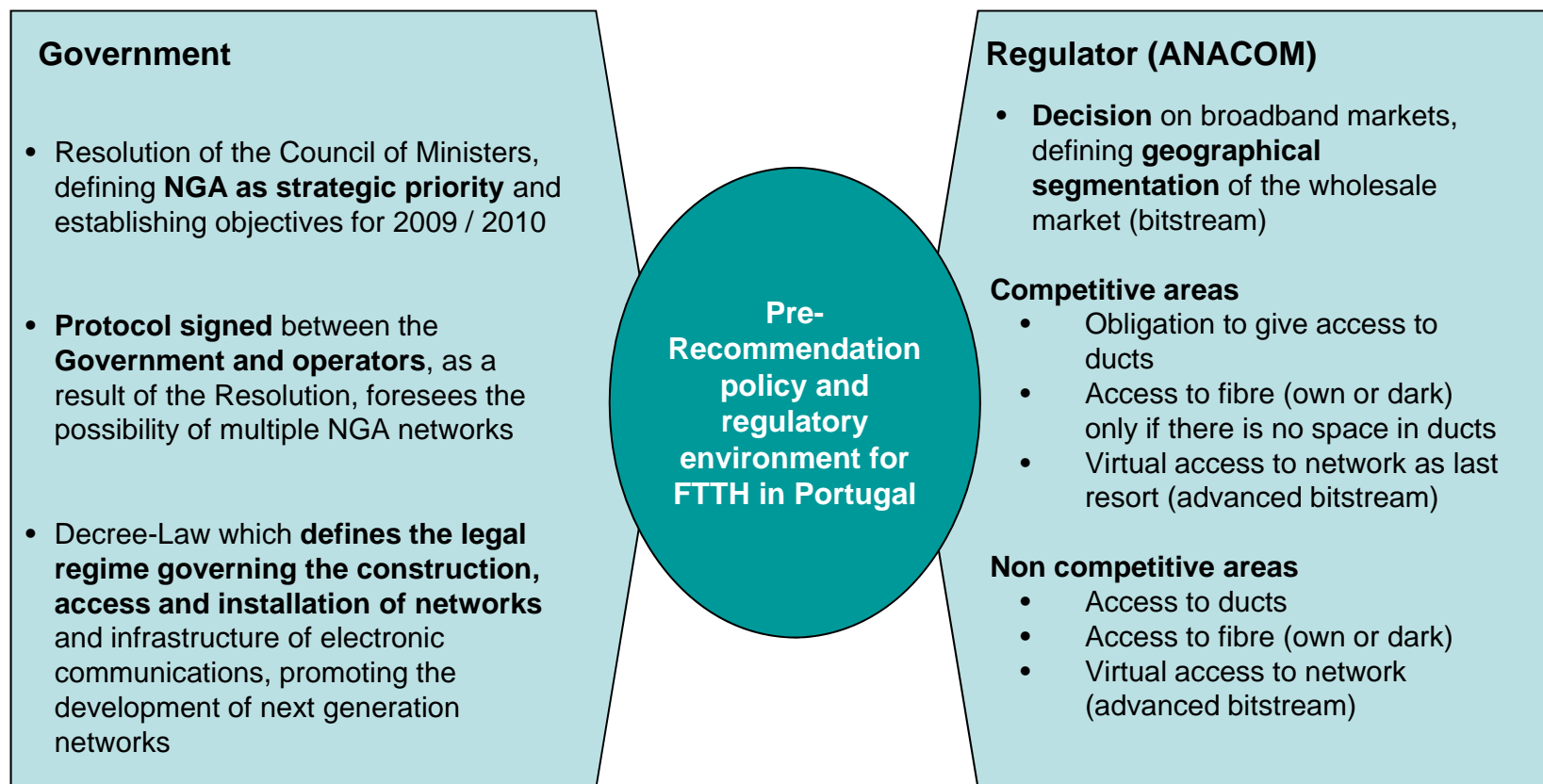


Source: M. Cave and T. Shortall for NEREC (Oct. 2010)

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In Portugal, for example, the gov't and regulator have taken a proportionate approach

EXAMPLE



Source: Portugal Telecom

‘Limiting the damage’: ETNO view

- Applying state-aid rules rigorously, not allowing public funding to ‘crowd out’ private investment
- Applying regulation to bottleneck infrastructure in a symmetric manner across all platforms and players, ensuring a ‘level playing field’
- Where having found *ex ante* regulation warranted,
 - Maintaining technological neutrality
 - Applying proportionate, or least onerous, access obligations
 - Taking account of varying competitive conditions by defining sub-national markets and/or modulating remedies
 - Allowing commercial freedom at retail level (e.g., product and pricing differentiation)
 - Recognising risk and permitting risk sharing at [regulated] wholesale level (e.g., term and volume discounts)
 - Ensuring cost-recovery and an efficient transition from copper to fibre networks



Source: For ETNO's position paper on NGA Recommendation, see <http://www.etno.eu/Default.aspx?tabid=2174>

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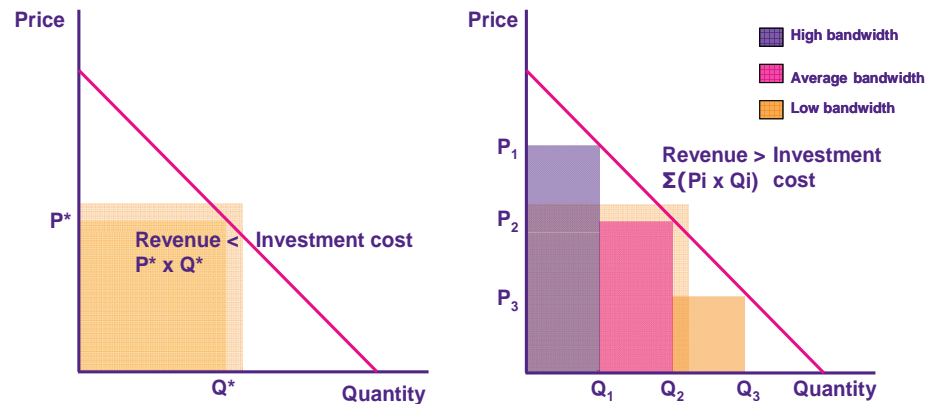
Price differentiation would help drive investment as well as take-up

EXAMPLE

Digital inclusion and investment



- Price differentiation required to ensure high take up of high speed broadband
 - Consumers with low value/ability to pay for entry level products
 - Consumers with high willingness/ability to pay for premium products

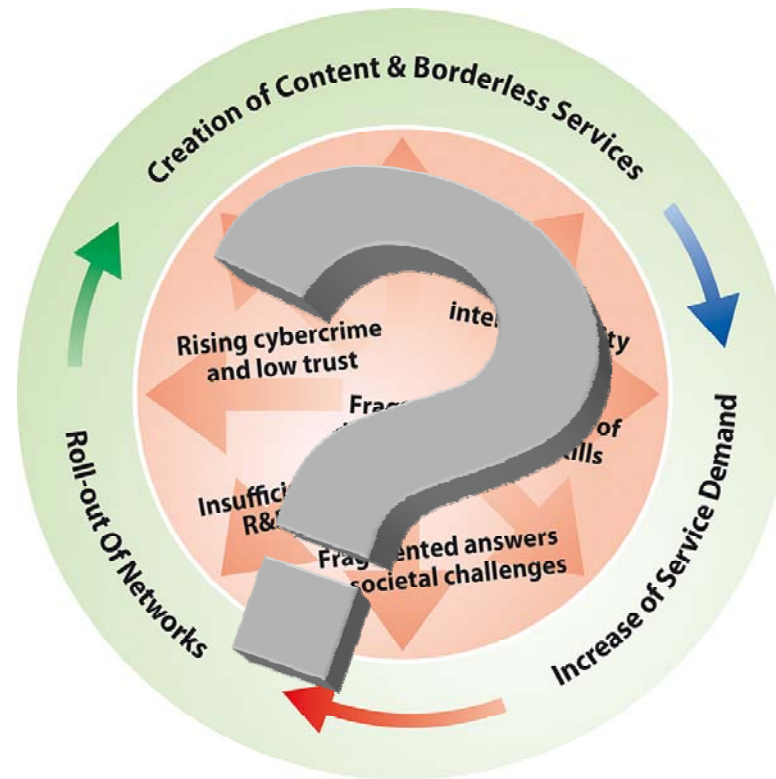


Avoid wholesale remedies which undermine price differentiation in retail market

Source: Plum (Oct. 2010)



With the NGA Recommendation, the virtuous circle of the Digital Agenda is far from certain





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