

The extended gestation and birth of the Recommendation on NGAs

Martin Cave and Tony Shortall

Agenda

- Context
- Evolution
- What is different from today's practice
- Assessment
 - Harmonisation
 - Investment
 - Competition
 - Certainty
- Conclusions and next steps

Context

- Part of a broader package of guidance
- US and AsiaPac had already chosen their routes
- The Revision to the Framework already underway/settled
- European NRAs already addressing issues (and differently)

Evolution

- Started by proposing something different, a different approach 'forcing' operators up a ladder of investment.
- Then moved back towards an orthodoxy but again with some add-on
- And then ended up with more or less the same as we have today...
- The different steps weren't tentative type proposals. Each was pretty emphatic, not much doubt in evidence.

What has changed from today's Practice?

1. Long term or volume discounts on (only FTTH) deployments
2. Extensive Margin Squeeze tests
3. Bitstream from day 1
4. unbundled access on any architecture
- Some other things have been clarified where there is mixed practice today (pre-offered wholesale obligations, duct access etc.)

Assessment: Harmonisation

- Good objective in the first place? Starting late means everyone has done their own thing already
- Commission are no longer working with a blank canvass
- Lot of discretion given back to NRAs over drafts.
- However, over time it should help to have a starting/reference point.

Assessment: Investment

- Lot of positive aspects on infrastructure sharing and deployment, symmetrical access and so on.
- Will lower deployment costs (and thereby barriers to entry) which should help investment
- However investment inherently linked to the competitive position in the market, the more competitive the physical access network, the more investment (and quickly) that will be seen.
- The incentives to invest look to be weakened. Commission recognises the trade offs but doesn't act on them

Assessment: Competition

- Virtual access competition is just not as good as physical access competition.
- There is a trade off. No one doubts it.
- The Commission's approach to that the trade off seems to have concentrated on the short term structure in our view.
- Good short term, medium to longer term looks alarmingly like a ladder of investment in reverse.

Assessment: Certainty

- The shifting positions between drafts
 - The apparent contradictions
 - Reassess your market 4 and 5 remedies (Article 7) versus don't intervene mid-cycle (Recommendation on Relevant Markets)
 - Virtual remedies on market 4 temporary (NGA Rec) but can be long term in revised Framework Directive
 - Margin squeeze test at odds with courts practice
-all conspire to potentially add to, rather than resolve the problem of certainty.

Conclusions and next steps

- It is finished! That in itself is positive since some were waiting. Many positive aspects on sharing passives, in-building wiring, coordination etc.
- The Commission is already making reference to the NGA Recommendation in its comments letters. BEREC has proposed a document on NGA implementation for early 2011.
- However, balance seems to be going from private to public!
- The Commission could usefully clarify and explain away the apparent anomalies /contradictions in the text which we believe can be resolved.
- The Commission now needs to be sharper on implementation with NRAs e.g. NRA not writing down the value of passive infrastructures in their cost model as recommended in the NGA Recommendation but the Commission not commenting.

THANK YOU!

tony.shortall@telage.net

Feature Heading	Sub Heading	Current Practice	First Draft	Second Draft	Final Draft	Change from Current Practice
Access products (day 1)	duct access	Y/N	Y	Y	Y	Y/N
	access to the terminating segment of the line	Y	Y	Y	Y	N
	distribution point should be viable	Y	Y	Y	Y	N
	“symmetric access” in-building	Y	Y	Y	Y	N
	unbundled access on any architecture	N	N	Y	Y	Y
	Copper sub-loop unbundling	Y	Y	Y	Y	N
	Bitstream	N	N	Y	Y	Y
	vDSL is a chain substitute.	Y/N	Y	Y	Y	N
	Pre-offer of wholesale offers	Y/N	N	Y	Y	Y
Geographic segmentation	define sub-national markets if stable over time	Y	N	Y	Y	N
	differentiated remedies.	Y	N	Y	Y	N
	unbundled access should only be waived in geographic areas if no SMP	Y	Y	N	Y	N

Feature Heading	Sub Heading	Current Practice	First Draft	Second Draft	Final Draft	Change from Current Practice
	Existing geographic segmentations should be reviewed in light of NGA	NA	Y	Y	Y	NA
Co-investment		Y/N	N	Y	Y	Y/N
Pricing:	LLU (copper or fibre) cost-oriented.	Y	N	Y	Y	N
	Bitstream cost-oriented (may be retail minus if LLU access is very good)	Y	N	Y	Y	N
	Extensive Margin Squeeze tests	N	N	Y	Y	Y
Risk premia	A risk premium is presupposed for FTTH deployments (included in normal way).	Y/N	Y	Y	Y	Y/N
	FTTN/vDSL can have a risk premium	Y/N	N	Y	Y	Y/N
	Long term or volume discounts on (only FTTH) deployments	N	N	Y	Y	Y
Migration: reference offers	Information	Y	Y	Y	Y	N
	Exchange decommissioning requirements	Y	Y	Y	Y	N
	Existing obligations until appropriate migration path	Y	Y	Y	Y	N
	Decommissioning interconnection points	Y	Y	Y	Y	N