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**The European NGA policy from the perspective  
of the Article 7 consultation mechanism**

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*The views expressed in this presentation are purely those of the author  
and may not in any circumstances be regarded as stating an official  
position of the European Commission*



# Outline

- Consistent market-based regulation
- EU broadband markets and NGA
- Treatment of NGA in Art. 7 notifications
- Delineation of relevant markets
- Appropriate remedies
- Outlook



# Consistent market-based regulation

## *(Objectives)*

- Consolidating the internal market (Art. 7 FD)
  - Enhance consistency across Member States
  - Balanced & transparent regulatory environment
  - Eliminate competitive distortions, create more level playing field
  - Promote sustainable competition & investment
  - Deliver concrete and ongoing benefits to consumers



# Consistent market-based regulation

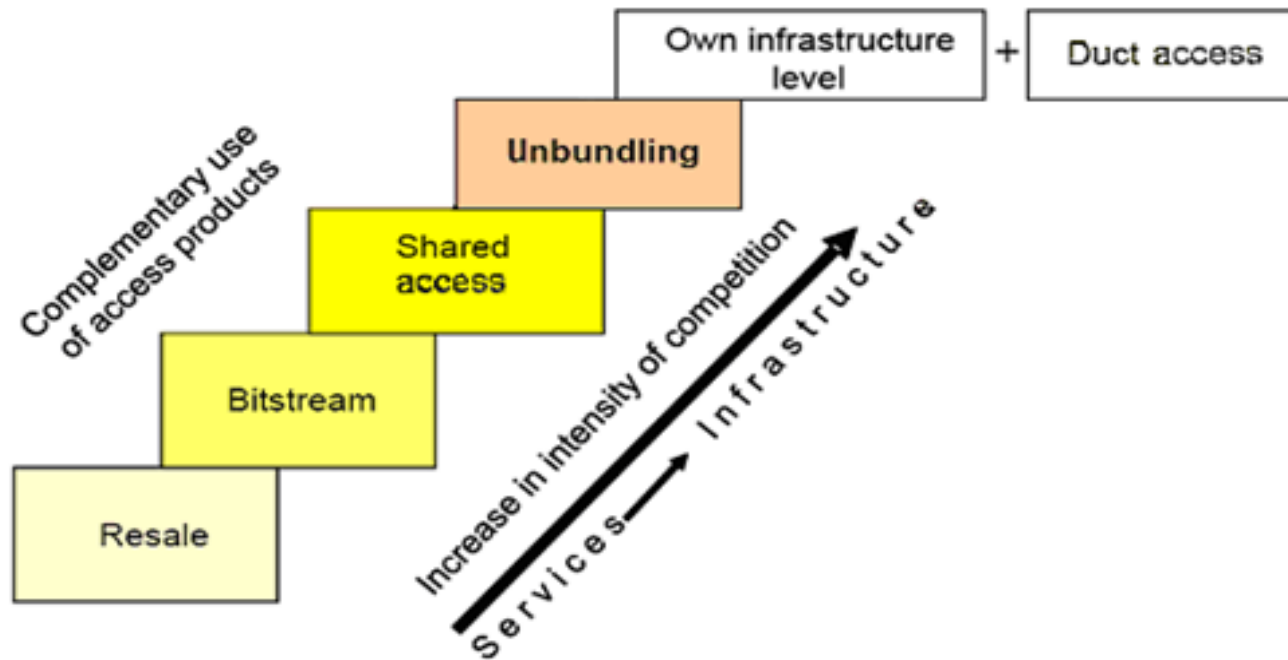
## *(The NGA context)*

- Regulatory certainty through common EU approach
  - For all investing undertakings in the transition from copper to fibre
  - Continued validity of *ex ante* regulation and ladder of investment principle
  - Allowing for new market entry and competition from alternative providers
  - Technological neutrality: what counts?
    - Substitution
    - Competitive situation in the market



# Consistent market-based regulation

*(Rungs of the ladder of investment)*



Source: European Commission`s staff chart



# EU broadband markets and NGA

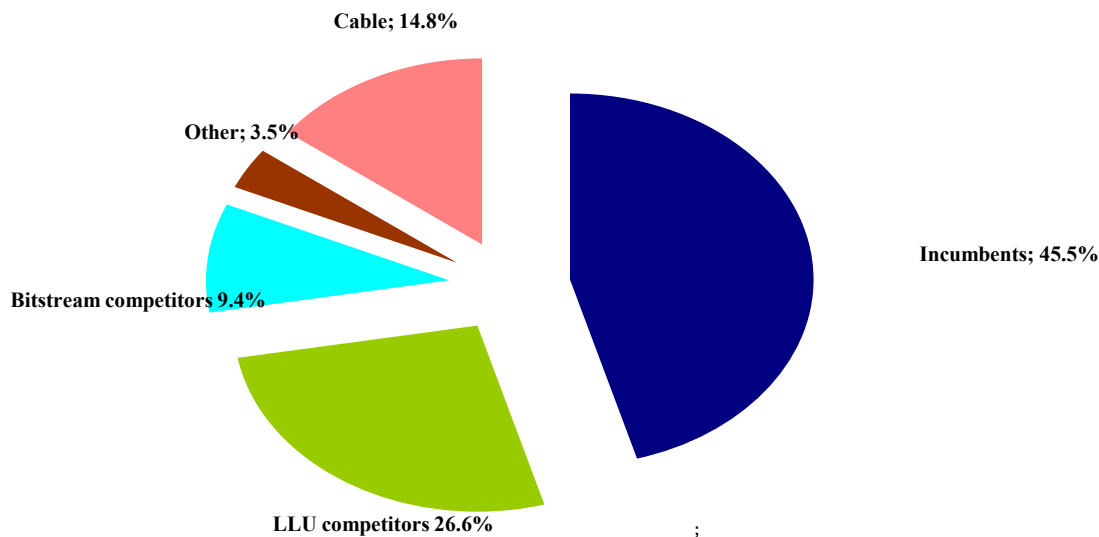
## *(Issues)*

- Drivers for competition and investment
- Link between wholesale regulation and retail competition
- Increased role of unbundled lines
- Impact of NGA development on competition differs across markets
- Market analyses by NRAs
  - Substitutability between fibre and copper based products
  - Forward looking approach



# EU broadband markets and NGA

*(EU broadband market shares by operator type, July 2009)*

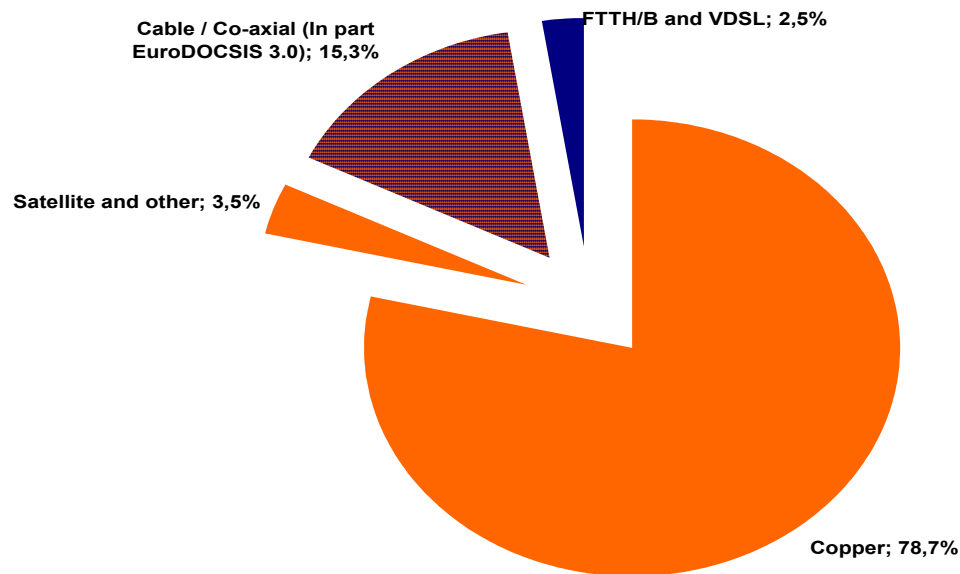


Source: Estimates based on European Commission`s Implementation Reports and Responses to European Commission`s Pubic Consultations



# EU broadband markets and NGA

*(NGA share of the EU broadband market by technology, 2009)*



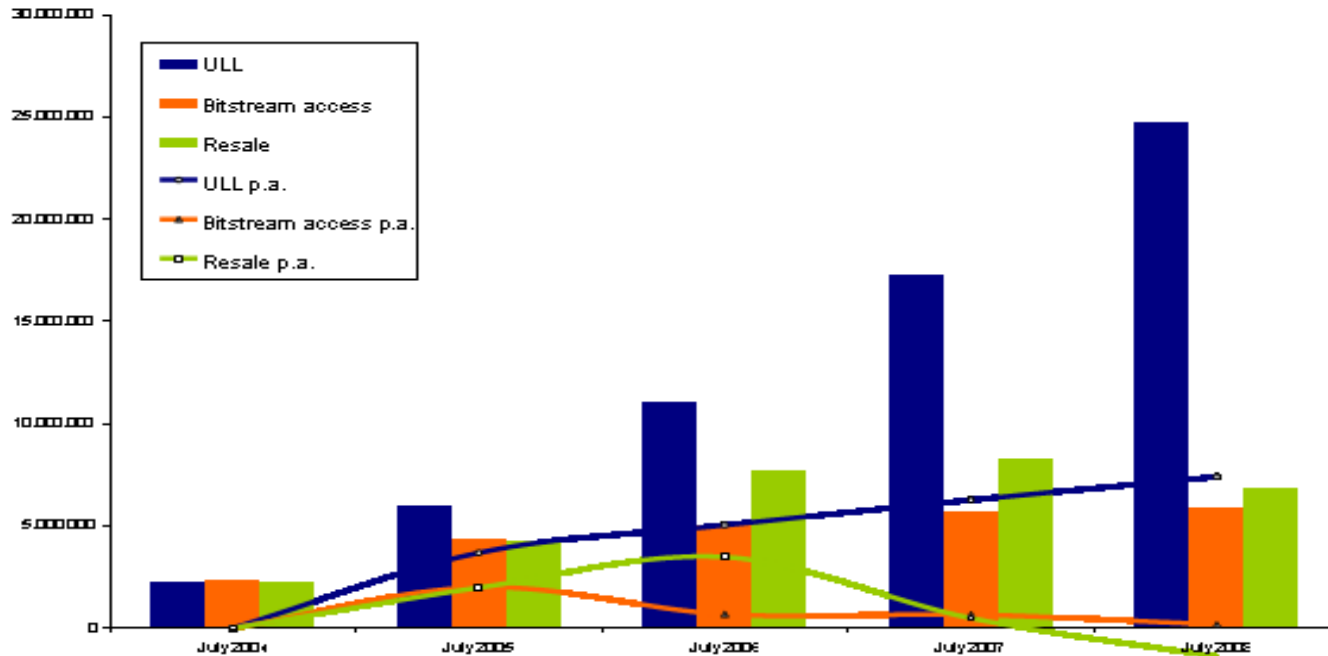
Source: Estimates based on European Commission`s Implementation Reports and Responses to European Commission`s Pubic Consultations





# EU broadband markets and NGA

## *(Alternative operator lines by type of access)*



Source: Estimates based on European Commission`s Implementation Reports and Responses to European Commission`s Pubic Consultations



# Treatment of NGA in Art. 7 notifications

## *(Markets and concerns)*

- Growing number of Art. 7 notifications relate to NGA
- Two markets affected:
  - Wholesale (physical) network infrastructure access (market 4)
  - Wholesale broadband access (market 5)
- Main issues concern:
  - Market definition
    - Fibre access products
    - Virtual line access
  - Remedies
    - Type of access
    - Cost orientation
    - Migration



# Treatment of NGA in Art. 7 notifications

## (Closed notifications by market and country)

	Effective competition - no ex ante regulation	No effective competition - ex ante regulation	Partial competition - partial ex ante regulation	W	V	1	2	3	1st round-competition/regulation	2nd round-competition/regulation	3rd round-competition/regulation						
	NEW RECOMMENDATION							OLD RECOMMENDATION									
	Access to PSTN for res & non-res.	Call orig. on fixed network	Call term. on fixed network	Unbund. access	Broadb. access	Term. segments LL	Voice call term. on mobile networks	Local/nat. call for res.	Internat. call for res.	Local/nat. call for non-res.	Internat. call for non-res.	Retail LL	Transit on fixed network	Trunk segments LL	Access & call orig. on mobile network	Broadcast Transmis.	
	Market 1	Market 2	Market 3	Market 4	Market 5	Market 6	Market 7	ex-Mkt 3	ex-Mkt 4	ex-Mkt 5	ex-Mkt 6	ex-Mkt 7	ex-Mkt 10	ex-Mkt 14	ex-Mkt 15	ex-Mkt 18	
Austria	3	3	3	3	2	3	3	3	2	3	3	2	1	2	1	2	
Belgium	1	1	1	1	1	1	1	2	1	2	1	1	1	1	1	w	
Bulgaria	1	1	1				1	1	1	1	1		1				
Cyprus	1	1	2	2	2	1	2	1	1	1	1	1	1	1	2	1	
Czech Republic	2	2	2	2	2	1	2	2	2	2	1	2	1	1	1	2	
Denmark	1	1	1	2	2	2	2	1	1	1	1	2	1	1	1	1	
Estonia	2	2	2	2	2	1	2	1	1	1	1	1	1	1	1	1	
Finland	1	2	2	3	3	1	1	1	1	1	1	1	2	1	V	2	
France	2	2	2	2	2	2	2	1	1	1	1	2	1	2	W	2	
Germany	2	2	2	2	1	1	2	2	1	2	1	2	2	1	1	1	
Greece	1	2	2	2	2	1	2	1	1	1	1	1	2	1	1	1	
Hungary	2	2	2	2	2	2	3	2	2	2	2	2	2	2	2	1	
Ireland	2	2	2	2	1	2	1	2	2	2	2	2	2	2	1	1	
Italy	2	2	2	2	2	2	1	2	2	2	2	2	2	2	2	1	
Latvia	1	2	2	1	2	2	2	1	1	1	1	1	1	1	1	1	
Lithuania	1	1	2	1	1	1	1	2	1	2	1	1	1	1	1	2	
Luxemburg	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
Malta	1	1	2	1	1	1	2	2	2	2	2	1	1	1	1	1	
Netherlands	2	2	3	2	2	2	1	2	2	2	2	2	2	2	1	2	
Poland	1	1	2	1	1	1	2	1	1	1	1	1	1	1	1	2	
Portugal	1	1	1	2	2	1	2	1	1	1	1	1	1	1		1	
Romania	1	1	1				1	1	1	1	1		1			1	
Slovakia	2	2	1	1/w	1	1	2	1	1	1	1	2	2	1	1	2	
Slovenia	2	2	2	3	3	2	3	1	1	1	1	2	2	1	2	2	
Spain	2	2	2	2	2	2	2	2	2	2	2	2	2	2	1	2	
Sweden	2	2	2	2	2	1	1	1	1	1	1	1	2	1	1	2	
UK	2	2	2	1	2	2	2	2	2	2	2	2	2	2	1	1	

Source: European Commission, DG Information Society and Media as of 02/06/2010



# Treatment of NGA in Art. 7 notifications

## *(Market definition and remedies in recent market 4 cases)*

- Important cases in 2010 on market 4
- Market definition:
  - Lithuanian notification (LT/2010/1035) – withdrawal in Phase II
  - Dutch notification (NL/2010/1041) – Commission comments
  - Czech notification (CZ/2010/1070) – Commission comments
  - Austrian notification (AT/2010/1084) – Commission comments
- Remedies:
  - Swedish notification (SE/2010/1061) – Commission comments
  - UK notification (UK/2010/1064) – Commission comments



# Delineation of relevant markets

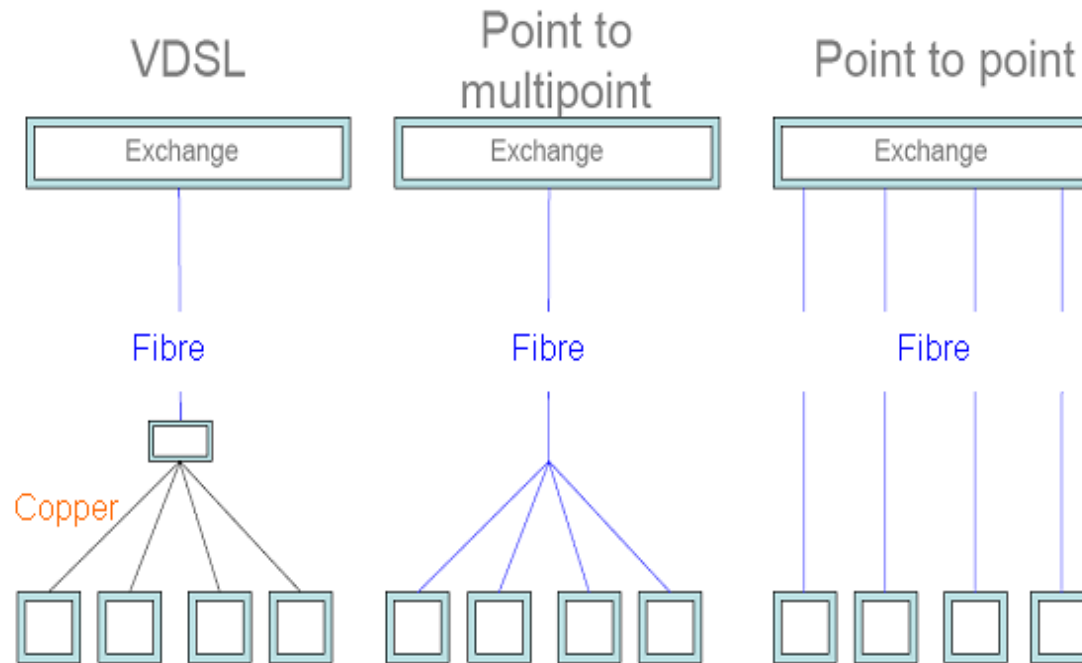
## *(Principles)*

- Link between inaccurate market definitions and regulatory outcome
- From retail to wholesale access markets
- Access lines over optical fibre in principle included in relevant market
- Prospective deployment plans of operators
- Link between market definition and access remedies
  - Ducts
  - Virtual access lines
  - Geographic dimension
    - sub-national markets
    - (differentiated remedies)



# Delineation of relevant markets

*(Common NGA topologies, excluding cable)*



Source: OECD



# Appropriate remedies

## *(Consistency)*

- What`s in a consistent approach?
  - Appropriateness of remedies (Access Directive)
  - Access obligation
  - Access prices
    - Cost orientation and cost accounting remedies
    - Cost base and cost methodology
  - NGA Recommendation



# Appropriate remedies

## *(Imposing access)*

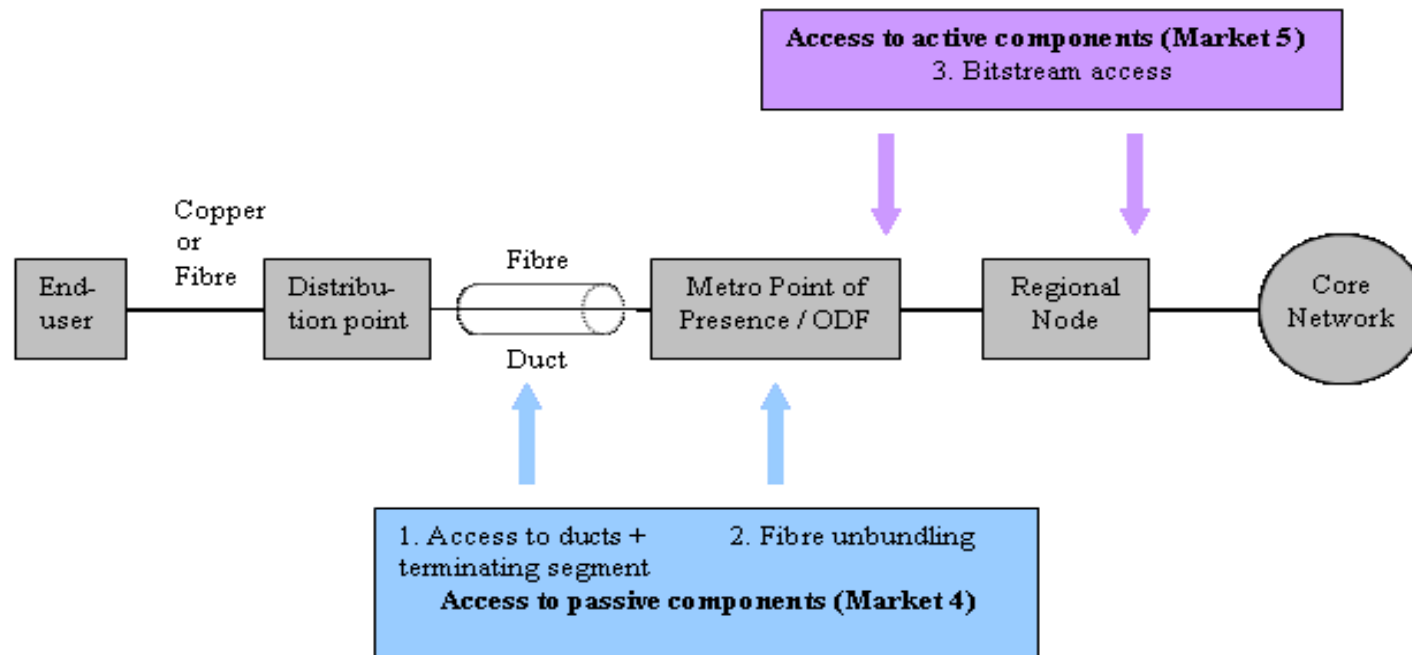
- Access to civil engineering infrastructure
- Access to the terminating segment
- Unbundled access to the fibre loop
- FTTN – FTTB – FTTH
- Bitstream access





# Appropriate remedies

*(Access remedies in the NGA infrastructure)*



Source: European Commission`s staff chart



# Appropriate remedies

## *(Cost orientation)*

- Cost orientation the pricing methodology of choice
  - Cost methodology / cost base
  - Stimulating investment in fibre networks
- NRAs to consider tools to push investment
  - Risk premium
  - Price flexibility
  - Co-investment
- Cost orientation and competition considerations
  - Upstream markets
  - Type of fibre deployment



# Appropriate remedies

*(Consistent price regulation for key access products)*

- Instrumental to the realisation of the internal market
- Consistent regulation  $\neq$  "one-size-fits-all"
- Trend towards more consistency (CCA; LRIC), but ...
- Variations in cost orientation/accounting remedies
  - Divergences on a cross-country basis
  - Divergences on a cross-market basis



# Appropriate remedies

## *(Observed divergences in access prices)*

- For key access products:
  - Wholesale line rental (markets 1 or 2)
  - LLU (market 4)
  - Wholesale broadband access (market 5)
  - Terminating segments of leased lines (market 6)
- Observed approaches:
  - No price regulation
  - Cost orientation
  - Retail minus
  - Benchmarking
  - Other (*reasonable prices; margin squeeze test* etc.)



# Outlook

- Increase regulatory consistency
  - Improved Consultation Mechanism with BEREC
  - Enhanced transparency through Recommendation on specific remedies cases
  - Art. 19 FWD to address inconsistent implementation of regulatory approaches
- Continued work on consistent remedies
  - Broad experience from Art. 7 notifications
  - Access pricing
  - Functional separation and commitments
- Bringing about a true internal market



**Thank you for your attention !**

