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Regulation as a driver for investment and growth in the NGA era

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BEREC Chair 2013

Ladies and Gentlemen,

It is for me an honour and a pleasure to address this important event as the Incoming Chair of the Body of European Regulators for Electronic Communications.

My presence here reflects the importance that BEREC attributes to the role of alternative operators as drivers of innovation and growth in the competitive electronic communications landscape. The timing is also significant, coming amidst the preparation by the European Commission of the policy measures that will implement the 12th of July initiative of VP Kroes.

The forthcoming Recommendation announces tougher non-discrimination rules to prevent incumbents from gaining an unfair advantage, stable copper prices and more flexibility for "next generation" wholesale products, without cost - oriented price regulation in almost all circumstances. BEREC is looking forward to advice the Commission by issuing a coherent and independent expert opinion on the relevant recommendation, as soon as its provisions become available to us.

Today my presentation will focus on the BEREC views on how effective regulatory models can contribute towards the successful deployment of NGA in Europe. The main point I want to emphasize is that, in our view, there is no uniform solution, but several options, which require careful evaluation, when trying to strike the right balance between promoting investment while safeguarding competition in our national markets.

Next Generation Access lies at the core of the BEREC medium-term strategy which is reflected in our Work Plan for 2013. Our strategic goal remains to support, through the application of a suitable regulatory model, investment, innovation and growth, which is based on high-speed infrastructure and services in Europe's transition towards a single digital market, which is a key objective of the regulatory framework.

However, the current economic and market conditions in Europe do not favour investment. Electronic communications markets remain under pressure. Income from traditional fixed voice services declines. The increasing usage of data services provided by "Over The Top" players fuels the demand for more broadband capacity. At the same time, this trend shifts the flow of revenue streams from Europe towards the other side of the Atlantic.

According to a recent study by Credit Suisse (February 2012) investors embrace the objectives of the Digital Agenda, invite companies to invest more in NGA while calling for a more predictable regulatory environment.

However, irrespective of any regulatory incentives, every decision to invest in ultra high - speed infrastructure relies on several criteria (such as scale of investment, yield returns compared to other

sectors, payback period, expected profits etc.). Therefore, it entails a thorough cost - benefit analysis by potential investors for several reasons: on the one hand, legacy copper networks still generate substantial cash flow for the incumbent operators, thus reducing any incentive for moving to fibre; on the other hand, the high capital expenditure requirements coupled with the uncertainty in demand, result in a slow return of investment. Consequently, with few exceptions, NGA infrastructure becomes a rather non - replicable asset.

In this brave new world, there are numerous strains that need to be effectively addressed by us, regulators. In fact, do we need new legal, technical and accounting tools to face the new challenges ahead? How can any policy shift be smoothly and consistently implemented in each European electronic communications market? Which investment type does pro-investment regulation aim to attract and in which timeframe? How can we achieve efficiency by rightly balancing the legitimate but conflicting interests of various market actors? What will be the impact of a possible increase of the wholesale LLU price on the retail prices of bundles currently offered to European consumers in each Member State?

BEREC maintains that the successful implementation of NGAs ultimately relies on the right mix of various technologies and access platforms, fixed and wireless, such as copper, cable, fibre and mobile 4G/LTE, depending on the underlying economic and market conditions, as well as on the business strategies of operators.

In this context, competition issues require careful consideration. Undue discrimination between operators, margin squeeze or artificial barriers to entry in the broadband market ought to be excluded. Otherwise, anti-competitive practices could lead to the quick depreciation of existing investments in the unbundled local loop, which is currently used by alternative operators to deliver broadband services and even threaten their business prospects.

To maintain the equilibrium and avoid market distortion by dominant players, we, the national regulators, need to ensure, that access to NGA infrastructure is granted to all operators under equal, fair and non discriminatory conditions, in accordance with European law. Non-discrimination has been at the core of the recent BEREC Common Positions on the Wholesale Local Access, Wholesale Broadband Access and Wholesale Leased Lines. Its interplay with cost orientation will be in the centre of our attention in the coming months, as it is one key point of the Commission 12th July initiative.

Except from legal remedies, there seems to be a consensus on the need to reduce the deployment cost while increasing the speed of broadband networks. In this direction, various remedies should be applied by regulators and policy makers, depending on the circumstances. These include mandated access to passive infrastructure, ducts, dark fibre, network-terminating segments, street cabinets, fibre loop or sub-loop, physical or virtual collocation, access to in-building wiring, enhanced bitstream etc. Those supportive measures need to be combined with one-stop shop on rights of way and simplified administrative procedures.

BEREC also encourages co - investment initiatives and risk sharing schemes, such as long - term contracts between operators. Equally important, is the effective use of financing instruments, such as the "Connecting Europe Facility", so as to attract additional private investment in broadband that would spread its benefits to all European countries, especially the ones that have less developed NGA infrastructures.

Let me also highlight that we, the BEREC members, fully comprehend the risks and complexities involved in the deployment of ultra high-speed broadband infrastructure, as a dynamic tool to overcome the crisis and serve the general interest of all Member States.

BEREC firmly supports that the NGA roll - out is not an end in itself but a means to deliver services. Broadband promotion relies not only on the supply- side but mainly and to a great extent on the demand-side. Only "smart" on line services with high end-user acceptance, provided in affordable prices and under secure and privacy-protective conditions, will be able to amortize investments in new networks.

Ladies and Gentlemen,

In this emerging broadband ecosystem, all stakeholders of the value chain, such as network operators, equipment manufacturers, application developers, service providers, public utilities, local authorities and user communities should develop synergies among themselves and embrace a forward - looking approach. Sticking to past generation practices or to old business models is unlikely to pay any dividend. Unveiling your creative potential is a crucial factor for success.

To conclude, I would like to ensure you that we, the independent regulators, are committed to the pursuit of the goals of the Digital Agenda. To this end, we will benefit from our market experience to act pragmatically and in a flexible manner as business enablers in our respective markets. Our common objective will remain to defend the right of all European citizens, regardless of residence, nationality or social status, to embrace the digital revolution and actively participate in the Information Society.

Thank you.