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Enhancing the broadband investment environment – policy statement by Vice President Kroes

Today in Europe we stand on the brink of a new digital transition. New applications and services, from e-Health to the cloud to Connected TV, stand to offer huge benefits for citizens and businesses, and an overall boost to our economy. But many of these new ideas cannot run on copper-based ADSL broadband networks. We cannot let our networks be the bottleneck for this amazing opportunity: we need investment in new high-speed infrastructure. And for that, we need the sector that provides that vital infrastructure – telecoms companies and others – to be strong.

Over a decade ago, we successfully introduced competition to European telecom networks. The results to date have been positive for consumers and businesses. But the transition to an expensive new generation of high-speed networks, co-existing with the old, poses special challenges. Though the public sector can help, the real heavy lifting must be done by private investment. Clearly, whatever the network and whatever the operator, people need to see an adequate return before they will invest: taking into account the risks.

Last October, the Commission launched two public consultations (see [IP/11/1147](#)) regarding regulated wholesale access to telecoms networks, on cost methodology and non-discrimination, to ensure consistency throughout Europe, develop the single market in communications, and help achieve our high-speed broadband goals.

Those consultations sparked a wider debate about the role of regulation in promoting competition and investment in a period of technological transition. We received contributions from BEREC (Body of European Regulators for Electronic Communications) and national regulatory authorities (NRAs), sectoral associations, investors, companies, and detailed expert studies.

We have thoroughly examined the contributions made, and I can now announce the decisions I intend to propose to ensure that Europe finds its place as the connected, competitive continent, in particular through investment in high-speed, next generation access (NGA) broadband networks.

Regulatory policy should clearly be an enabler not an obstacle. Regulation that is stable over time and consistent throughout Europe can underpin sustainable competition and efficient investment.

General conclusions

1) Competition needs a level playing field. In particular, alternative players should not have to compete with one hand tied behind their backs: incumbents should not be able to discriminate between their own retail arms and others'. Although often undervalued in today's regulatory practice, securing truly equivalent access by alternative operators to incumbent networks is probably the most important guarantee of sustainable competition, on existing and new networks.

2) Too much intervention constrains flexibility, which in turn reduces the range and quality of services that can be offered to different consumers. Particularly as we make the transition from one technology to the other, both incumbent operators and others need to be able to explore new possibilities. As far as possible, we will focus on issues vital for healthy competition, allowing us potentially to lighten regulatory intervention elsewhere.

3) We should be aware of both direct and indirect effects of regulation. For example, regulating copper access prices can affect the pricing and return on other infrastructures: on new fibre networks or fibre-based upgrades (from whatever kind of operator), on cable, even perhaps on wireless. In the right circumstances, we can take advantage of this by focusing wholesale price regulation on key anchor products.

4) We should be wary of picking winners. "Technology neutrality" is just another way of saying that we cannot predict with any certainty what the best technological solutions will be, nor how they will compete and interact. Incremental solutions may help to address weak demand in the short term – for example, new technology combining fibre and copper, or upgrading TV cable, can be very cost-effective in delivering higher download capacity.

5) In general, regulated wholesale access prices should get the "buy or build" signals right. Replacement cost can give other operators a clear incentive to build out their own networks, and so to use their own assets to drive infrastructure-based competition, in areas where it makes economic sense to do so. Elsewhere, alternative operators will continue to have wholesale access to incumbent networks so consumers can get competitive services.

6) Regulatory stability and consistency over time is a value in itself, and is vital to build trust by commercial investors and operators. Consistency across the single market is also a vital part of the equation. Our approach should be maintained over time, consistent and reliable for the long term – but it also needs to be sufficiently flexible to adapt to changing circumstances.

7) The question whether a rise or fall of copper prices would spur NGA investment is complex. Different factors pull in different directions, and vary in relative strength: according to context and in their effect on alternative and incumbent operators. Last October we explored some ideas on how to reconcile these competing factors. NRAs were concerned that an approach linking the copper price to NGA investment commitments would be difficult to enforce in practice, and open to gaming.

But more importantly, after examining all the evidence, and given the significant competitive relationship between copper and NGA networks, we are not convinced that a phased decrease in copper prices would spur NGA investment. Indeed, we now see fibre investment progressing relatively well in some Member States where copper prices are around or above the EU average.

Next steps

Taking into account these factors, I intend to produce durable regulatory guidance, to apply at least until 2020. It will notably do three things.

First, I am planning a **recommendation on non-discrimination**. This would underline that equivalence of inputs is the best guarantee of non-discrimination, to ensure equivalence of access.

Of course, this can be costly in existing networks, so NRAs will have to weigh up proportionality considerations very carefully in such cases: but there is no excuse, in my view, not to achieve this standard in new systems, to put self-supply and supply to third parties on an equal footing to the greatest extent possible when they seek comparable access products.

NRAs should establish key performance indicators in areas such as ordering, delivery, fault repair, and quality of service. This would be supported by service level agreements or guarantees; and by a technical and economic replicability test, so regulators can check that an efficient operator would be able to compete with the incumbent's retail product on the basis of the same wholesale access products provided. In particular, economic replicability will require a properly-specified ex ante "margin squeeze" test. This combination of measures will give effective alternative guarantees without recourse to functional separation, which in our view remains a last-resort remedy.

Second, I plan a **separate recommendation on cost methodology for regulated wholesale prices for network access**, to promote consistency and stability in Europe. Gradual convergence should be possible, as I do not see grounds to question the price signals sent by the current average copper unbundling price in Europe (in the region of €9 per month), around which some local variation may be quite normal.

In general, the most reliable "buy or build" signals for investing in efficient alternative infrastructure come from a long-run incremental costing method, including an appropriate amount for common costs. Indeed many regulators already apply this approach, or a variant. Furthermore, the appropriate "modern equivalent asset" for calculating copper access costs seems to be a fibre network: after all, no operator would today build a copper network. That said, over time consumers will come to place greater value on what they can get from NGA networks: then copper prices should adapt: on the basis that "you pay for what you get". Where NGA networks are price regulated, regulation should address investment risks by aiming at full cost recovery in such infrastructure even if future costs decline.

Our public consultation has also examined whether certain asset classes like civil engineering assets should be subject to distinct treatment, as is done in certain Member States. We have seen that application in practice in those countries has not caused significant divergence from the current European average unbundling price, which, as I have said, I do not put in question.

Third, these initiatives provide **an opportunity to impose obligations where they are most useful for alternative operators, and least burdensome to incumbents' normal commercial activities**. The Commission's [NGA recommendation](#) of 2010 sets out the general principle of cost-oriented wholesale access to the networks of dominant operators, subject to certain exceptions.

When the right conditions are imposed by regulators (equivalence of input obligation, replicability test), and where there is a significant competitive constraint (from operators with cost-oriented access to the copper network in accordance with Commission guidance; or from other infrastructure-based competitors such as cable or LTE), I propose that NRAs need not apply cost orientation directly to NGA wholesale access products.

These issues are both important and complex: and it has required significant input from interested parties, and time for reflection, for me to reach these conclusions. But these recommendations will encourage operators to invest, strengthen competition across all networks, and allow alternative operators to compete on more than just price.

I will present these regulatory plans for validation by my colleagues in the College as soon as possible in the autumn, in the framework of my general review of how the Digital Agenda can become an even more focused strategy for digital growth for in Europe.

I want all industry players to receive the signal loud and clear – that they can invest profitably in the future connectivity of Europe, and compete on the basis of their investment.

Additional measures

These measures sit alongside a package of others that can, together, make Europe the connected continent. These include:

- **public support**, whether from state aid by national or local authorities or EU funding such as the Connecting Europe Facility (CEF) or Structural Funds. Innovative financial instruments under the CEF can tip the balance, and "crowd in" other market investors. So the Commission's CEF proposal and its review of the guidelines on State aid to broadband are vitally important to get a good policy mix.
- **Measures to reduce the costs of NGA roll-out.** Later this year, I will bring forward a legislative proposal so that best practices from some regions are deployed EU-wide: like better re-use and sharing of duct infrastructure across sectors, and smoother permitting.
- For rapid roll-out of 4G wireless networks I will continue to implement the **Radio Spectrum Policy Programme**. In particular, national governments need to provide sufficient spectrum, at prices which are not confiscatory.
- Finally, we need to build a **vibrant digital single market for online content**, new services and applications, that draw people in to the benefits of faster internet access. Ultimately, it is consumer demand that will make investing in networks less risky and more profitable. Yesterday's proposal on multi-territorial copyright licensing ([IP/12/772](#)) is the first step in a more general review of how our copyright rules work in the digital age. We already have ambitious legislative proposals on data protection, online dispute resolution, online sales contract terms and electronic ID; and will soon adopt a strategy for cloud computing, initiatives on online payments and the eCommerce Directive, policy work on Connected TV, guidance on net neutrality, legislation on network security and much more.

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