RECITAL 17 (PAGE 6)

<u>Suggestion:</u> DELETE the implication that the presence of two NGA networks could lead to a competitive outcome as this can be interpreted as full deregulation and a move to a duopoly model.

"In the interests of regulatory predictability, key elements of evolving decisional practice under the current Framework should also be reflected in the legislation. These should include provisions reflecting the importance, for the analysis of wholesale access markets and in particular of price controls on such access to NGA networks, of the relationship between competitive constraints from alternative infrastructures, effective guarantees of non-discriminatory access, and the level of competition in terms of price and quality at retail level. ~~Indeed, in the presence of two NGA networks, the market conditions are generally considered competitive enough to be able to evolve towards the provision of ultra-fast services. [Footnote: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ 2013, C25, p. 1]~~ The establishment of a European virtual broadband access product under this Regulation with equivalent functionalities, in terms of access to fixed NGA networks, to passive infrastructure access should also be reflected in the assessment by NRAs of the proportionality of alternative access remedies to the NGA networks of SMP operators."

<u>Alternative proposal</u>: change the sentence to remove ambiguity on reversing the basis for SMP regulation, i.e. clarify that the presence of two NGA networks does not mean that the market is effectively competitive.

"In the interests of regulatory predictability, key elements of evolving decisional practice under the current Framework should also be reflected in the legislation. These should include provisions reflecting the importance, for the analysis of wholesale access markets and in particular of price controls on such access to NGA networks, of the relationship between competitive constraints from alternative infrastructures, effective guarantees of non-discriminatory access, and the level of competition in terms of price and quality at retail level. Indeed, in the presence of two NGA networks, the market conditions are generally considered ~~competitive enough~~ to be able to evolve towards the provision of ultra-fast services. ~~[Footnote: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ 2013, C25, p. 1]~~ The establishment of a European virtual broadband access product under this Regulation with equivalent functionalities, in terms of access to fixed NGA networks, to passive infrastructure access should also be reflected in the assessment by NRAs of the proportionality of alternative access remedies to the NGA networks of SMP operators."

ARTICLE 28.3 AMENDING ARTICLE 12 OF THE ACCESS DIRECTIVE (PAGE 44)

- *Sub-paragraph at the end of 12 (2)*

Suggestion: DELETE this sub-paragraph because it significantly changes the current competition model, which promotes physical access based competition, the key driver of product innovation, maximises altnet investments and boosts broadband take-up.

Alternative proposal: maintain principle of physical access but permit transitory virtual access in accordance with the NGA Recommendation and DG CNECT Article 7 case law

"In assessing the proportionality of possible imposition of obligations pursuant to paragraph 1 in respect of next-generation networks, national regulatory authorities shall assess the proportionality of imposing for a transitional period a non-physical or virtual wholesale input offering equivalent functionalities, and in particular a European virtual broadband access product within the meaning of Article 14 and of Annex I.1 of Regulation [XXX/2014] and as further defined in Commission implementing measures pursuant to Article 16(1) of that Regulation. ~~;~~In so doing, the national regulatory authorities should have regard to the existing investments and incentives to invest by access-seekers in one or the other form of wholesale access and to the amortisation period for such investments."

- *Article 12 (4)*

Suggestion: DELETE this sub-paragraph because it is inconsistent with the:

(i) **principles of legal and regulatory certainty, stranding investments made in fibre to the ODF and/or fibre to the cabinet by alternative operators, and**

(ii) **principle of promoting infrastructure based competition enshrined in Article 8 (5) (c) of the Framework Directive.**

~~- Article 12(4), (5) and (6) shall be inserted:~~

~~4. Notwithstanding paragraph 3 and the timing of the analysis of relevant markets in accordance with Article 16(6) of Directive 2002/21/EC (Framework Directive), a national regulatory authority which has imposed on an operator in accordance with the provisions of this Article an obligation to provide physical unbundled wholesale access to a next-generation network shall consider whether it would be proportionate to impose instead an obligation to supply access inputs that meet the criteria of a European virtual broadband access product with equivalent functionalities as defined in Article 14 and Annex I.1 of that Regulation and as further defined in such implementing measure, in particular in the presence of infrastructure competition. Such obligation shall be subject to the application of the procedure in Articles 6 and 7 of the Framework Directive.~~

ARTICLE 28.4 AMENDING ARTICLE 13 OF THE ACCESS DIRECTIVE (PAGE 45)

Suggestion: DELETE proposed amendment because it prevents NRAs from addressing the nature of the competition problems identified in their markets and imposing appropriate specific regulatory obligations according to Article 16.4 of the Framework Directive and Article 8.4 of the Access Directive. It is entirely premature and inappropriate to include in the Directive an untested concept that is likely to be detrimental to competition and ultimately to consumers but is not proven to increase investments.

"4. The first paragraph of Article 13 is amended as follows:

A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users.~~, In determining whether to impose or maintain price controls on next generation networks, national regulatory authorities shall have regard in particular to the effectiveness of protection against discrimination, to the state of infrastructure-based competition from other fixed line or wireless networks, and to the effects of such competition on the prices, choice and quality of access products offered at retail level and on the evolution of market conditions towards provision of competing next generation networks.~~ To encourage investments by the operator, including in next generation networks, national regulatory authorities shall take into account the investment made by the operator and allow him, ***in the event that the imposition of price control is deemed necessary to reach the objectives of Article 8 of the Framework Directive,*** *a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new network investment project."*

Alternative proposal: change to at least match the stricter competition safeguards of Recommends 48 and 49 of the draft costing and non-discrimination recommendation

"4. The first paragraph of Article 13 is amended as follows:

A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. ***In determining whether to impose or maintain price controls on next generation networks, national regulatory authorities shall have regard in particular to the effectiveness of*** *the Equivalence of Input obligation imposed on the SMP operator to* ***protect~~ion~~ against discrimination,*** *effective economic replicability demonstrated by the* *evolution of market shares,* ***to the state of infrastructure-based competition from other fixed line or wireless networks, and to the effects of such competition on the prices, choice and quality of access products offered at*** *the wholesale and* ***retail level~~and on the evolution of market conditions towards provision of competing next generation networks~~.*** *To encourage investments by the operator, including in next generation networks, national regulatory authorities shall take into account the investment made by the operator and allow him~~, in the event that the imposition of price control is deemed necessary to reach the objectives of Article 8 of the Framework Directive,~~ a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new network investment project."*

ECTA's proposal to achieve the Digital Agenda target on roaming[1]

ECTA's members **accept that it is justified and necessary to extend the Roaming Regulation** in light of the roaming price developments observed by BEREC and the findings of the Commission in its interim review.

A consumer friendly and simple alternative to the structural measures proposed by the Commission could be the **voluntary achievement of the Digital Agenda target**. Mobile operators willing to **voluntarily reduce** their **roaming tariffs to levels significantly close to domestic prices by 1 July 2014** could be exempted from the costly implementation of de-coupling which is aimed at achieving the same objective.

The voluntary reduction of roaming charges to near domestic tariffs' levels would be an alternative to de-coupling roaming services, so mobile operators would be obliged to implement either decoupling or the voluntary achievement of the Digital Agenda target by the same deadline. If an operator opts for voluntary reduction, it would have to apply to all of its tariff plans.

In practice, the voluntary reduction would mean that consumers could use their domestic bundles also for voice, SMS and data roaming for a minor surcharge. They would not have to conclude a separate roaming contract and would not have to worry about bill shocks, since **roaming is included in their domestic package for a pre-defined, small fee**. The surcharge could be a small per minute, per SMS or per MB fee or a one-off fee added to the price of the domestic package.

BEREC would be best placed to define the tolerable difference between domestic and roaming tariffs as well as the calculation method for corresponding wholesale charges.

The **pre-requisite** of the voluntary reduction of retail roaming charges is that **correspondingly low wholesale roaming charges** are guaranteed. The current trend of continuously decreasing wholesale roaming prices suggests that operators might have a chance to opt for the voluntary reduction of roaming charges on commercial wholesale terms.

The advantages of the voluntary reduction option compared to de-coupling are that it is very simple and consumer friendly, has a clearly foreseeable outcome, i.e. roaming tariffs will equal domestic tariffs plus a pre-defined small surcharge, it leverages the benefits of domestic competition to the roaming market since the roaming charge is tied to competitive national tariffs, it is less costly to implement and achieves the Digital Agenda's target to bring down roaming prices immediately from the moment of its implementation.

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[1] This proposal cannot be attributed to fixed only ECTA members, but represents the views of all other ECTA members.

[redacted]

	Copper LLU (at MDF)	Copper VULA (incumbent using copper SLU with VULA delivered at MDF or equivalent location)
Equipment which the alternative operator (altnet) can deploy	Altnet can deploy ANY non-interfering equipment (on both the network side and the Customer Premises Equipment side - CPE) including new generations of advanced equipment on the copper wire. This enables: • the provision of any technically feasible speed, including: o symmetric high speed services (fast upload) for businesses and for consumers that demand it • Differentiated functionalities e.g. multi-VLAN, Ethernet Network-to-Network interface (NNI), multicast. • LLU pair-bonding for very high (incl. symmetric) speeds	Altnet has to rely on incumbent technology choice, including possible CPE restrictions. Note that the incumbent: • as a matter of principle optimizes for consumer market, i.e.by offering asymmetric speeds (slow upload), a few VLANs for voice, IPTV, maybe a 'fast lane'; • is unlikely to use SLU pair-bonding (which allows for higher speeds) unless it is truly under pressure from a parallel infrastructure.
Incentives for the incumbent to upgrade the network	Strong incentive for the incumbent to match any altnet deployment of advanced equipment/speed/services on the copper wire. Note that e.g. altnets took the lead with deploying new technologies such as ADSL2+ (deployed by altnets even before ADSL2+ was standardised), ShDSL, e-ShDSL, bonded e-ShDSL over LLU.	Weak incentive for incumbent to upgrade to next technology evolution, unless truly under pressure from parallel infrastructure. Note that incumbents have to a large extent upgraded to FttC rather than FttH where DOCSIS3 exists, suggesting that pressure is limited.
Backhaul and level of contention	Altnet can lease the copper wires, equip them with the best equipment, and build fibre backhaul with zero contention, enabling provision of maximum speed to all its customers.	Strong incentive for incumbent to build contended network in the feeder segment (from street cabinet to MDF) to enable charging a premium for speed or even prevent altnets taking VULA from providing maximum speeds to all their customers.
Pricing flexibility at retail level	Altnet can set any price (within wholesale charge + its own cost constraints, unless selling at a loss) and thus has freedom to experiment with pricing to drive take-up (also recognizing in pricing that additional	Strong incentive for the incumbent to charge high premium for higher speed at both retail and wholesale level, thereby neutralizing speed and price competition from altnets taking

	speed does not generate material additional cost).	VULA.
Provision of wholesale services to third parties	Altnet can provide wholesale services to third parties (e.g. wholesale broadband access, leased lines terminating segment, any other).	Strong incentive for incumbent to structure the wholesale services it provides to the altnet (technical specifications) and wholesale charges in a manner which prevents altnets from providing wholesale services to third parties.

CONCLUSIONS

- Copper VULA is intrinsically not equivalent to copper LLU, and cannot be intrinsically equivalent to copper LLU.

- Copper VULA, if the only available wholesale input (no physical access) has intrinsically inferior characteristics in terms of enabling competition, with important likely consequences for wholesale charges and retail prices.

- If the objective is to make copper VULA as close as possible to copper LLU, regulation needs to ensure that:

  - All VULA lines always operate at maximum speed enabled by the equipment; different profiles only if technology requires different balance between downstream/upstream. Note that this does not address the incentive for the incumbent to upgrade to next technology evolution;

  - There is no traffic contention in the feeder segment;

  - VULA enables multi-VLAN/Ethernet NNI/multicast;

  - Altnet taking VULA can select, own and install any CPE (unless demonstrated technical impossibility – burden of proof on SMP operator).

  - Wholesale VULA charges that vary by speed or by downstream/upstream profile are prohibited. The only permissible difference in wholesale VULA charges would be for a different (more expensive) CPE, if the CPE has to be provided by the incumbent (see previous point).

GLOSSARY

Ethernet NNI	Ethernet Network-to-Network interface specified by the Metro Ethernet Forum (MEF)
FttC	Fibre to the cabinet
FttH	Fibre to the home
Feeder segment	The segment connecting the street cabinet to the MDF
IPTV	Internet Protocol Television
MDF	Main Distribution Frame (the rack on which copper lines are aggregated in the incumbent's building)
Multicast	http://en.wikipedia.org/wiki/Multicast
Multi-VLAN	Multiple Virtual LANs (possibility to define multiple "channels" with different sizes and characteristics which enable the tailoring of Quality of Service guarantees to support IPTV, telephony, etc.)
Pair bonding	Use of two or more copper pairs simultaneously to enhance speed
VULA	Virtual Unbundled Local Access
ADSL2+, ShDSL, e-ShDSL, bonded e-ShDSL	Types of digital subscriber line technologies (delivered over copper)