

European Regulators Group
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Vienna, June 11, 2007

Subject: Comments of ISPA on the ERG Consultation Document on Regulatory Principles of NGA (ERG (07) 16)

Dear Sirs,

ISPA, the Austrian Association of Internet Service Providers thanks the ERG for the profound examination of the Next Generation Access (NGA) rollout scenarios. However, ISPA cannot fully agree with all the conclusions ERG draws from the findings.

Influence of the NGA rollout on the markets

Although ISPA agrees in principle that many of the issues arising from the deployment of NGA networks can be solved within the frame of the existing regulatory framework, we strongly believe that the rollout of NGA networks is a fundamental challenge and cannot be handled just with some minor adjustments regulation – page V of the consultation document however suggests otherwise. National Regulatory Authorities (NRAs) have to bear in mind that the incumbent would be able to, without appropriate regulatory intervention, shape his network in a way that could foreclose alternative operators. Therefore ISPA calls for an effective and consistent regulation to allow alternative operators access to all levels of the ladder of investment, whichever setup of the NGA the incumbent chooses to implement.

Market definition

ISPA would like to draw ERG's attention to the fact that the Austrian NRA does not regard FTTH as part of markets 11 or 12. Although there no operator has started a major rollout, FTTH is available in Austria and should therefore be considered part of these markets.

Transparency

As ERG states on page 56 in the case of Austria it is still unclear when and how the incumbent will roll out its NGA network. ISPA urges NRAs to proactively require incumbents to disclose information about the NGA rollout to the NRAs. Absent this information, NRAs cannot impose appropriate remedies. Furthermore it must be warranted that regulation of access to NGAs is in place before the incumbent actually starts to provide services to the consumer. As we already experienced in Austria with regard to the deployment of ADSL-services, ISPs can never compensate the late-comer disadvantages that results from the refusal of the incumbent to grant access to the network or equivalent necessary wholesale services.

Influence of the NGA rollout on existing infrastructure

Alternative operators have made considerable investments into local loop unbundling (LLU), relying on the present technical and regulatory general setup. Those investments will be lost if the incumbent is allowed to dismantle his Main Distribution Frames (MDFs). Therefore incumbents should be required to keep MDFs operative.

The deployment of NGA, namely using VDSL, can lead to disruptions of existing infrastructure. To avoid these negative effects, NRAs should mandate that the assessment of the network compatibility and the development of deployment rules for VDSL have to be carried out by a neutral third party.

Collocation

ISPA agrees with the outcome of the examination of the collocation situation in NGAs. ISPA believes that the incumbent should be obliged to reserve a certain percentage of space in street cabinets for the collocation of alternative operators. Another possibility would be to impose the obligation to grant access to the fiber itself – either as “unbundling of the dark fiber” or as granting access to individual colored wavelengths on the fiber to ISPs.

Backhaul

ISPA welcomes the ERG’s remarks on the regulation of backhaul services. In a NGA environment backhaul services, in particular to the street cabinet, are bottlenecks and therefore need appropriate regulation. As the ERG points out it is not economically feasible to deploy multiple backhaul infrastructures. Therefore ISPA thinks that in addition to the actions proposed by ERG it is necessary to oblige the incumbent to offer sufficient backhaul capacity for alternative operators. Otherwise the incumbent could easily foreclose alternative operators.

Structural/Functional Separation

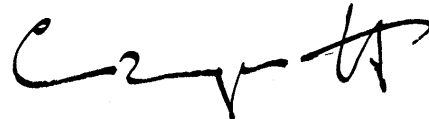
ISPA is surprised that ERG didn’t discuss the concepts of functional separation in the document, although it is strongly endorsed by the Commission. ISPA thinks that

structural separation would be an effective remedy in the NRA's "toolbox" to address many of the regulatory issues that could not be sufficiently resolved with currently available remedies.

Regards,



Roland Türke
President



Kurt Einzinger
General Secretary

About ISPA: ISPA is the Austrian association of Internet Service Providers, representing approximately 200 ISPs. ISPA is a major voice of the Austrian Internet industry. Our goal is to shape the economic and legal framework supporting an optimal growth of the Internet and Internet services. We regard the use of the Internet as an important cultural skill and acknowledge the socio political responsibilities resulting from it.