



Google welcomes the publication of the draft Recommendation, and would like to offer a couple of comments.

## Competition

The European legislator recently recommitted to a policy of "effective competition" as the main guarantor that the Internet in Europe continues to be an open, dynamic source of jobs & growth. Google agrees with this choice, and recognises that this Recommendation is fundamental to the success of this policy.

The draft Recommendation notes the broad consensus of the "role of telecommunications and broadband development in terms of EU investment, job creation and overall economic recovery". But the potential lies predominantly in what new networks enable rather than in the deployment of new networks themselves. It is the transformation towards a knowledge-based economy - i.e. the Lisbon Agenda - that telecoms competition facilitates.

Telecoms regulators rightly focus on competition in the telecoms market, and this is a long term process - the need for a reinforced telecoms package and this Recommendation 11 years after market liberalisation is testimony to that. But whereas competition deficiencies in the past meant a higher prices and/or less innovation for users of telecoms services (a relatively small part of overall consumer expenditure), telecoms competition now significantly influences consumers access to the Internet (whether as a citizen or for entertainment, education or commerce). In other words, society pays a steadily greater price for delays in attaining a competitive market.

This Recommendation must therefore help hasten the emergence of effective competition. The Commission's moves to ensure that the framework for promoting competition applies effectively in the NGA policy space is supported.

## Risk premiums

The principle difference in wholesale price setting for NGAs relative to existing wholesale access products is the potential inclusion of a "risk premium" included in a risk adjusted cost of capital. In particular, annex 6 provides several criteria for this assessment.

"Systematic risk should be estimated on the basis of future NGA penetration scenarios. Factors such as existing broadband penetration, *demand for additional bandwidth, consumers' willingness to pay*, the degree of infrastructure-based competition and the likelihood of alternative operators migrating their clients to fibre loops should be taken into account" (Annex 6)

The history of the Internet shows that consumers value the open Internet. It became clear in the negotiations of the package, however, that some operators are troubled with the idea of providing non-discriminatory access to online services for their customers. Some have argued vociferously in the course of the telecoms review that they should be permitted to manage traffic to facilitate new services of their choosing. Telecoms

regulators have spent the last 10 years addressing issues of vertical integration and this task looks set to continue!

The Legislator has therefore provided regulators with some powers to intervene to ensure consumers can access the services of their choice, but intervention is not mandatory.

The critical point, however, is that if operators seek to favour own or affiliated services, regulators' decisions on how and when to use their powers will have an impact on the demand for additional bandwidth and consumers' willingness to pay. In other words, the risk premium is not an *exogenous* parameter readily determined by NRAs. On the contrary, it is an *endogenous* part of the regulatory process.

There are two equilibria in this model

1. Operators are generally permitted to discriminate, leading them to acquire a gatekeeper role and less online innovation. This reduces demand and willingness to pay and thus increases the risk premium, raising wholesale (and presumably retail) prices and further impacting on demand; or
2. Regulators use their powers to limit traffic management to non-discriminatory actions to address network congestion. Innovation thrives and strong user demand reduces the need for a risk premium.

Consequently, Google recommends that all assessments of demand and consumer willingness to pay are based on the assumption that NRAs use their powers vigorously as and when necessary to ensure consumers have ongoing easy access to all online services.

July 14, 2009