

Jose-Manuel Barroso, President, European Commission



Cc Neelie Kroes, Commissioner  
Viviane Reding, Commissioner

7 April 2009

Dear President Barroso,

### **Next Generation Access Recommendation**

As leaders of the companies that have brought innovation and choice in broadband and business communications across Europe, we are writing to express our serious concerns over demands made by some dominant firms and protectionist countries for de facto regulatory holidays for 'next generation access' networks.

This route would be disastrous for competitors, competition, consumers and business users and could jeopardise Europe's recovery plan. We therefore urge you to take a firm and pro-competitive stance on the forthcoming Recommendation on Next Generation Access so that the telecoms sector's potential for growth and innovation can be properly harnessed.

Entrants have played a pioneering role in bringing mass-market Internet and broadband services to Europe's consumers and SMEs, making significant investments - on average two to three times more than incumbents in proportion to our size. But we have been struggling for years to make a fair return in a sector which remains dominated by historic incumbents in most countries due to inadequate and patchy regulation. In stark contrast some of the same incumbents who have been asking for – and in some cases secured - regulatory holidays, have reported record profits and cashflows and extended their dominant position in the market, often whilst freezing or reducing investment.

Recent precedents from the Netherlands and UK show that investment can be promoted by regulation which aims to maintain the principle of competition and non-discrimination for single companies and co-operative joint ventures. Conversely, regulatory holidays have not led to more investment in fibre access in any country in which they have been granted. Indeed, without the stimulus of innovation and competition in retail markets, the business case for fibre investment is significantly weakened.

It is also important to note that much more is at stake than investment in new fibre networks. If Member States, regulators or the courts are allowed to deny regulated access to operators, effective competition in the provision of services for Europe's cross-border businesses will be simply impossible. Many of the associated benefits identified by Micus in a 2008 study for the European Commission could consequently be threatened. These include more than 1m jobs and additional growth of €849bln by 2015

The European Commission has fought hard to promote development of fit-for-purpose pan-European business services during the Telecoms Framework Review. Users of such services represent about 35% of EU GDP. If the progress achieved is sacrificed at the very moment when it is vital to resist protectionist tendencies, this would be a major blow for the EU economy.

As a legacy of your first term and as a signal for the next, we hope that you will be able to support the following 5 key principles in the Recommendation on Next Generation Access, which have been backed by the Council and Parliament in the European Council and Review of the Telecoms Framework.

It is vital for the Framework for Next Generation Access to be right first time round. The EU's broadband history shows that investment blossoms and users enjoy choice and low prices only when pro-competitive regulation is implemented. We hope to have the opportunity to discuss the current state of the sector with you and the urgent need for effective regulatory measures before you adopt the draft Recommendation.

## Principles for effective competition in high speed networks and services

1. **Access to the fixed access networks of dominant operators must be provided regardless of technology** as will be explicitly required through changes to the Telecoms Framework.
2. The **principle of non-discrimination is paramount** so that all operators have an equal opportunity to compete and innovate. That means that dominant operators should provide services to others at the same time and on the same basis as they provide for their own use. **Functional separation** could be useful to support this principle and provide clarity to investors and access seekers on a forward-looking basis, in cases where enforcement of the non-discrimination principle in the broadband market has failed.
3. **The regulatory regime should encourage the construction of networks which are open to competition and ensure a fair migration process as networks are upgraded.** In particular the process by which incumbents change their architecture must be transparent and consultative and the rights of competitors that invested heavily in local loop unbundling and other broadband access products should be respected.
4. **Prices for access should be set so as to ensure that there can be effective competition in services at the retail level.** Where cost orientation is required to avoid excessive pricing, the return should be calculated to ensure a fair return which reflects any justified risk incurred. Differentiated arrangements such as volume discounts can be permitted, but only where they are compatible with promoting effective competition for consumers and businesses and do not have a discriminatory effect.
5. **Co-operative arrangements including joint ventures for investment sharing should be permitted**, where compatible with competition law. However, **such arrangements do not substitute for regulation** where an operator or joint venture has significant market power. The competition assessments for wholesale physical access and wholesale broadband access should be based on conditions that exist or can reasonably be foreseen in the market and not on theoretical assumptions about the effect of particular arrangements, network designs or access products.

Hanif Lalani OBE  
CEO, BT Global Services



A handwritten signature in blue ink that reads 'Hanif Lalani'.

**Cable&Wireless**

A handwritten signature in blue ink that reads 'J Pluthero'.

John Pluthero  
CEO, Cable & Wireless

Jukka-Pekka Joensuu  
VP & General Counsel, TDC Oy



On behalf of TDC Oy


A handwritten signature in blue ink that reads 'Jukka-Pekka Joensuu'.



A handwritten signature in blue ink that reads 'Libor Voncina'.

Libor Voncina  
Chairman, KPN Belgium

Maxime Lombardini  
Director-General, Iliad



Luigi Gubitosi  
CEO, WIND Telecomunicazioni



Stefano Parisi  
CEO, Fastweb



Ângelo Paupério  
CEO, Sonaecom



Bernd Schlobohm, CEO, QSC AG



Ihre Premium-Alternative



Mirosław Godlewski  
President & CEO, Netia SA


Adam Sawicki  
CEO, GTS Central Europe



forthnet  
Pantelis Tzortzakis

Pantelis Tzortzakis, CEO, Forthnet

Riitta Tiuraniemi  
CEO, DNA Limited



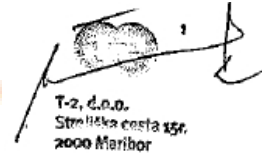
Theodore Zahov  
CEO, Spectrum Net

Roberto Beitia  
CEO, Sarenet



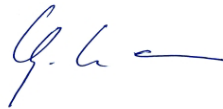
José Poza  
CEO, Ibercom

Matevž Turk  
Director, T-2



Rafael Aranda  
CEO, dti2

### TRADE ASSOCIATIONS



Gerd Eickers, President, VATM

Richard Lalande  
Chairman, AFORS Télécom



Dougald Robinson  
Chairman, UKCTA

Feyo Sickinghe  
Chairman, ACT



Paolo Nuti  
President  
AIIIP (Associazione Italiana Internet Provider)



Theodore Zahov  
Chairman of the Board  
Society for Electronic Communications



Lionel Fernández  
Director, Grupo de Operadores Independientes



Ronan Lupton  
Director, ALTO

