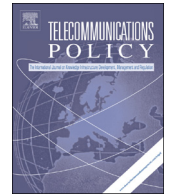




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Is a fine-tuning approach sufficient for EU NGA policy? A global review around the long-lasting debate[☆]

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ABSTRACT

In this paper, regulatory policies with regard to Next Generation Access (NGA) networks are analysed through a four-part categorisation: (i) conventional type (i.e., copper-based regulation, (ii) no imposition of mandatory access, (iii) regulatory holiday, and (iv) full deregulation. While EU's regulatory policy towards NGA originally has been falling somewhere between the first two, the recent developments affirm the influence of long-standing conventional approach over the emerging NGA platforms, and related competition and investment strategies. While US experience clearly exhibits full deregulation, some other countries' (e.g., Turkey, Brazil) NGA policy decisions represent an approach corresponding to the third category in general. This study mainly focuses on the EU's regulatory history from the beginning till its current NGA strategy under the light of 2010 and 2013 Recommendations with an emphasis on recent pricing policy adopted by the latter. In the paper, after examining EU regulatory perspective and broadband market indicators in general, 'ladder of investment' theory which has driven growth of EU investment policies, was found having limited success and stuck to LLU rung. This study, putting an emphasis to 2020 Digital Agenda targets, focuses on price-based investment trade-offs, and in lieu of such trade-off policies proposes *larger scale optimisation* displacing the historical regulatory access and pricing schemes that are vulnerable and exposed to regulatory commitment and dynamic consistency problems. It is considered that rather than 2013 Recommendation's way of fine-tuning over conventional wisdom of regulation, an overhaul consisting of some elements derivable from regulatory holiday – as is found preferable to full deregulation – is applicable under certain conditions, particularly *symmetric obligations* for sharing civil engineering infrastructure.

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1. Introduction

With the emergence of next generation access (NGA) networks¹ with substantial benefits, policy makers have started to develop different NGA-boosting strategies, entailing wide-ranging approaches with regard to regulation of FTTX platforms

[☆] The views and statements expressed in this article are those of the author, and do not reflect those of ICTA.

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¹ Next Generation Access (NGA) networks are new or upgraded infrastructures that allow substantial improvements in broadband speeds and quality of service compared with current (legacy) services. While the term is used to describe the infrastructure and set of technologies, particularly fixed fibre lines, which provide higher speeds than xDSL that typically might be up to 24 Mbit/s, some other technologies including cable, fixed wireless and mobile may also be referred within this category to underline high-speed or ultra-fast broadband networks. (OECD NGA Report). In this study, the term of NGA is

and technologies. Such approaches having a diverse spectrum, out of which many countries are confronted with the trade-off decisions in order to encourage NGA investments along with the question of how to efficiently use the resources serving competition. NGA policy discussions are thus marked with policy challenges and elaborations as to whether or to what degree how much static efficiency must be sacrificed to achieve the desired level of investment (Klump & Su, 2010). In the EU, investment strategies have gained much more importance within the particular context of 2010 Digital Agenda,² which declared that all EU households should have access to at least 30 Mbps and 50% of subscriptions should be at least 100 Mbps by 2020.

While the referred goals need to be achieved by the EU members, there is no unequivocally defined route for the European countries with regard to NGA regulatory policies. Across this picture, many countries hesitate whether or not to pursue a differentiated policy for NGA after long-standing, cost-reducing approaches directed to static efficiency. Some countries are observed to have developed distinct NGA access models either enhanced bitstream (i.e., virtual unbundling) or some new technologies (i.e., vectoring, G-fast) aiming to maximise efficiency of legacy part of the network. Some others, with the same or similar ultra-broadband targets, took some macro-level supply-side measures (e.g., releasing funds, tax allowances to boost NGA investment), going beyond market scrutiny and regulatory interventions.³ When compared to legacy (copper) networks, a more cautious NGA regulatory policy rather than a pro-active one is remarkable in almost all EU members although they are ultimately faced with copper type ex-ante measures under the realm of harmonisation. Notwithstanding, many policy makers try to inject some flexing capabilities (particularly regarding price control mechanisms) to the conventional wisdom of regulation that is dependent on service competition and static efficiency.

Whereas degree of such investment capabilities in specific markets varies depending on the investment climate including level of platform competition, some other parameters (i.e., re-monopolisation, foreclosure concerns) also shape the way for emerging platforms that national authorities should follow under EU rules. For such reasons, EU authorities defend a quasi-conventional NGA policy approach whereby mandatory access fashions the market competition inclusive of ex-ante remedies, i.e., transparency, non-discrimination, price control, cost accounting. Although EU regulatory framework draws a rather wide and more flexible ambit, this framework seems to have been skewed towards some unified approaches via the recent acts of EU Commission, particularly with the 2010 and 2013 Recommendations⁴ and the decisional practice of market reviews. Under the Commission's policy geared towards a more competitive marketplace, including the recently developed price control mechanisms, neither 'full deregulation' nor 'regulatory holiday' is applicable with their respective features. That is not to say facility-based models are not encouraged at all, yet one could be concerned about the excessive access rights and requirements that would preclude the recoupment of investment costs against the unpredictable demand for fibre products.

The 2013 Recommendation tries to resolve this uncertainty by striking a balance between investment incentives and competition spurring regulatory mechanisms. In this formulation, ex-ante price control obligations are lessened under certain conditions that entail *copper price stabilisation* and implementation of *economic & technical replicability tests* (respectively 'margin squeeze' and 'equivalence of inputs' remedies). While cost-orientation rule is foreborn to relax operators having significant market power (SMP) from ex-ante cost-based wholesale prices, a level playing field is still emphasized for the access seekers who are given a number of safeguards to be able to compete under comparable conditions with those of incumbents. Implementation of copper anchor (€8–10), on the other hand, aims to stabilise the local loop unbundling (LLU) fees, which are found to influence NGA growth and uptake by the end-users, who are otherwise supposed to face artificially increased prices.⁵ Whereas these remedies are designed to serve consumer welfare it is also aimed to ensure that NGA investments are not forgone because of unrealistic (i.e., excessively reduced) wholesale prices. Lying at the center of this fine-tuning policy, which is given a particular emphasis within this study, is a shift concerning price control regime, dependent on a set of crystalised conditions. Such conditions denote a well-engineered set of pre-requisites that potentially have a risk of overreaching all types of market failures as well as of creating a regulatory vacuum.

To sum up, the EU's NGA regulatory approach is examined in this paper, where also its historical roots have also been traced up until the recent strategy enshrined under the 2013 Recommendation, which is issued to give a message of "build or buy" for emerging NGA platforms.⁶ Throughout the discussion made herein, both the 'ladder of investment' approach and interplay between copper based regulations (i.e., LLU rates) and the NGA investments are delved into with factual and theoretical analysis. To shed light such discussions and elaborate more about the NGA competition patterns, mainstream NGA regulatory approaches are classified under four categories, which are respectively (i) *conventional type (i.e., copper based) regulation*, (ii) *no imposition of mandatory access*, (iii) *regulatory holiday*, and (iv) *full deregulation*.

(footnote continued)

used to refer to FTTX models and platforms including Fibre-to-the-Cabinet (FTTC), Fibre-to-the-Home (FTTH), Fibre-to-the-Building (FTTB), in which fibre optic is deployed fully or partially during the distance between end-users and the central exchanges.

² See <http://ec.europa.eu/digital-agenda/> (Digital Agenda for Europe: A Europe, 2020).

³ For some details about different policy responses with regard to NGA networks see Shortall and Cave (2015); Beltrán (2014); Cave (2014); Crandall, Eisenach and Ingraham (2013).

⁴ NGA Recommendation ("2010 Recommendation") and Recommendation on Non-Discrimination and Costing Methodologies ("2013 Recommendation").

⁵ Recommendation on Non-Discrimination and Costing Methodologies, Recital 52–53, Art. 48–49. See Section 4 for more details and overall analysis regarding the price-based policy formulations of 2013 Recommendation.

⁶ Recommendation on Non-Discrimination and Costing Methodologies, Recital 27.

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