

Principles for effective competition in high speed NGA 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. **Prices for access should be set so as to ensure there is no margin squeeze**, and 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 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 any discriminatory effect.
3. The **principle of non-discrimination is paramount**, so that all operators and service providers 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.
4. **Functional Separation** is useful to support the first three principles and to 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.
5. **The regulatory regime should encourage the construction of networks which are open to competition, and should ensure that a fair migration process is implemented 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.
6. **Co-operative arrangements should be permitted, including joint ventures for investment sharing**, and physical sharing arrangements such as for ducts, base stations, aerial and spectrum, where compatible with competition law. However, it is vital **such arrangements do not substitute for regulation**, where an operator or joint venture has significant market power. The competition assessments for wholesale physical and broadband access must be based on market conditions that exist, or can reasonably be foreseen, and not on any theoretical assumptions about the effect of particular arrangements, network designs or access products.