ECTA COMMENTS ON DRAFT ERG COMMON POSITION: WHOLESALE LEASED LINES

ECTA thanks the ERG for the opportunity to comment on its draft document which we consider to be extremely timely. The importance and urgency of the task in hand is underlined by:

- Removal of Market 14 (trunk leased lines) from the revised "Relevant Markets" Recommendation published by the European Commission on 13 November 2007.
- The lack of harmonisation that continues to characterise wholesale leased line regulation five years after adoption of the current EU framework.

As far as the new Recommendation is concerned, ECTA disagrees strongly with Commission's decision on trunk leased lines. More specifically, the Association considers that in most cases this market remains characterised by competition problems that justify continued regular analysis by NRAs. We would also draw attention to Section 5 of the Explanatory Note which accompanies the new Recommendation, and which underlines that markets currently subject to regulation should not be deregulated before the NRA in question has completed a new analysis of the market.

Regarding harmonsation of national approaches, ECTA would note that the accounting information and key performance indicators which are needed to ensure compliance with SMP operators' non-discrimination obligations are published still in only a small minority of Member States. Furthermore, notwithstanding the dramatic and ubiquitous impact of the technology, a regulated wholesale Ethernet product is available in a similarly small number of countries.

Against this background, ECTA considers that the final ERG document would benefit from an introduction explaining the high importance of ensuring that wholesale leased line markets are effectively competitive. Such an introduction could usefully outline the role that leased lines play as a building block for all new entrant services, and as step on the "ladder of investment". It might also emphasise the particular importance of leased lines in the market for services to businesses where the density of customer sites only rarely provides the economies of scale needed to justify new entrants' investment in local access, and where a lack of competition can have knock-on effects which extend far beyond the telecoms sector itself.

Regarding the last point, ECTA would draw particular attention to firms' needs for telecoms links that permit effective interworking of IT applications in different sites. Without easy, low-cost access to such links (particularly on a cross-border basis), European companies will be less able to introduce the productivity-boosting restructuring of business processes and operations that are needed to match the moves of competitors outside the EU. For the same reason, the EU's Lisbon/i2010 objectives for promotion of European growth and competitiveness – in particular development of a Single Market for Knowledge – will be severely compromised.

Turning to the draft guidelines themselves, ECTA considers the ERG document to be generally comprehensive and well-structured. Our comments are consequently limited in number but nevertheless significant. They are set out below under headings which refer to the "Objective" indicated in the first column of relevant row of the ERG's draft table.

Level playing field

- In the second column, a fourth bullet needs be added, viz: *"to avoid price and non-price discrimination"*. Given that this is the level-playing-field competition issue that is likely to arise most frequently, it might even be placed first in the list of items which require action on the part of NRAs.

- In the third column (fourth para), ECTA is disappointed by the implicit suggestion that KPIs will not always be published. We would suggest deletion of this suggestion, and insertion of additional text at the end of the para as follows: *"Publication of KPIs will allow all stakeholders to satisfy their legitimate need to know whether non-discrimination obligations are being effectively enforced."*

Reasonable quality of access products

The text in this row requires more detail regarding the meaning of "quality and service levels".

At a minimum, references to *"time-to-supply", "time-to-repair",* and *"monthly outage time"* should be included as illustrative examples in column two.

Para (c) of the "illustrative remedies" column would also benefit from identification of the KPIs that need to covered. ECTA suggestions are set out in an annex to the present document and the ERG could attach a similar annex to its guidelines. For a variety of reasons, we do not believe this proposal to be over-ambitious or disproportionate:

- The remedies set out in column 3 of the ERG document are only "illustrative" so inclusion of such a list could hardly be criticised as an unfounded constraint on NRAs' freedom of decision.

- ECTA believes that ERG Members may find exchange of best practice and development of consensus easier for such operational questions than for more high-level policy issues.

- Any additional effort required is more than justified by the benefit that harmonised KPIs will bring to development of pan-European telecoms services. Efficiency gains associated with increased cross-border *trade* – comparative advantage, dynamic economies of scale etc – form a central part of the fundamental rationale for all EU Single Market legislation. There is wide scope for such gains in the business telecoms sector markets (as opposed to consumer markets). However, their realisation has so far been blocked by a marked lack of regulatory harmonisation. To understand this point better, consider the case of a multinational company that wishes to contract with a single supplier for the provision of service in all Member States. It must currently accept the administrative complexity associated with different service level agreements in each country, or resign itself to the lowest common denominator. Without

harmonised public KPIs, market forces and peer pressure will be unable to raise the level of the lowest common denominator.

Finally, ECTA would recall that published KPIs will only have real value if separate sets are published for both the SMP operator's retail and wholesale arms. Without these two sets of information, the sort of non-price "margin squeeze" alluded to in para (a) of column 3 will be impossible to demonstrate.

ANNEX 1: Key Performance Indicators

Provisioning and Assurance Measures

Measure	**Typical Values**
SMP personal interface for provisioning	Single point of interface provided
SMP personal interface for assurance	Single point of interface provided
Electronic interface provided for provisioning	An effective, fit-for-purpose, API (Application Program Interface) appropriate for external parties to build to, sufficient to replicate SMP Supplier's own internal systems
Acknowledgement of order receipt	Supplier to automatically respond within set time
Confirmation of order incl delivery date Supplier to automatically respond within set time	
Acknowledgement of installation	Supplier to automatically respond within set time
Standard Order acceptance lead time	
Standard Lead time to delivery (including order acceptance)	Provided in line with current end customer requirements and mirroring (benchmarked with) best market providers.
Fast track delivery	50% of standard
Status update provided at regular intervals	Supplier to automatically respond within set time
Terms for violations	Service credits to start from 1st day delay with no cap
Out of hours Maintenance	24/7
Out of hours Reporting/Customer Service	24/7
Repair time service affecting faults	Provided in line with current end customer requirements and mirroring (benchmarked with) best market providers.
Repair time if dual access	
Planned outages advanced notice	15-21 days
Maintenance window	In line with current end customer requirements and mirroring (benchmarked with) best market providers.
Monthly performance reporting	Provided as soon as practicable after end of measured period (monthly or quarterly).

Product technical specification

Measure	Typical Values
Availability (depends on product variant)	Dual Feed <2Mb 99.995% Standard <2Mb 99.85% Dual Feed >2Mb 99.995% Standard >2Mb 99.85% Dual Feed >34Mb 99.95% Standard >34Mb 99.85% Standard 622Mb 99.992% Further values should be added relating to Ethernet speeds ie 10Mb, 100Mb, 1Gb
Terms for violations repair and availability	
Diversity and Resilience	should be offered

Product commercial specification

Measure	Typical Values
Minimum rental periods	12 months
Notice period to terminate	1 month
Opportunity to consider non-standard bid requests	