

EECC Implementation and Guidelines

GOS Consulting Discussion Paper

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Introductions

The GOS Team

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Gita Sorensen, Managing Director GOS consulting.

Gita has more than 30 years of experience in telecommunications regulation and has held industry position of Director of regulation, interconnection, and wholesale, before moving into consultancy. As a consultant, Gita has advised operators, regulators and investors across the world on a wide range of regulatory policy and strategy issues.

Dr. Antony Srzich

Antony is a regulatory economist with over 25 years' experience in the telecommunications sector. He has worked in management and regulatory roles for an incumbent operator and a wholesale-only operator, as a senior advisor for a regulator, and as a consultant. Through these diverse roles, Antony has gained a unique combination of management, technical and regulatory economics experience.

Tom James

Tom James was head of Competition/Regulatory Finance at BT Group plc from 2011 to 2019 and previously held finance and regulatory roles at a number of UK and multinational telcos. He is a fellow of the Institute of Chartered Accountants in England and Wales (FCA).

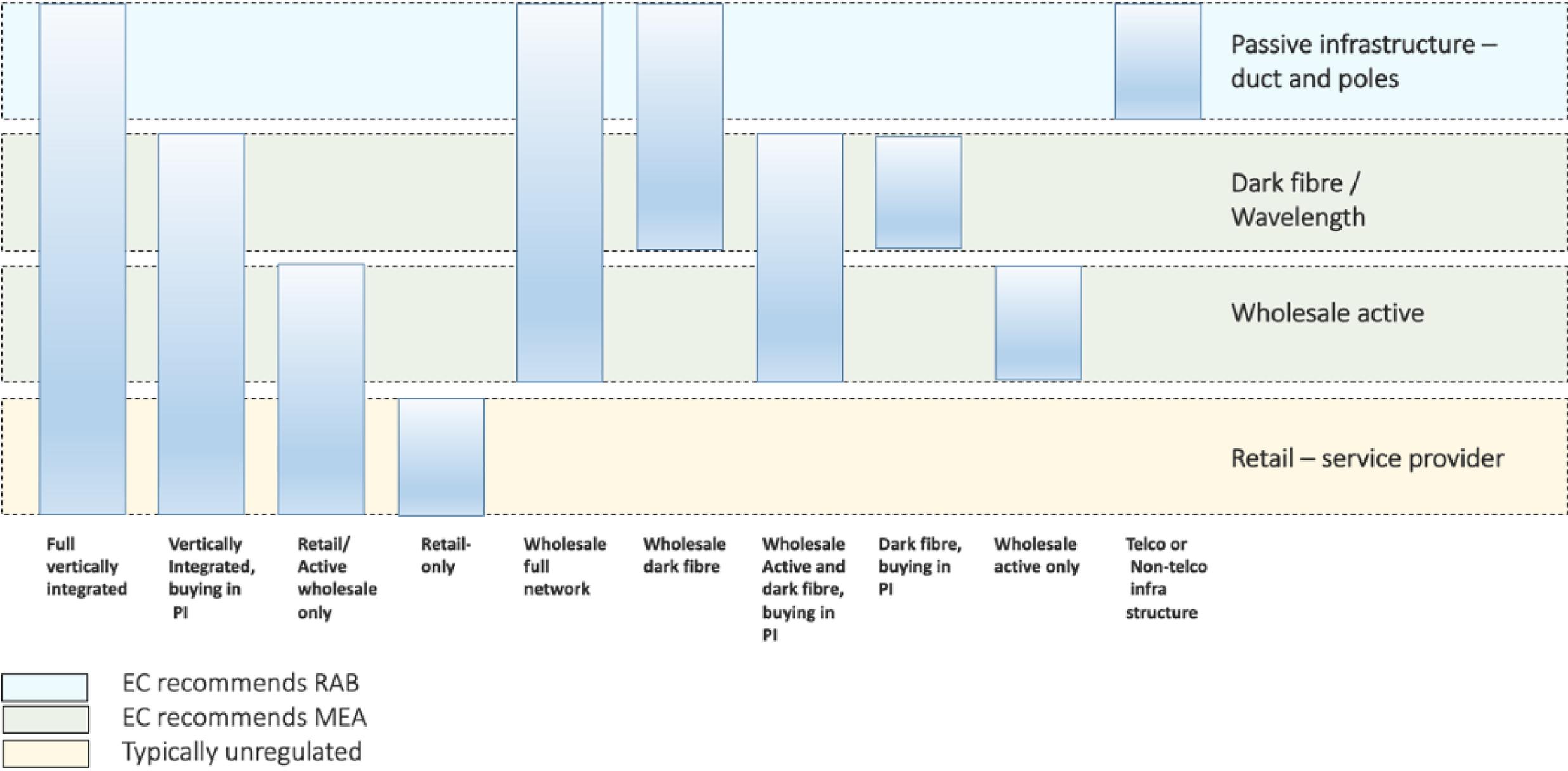
Jonathan Kingan

Jonathan Kingan is a highly experienced senior consultant in regulation, strategy and technology in the ICT sectors. He works internationally with clients in 30+ countries who have valued his combination of business and technology expertise. Jonathan runs JJK Associates Ltd (a network of independent consultants) and is an associate of GOS Consulting.

- **Looking for insight into experience from existing Recommendations and key forward-looking requirements**
 - Effectiveness, practices of the NDCM
 - Appropriateness and proportionality of EoI
 - Usefulness and application of KPIs, SLAs and SLGs
 - Application and effectiveness of economic replicability test and the pricing flexibility approach
 - Reflecting investment risks in price regulation and appropriateness of ‘fair and reasonable’ price remedies
 - Evolution of copper costing approaches and the impact of BU LRIC costing to set wholesale prices
 - Should costing approaches be technology-agnostic or -specific?
 - Application of PI-only access only to promote competition and end-user interests
 - Should costing for PI access differ between existing and prospective PI build?
 - Experience with and impact of co-investment and other co-operative agreements
 - New market review as result of co-operative agreements?
 - Status of commitments to commercial arrangements versus SMP remedies
 - Migration from copper networks and appropriate fibre wholesale access remedies to protect competition
 - Geographic remedy differentiation within a single geo market, experience, appropriateness, and issues

- **Consultation covers a wide range of critical parameters, but**
 - Consultation appears to be based on 'business as usual' market conditions
 - Not clear whether it addresses the fundamental structural and strategic changes already happening and anticipated over the coming period
- **Significant changes are happening**
 - Business models are diverging
 - Different parties may have SMP at different layers of the value chain
 - Traditional thinking on concentrating regulation furthest upstream may no longer be valid
 - Consistency in costing approaches at different levels becomes critical
 - The same asset categories may need different costing methodologies based on geographic market conditions for replicability
 - *Replicability test would need to be adjustable to cater for these variations*
- **Questions in EC consultation are relevant but may not fully address the challenges anticipated in a post-copper infrastructure market**
 - The new recommendations will be valid for 7-10 years, and need to cater for post-copper scenarios both for NRAs to follow once copper has been retired and to create transparency and predictability for providers, investors and NRAs to plan appropriately

A wide range of business models is emerging



Regulation at different layers in value chain

Significant increase in complexities and inter-dependencies

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- **NRAs need to assess at which layers assets will be replicable – and this may vary with geography and with technology developments over time**
- **As markets mature, and copper networks are withdrawn, single fibre networks may emerge in local areas.**
 - Regulation in the period up to copper retirement could be a critical determinant on the nature and level of investment in competing fibre networks
- **A possible scenario:**
 - For PI, incumbent may have national SMP
 - At network layer, local SMP, by incumbent or new entrant, in fragmented national market
- **Need also to consider HFC networks in assessing markets**
 - Both at PI and active wholesale levels

NRAs need a clear tool kit from the Commission

Focus on costing methodologies

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- **Clarity needed on where RAB should be applied to price modelling, and where MEA.**
- **NRAs have adopted various approaches to asset valuation, probably in response to different business models adopted in different member states**
- **A more granular approach to guidelines may be needed for NRAs to determine the appropriate methodologies for their national circumstances**
- **NRAs must consider key new questions:**
 - Does physical infrastructure investment have a different WACC to that for downstream active services?
 - How to address new build infrastructure by new entrants in smaller areas (e.g. on new estates)?
 - How should wholesale charges be determined for new entrant operators if found to have local (sub-national) SMP?
 - At what point in the investment cycle should price regulation be imposed?

Wholesale-only

Scope and impact of the new SMP operator category

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- **The restrictions on the actions of an NRA on wholesale-only operators is a new concept in EU telecoms regulation introduced by the EECC. Its practical implications are not fully clear as:**
 - There are currently no SMP operators that would qualify under Article 80, although the new Italian AccessCo expected to be created in 2021 is likely to do so
 - NRAs may still be able to impose price and other restrictions under the BCRD
 - Article 80 does allow extra remedies where there are competition concerns.
 - The exact meaning of fair and reasonable pricing restrictions is not well developed, although France and the UK provide some limited precedents.
 - These matters will need to be clarified in the new EC guidance on NGA and the BEREC guidance on the EECC.