BoR PC03 (14) 02

Response to the consultation on 'BEREC Strategy 2015-2017'

.

24 October 2014

Introduction

The FTTH Council Europe welcomes the opportunity to comment on the draft BEREC Strategy 2015-2017.

The FTTH Council Europe is an industry organisation with a mission to accelerate the availability of fibre-based, ultra-high-speed access networks to consumers and businesses. The Council promotes this technology because it will deliver a flow of new services that enhances the quality of life, contributes to a better environment and increased competitiveness. The FTTH Council Europe consists of more than 150 member companies. Its members include leading telecommunications companies and many world leaders in the telecommunications industry (additional information is available at www.ftthcouncil.eu).

The FTTH Council's interest is to see the benefits of FTTH made available to the greatest extent possible and in the shortest possible period of time. A competitive market dynamic is central to achieving our objective both for accelerating FTTH deployment directly where competitive deployment is possible and also indirectly, by driving service innovation and demand, where competitive deployment is not possible.

Commentary

With regard to the content of the draft BEREC Medium Term Strategy Outlook, the FTTH Council wonders whether a longer timeframe (say consistent with the legislature) might be appropriate.

Overall the FTTH Council appreciates the linkage between the 2015-2017 Strategy document and the structure of the annual work programmes.

The FTTH Council would like to see a stronger correlation between the Strategy Document and the work programme items related to the Review of the Regulatory Framework (section 3.2.3).

The FTTH Council agree with the major trends and developments as identified by BEREC, however, the FTTH Council believe that BEREC need to give greater consideration to a number of topics not currently listed.

Industry structure (vertically integrated or separated) should be reviewed and treated as appropriate.

The treatment of technological neutrality continues to be inappropriate with Policy Makers continuing to wash their hands of any requirements and/or technology considerations. Since every fixed access market in Europe exhibits market failure in the form of dominant firms, policy makers needs to be clear on the kind of functionality that networks should and should not exhibit, rewarding good characteristics and penalising bad characteristics.

The FTTH Council would also note that we are currently not experiencing the kind of investment levels required to move to high capacity networks. Consideration needs to be given to the revision of WACC rates and more generally, feel that the general direction of regulation should leave more pricing discretion on the market.

The FTTH Council believes that the State can act in an important 'anchor-client' role by move service delivery on-line and coordinating across services. BEREC can play an important role in advising how public services might leverage their position in this way on the demand side.

A full list a topics that should be considered are elaborated in Annex 1.

The FTTH Council agrees with the emphasis being placed on facilitation of competitive market and believes that competitive forces will deliver benefits to end users. The Council notes the other work that is being proposed regarding consumer empowerment and notes that many consumer aspects e.g. regarding contract terms, tend to be more national in scope and effect. The FTTH Council would stress certain pan-European issues such as transparency measures in terms of the network performance. Well informed consumers with a choice of suppliers will enable a more dynamic and responsive market to the benefit of consumers and industry.

We look forward to a more systematic measurement of network performance in the future[1] to complement the work being done today by certain regulators to inform and protect consumers.

Finally, the FTTH Council would like to make clear that we as an organisation wish to support and work constructively with BEREC and that the Council is available to provide input and assistance on technical or policy parameters should a need arise.

[1] http://www.samknows.eu/

Annex 1

Issues to be addressed in any strategic review.

The treatment of technological neutrality

Policy makers should define a clear vision for Europe in terms of the networks to be attained and the FTTH Council believes that by applying appropriate and measurable targets an expressed preference for 'fibre-first' would result.

The FTTH Council is concerned that the on-going interpretation of the technological neutrality principle set out in Recital 18 of the Framework Directive appears to be (a) not technologically-neutral and (b) not logical in the European regulatory context.

Setting targets (COM(2010) 245 final/2) which are set in order to include as many technologies as possible is, the FTTH Council believes, not technologically neutral and is a misinterpretation of the principle. Setting download speeds without corresponding upload speeds explicitly includes technologies which are not appropriate for Europe's long term needs and thereby favours them. The FTTH Council is strongly in favour of a neutral approach to technology that sets more measurable, appropriate and evolving targets related to the quality of experience for end users such as latency and jitter (critical to the deployment of certain services) as well as taking into account average bandwidth at peak times and that include targets for upstream bandwidth.

While the FTTH Council agrees that market players are best placed to make technology choices in well-functioning markets, that view is turned on its head where markets are characterised by market failure. In Europe, the fixed physical infrastructure market is characterised by market failure (leading to regulation) is every one of the 28 markets in the European Union. There is a dominant entity in every one of these markets and that entity is regulated – it is never free to choose prices or to whom it grants access. And yet, when it comes to technology choice, the Commission washes its hand and says it is none of their business and indeed, by not taking any position it allows the cheapest market foreclosing technology choice to emerge. The FTTH Council does not expect the Commission to specify the actual technology it would like to see it should, at a minimum, specify the characteristics it would like to see in technology choices (technology parameters, openness, development paths etc.). That the Commission does not specify these characteristics does not make sense in the context of the European regulatory framework.

The FTTH Council see FTTH like solutions (FTTH, FTTB, FTTO,…) as the only future proof solution to growing broadband requirements. Fibre solutions are not only required in their own right but are also necessary to support the wider broadband ecosystem including advanced mobile solutions such as 4G and 5G. The FTTH Council sees mobile markets as working efficiently for now, a view shared by the Commission where market failure on access markets is rarely, if ever, identified. While the Commission chooses not to favour technologies with better socio-economic profiles in deference to private investors, at a minimum, where public money is spent, a strong preference for future proof solutions should be inherent in any tender.

The FTTH Council thinks technology neutrality should only operate once appropriate broadband targets and technology characteristics have been defined.

Excluding unsuitable technologies would still provide the market with a set of options, ranging from PON variants to P2Pand even G.fast (which in some scenarios would be part of an FTTB roll-out).

Recommendation: Set realistic network usage targets which focus on consumer experience and after that let the technologies fall where they may. The Commission should express its preferences for technological characteristics by allowing preferable returns and conditions to apply to such technologies. Such an approach is consistent with Article 18 of the Framework Directive (2002/21/EC) which grants Regulators discretion to promote services where justified. Where public money is spent and choices are made about the type of infrastructure there should be a fibre-first principle in operation.

New finance and industry models should be considered.

The FTTH Council Europe proposes that policy makers should examine and facilitate a market structure that enables investments in future proof fibre access networks that can offer higher up- and download speeds, better consumer experience and better reliability.

The FTTH Council Europe proposes that the Digital Single Market should - at a minimum - facilitate a market structure in way that reflects the different economic and risk profiles of different assets (i.e. passive telecom infrastructure v active technology equipment) and advocates open access networks so that consumers can enjoy innovative service from all players, including incumbents. The FTTH Council notes that the current industry structure in communications is vertically integrated, that is communication networks and services integrate a large utility component (perhaps as much as 90%) with a small minority technical component. The unfortunate result is that finance views the entire project as one which is technology driven and therefore seeks a higher return over a shorter period. A different structure in the industry could allow a vast amount of investment to be rerated. Telecom Italia whose own ability to raise capital is severely constrained with a net debt to cash-flow ratio of 3.4 recently considered pursuing structural separation as a means to release value for shareholders while simultaneously facilitating new capital-raising.

Other industry players are also talking about 'layering' whereby the services part of the business would be treated at arms length to the infrastructure part of the business. Their logic is to recognise that the services business is a global business whereas infrastructure is local.

The FTTH Council agrees with this analysis but believes it is not sufficient to simply restructure telecom operators as separated-entities. These separated entities would still face problems such as that the structure of the project debt has a major impact on its attractiveness to investors. Projects which can be paid on availability (e.g. a school or hospital) are much lower risk project than projects whose return is dependent on demand or usage (toll-roads, energy generation and communications networks). Clearly, communication networks as currently structured and financed have a significant level of demand risk attached. Within the community of projects for long term financing, communication networks will likely sit a long way down the preference order.

However, the covenants attached to such projects in terms of buying commitments may ameliorate that situation and a movement to new structures such as "wholebuy" agreements (where customers of the infrastructure commit to a minimum buy) or underwriting by the Government (or some combination) could push preferred projects even with higher risk back up the preference order. Therefore the FTTH Council believe that in this critical sector, the European interest would be improved if the public debate would also include aspects such as 'Wholebuy' and not only 'Wholesale' business models. Wholebuy commitments from network operators have the potential to attract the interest of long term investors by lowering covenant risks. This is all the more important as the current debate is centred on existing debt and equity investors the interest of investment banks in significant M&A fees. In particular, Member States could underwrite the first X% in Wholebuy, a share which guarantees a return for investors but which diminishes as market demand evolves.

Other models of investment including co-investment should also be considered with a regulated utility model showing a lot of desirable characteristics over a competition based model of deployment.

Recommendation: Put themes such as structural separation, co-investment, government guarantees etc. on the policy agenda. The review of the regulatory framework should signal an easing of regulatory obligations on structurally separated firms or an enhanced return on separated assets. Guidance should be given on the steps that will need to be taken in order to achieve a structurally separated entity from competition perspectives to clarify what regulatory obligations will apply to the different parts of the entity.

Involve activist shareholders to discuss opportunities to release value and promote investment.

Users are not properly informed about the services they receive, or are likely to receive when signing up for a broadband connection because the use of 'up to' advertising suggests that consumers will receive speeds that are often never available. In other sectors such misleading advertising is not tolerated and purchasing a litre of milk which only has 700ml in it would immediately lead to action.

The European Commission has through a series of studies and surveys noted the poor relationship between actual and advertised speeds with 75% of the advertised speed being delivered on average with xDSL being a particularly poor performed at 62% of the advertised speed delivered[2].

The mislabelling of product has an important distortive effect on consumer choices and in turn, these misinformed choices send inappropriate investment signals to network operators.

Furthermore, the parameters that are specified need to go beyond speed and give metrics for other QoS parameters that effect service delivery on-net, such as latency and jitter.

Studies suggests that consumers will pay for higher speed once they understand the difference that exists between high and low capacity networks. Over time, FTTH consumers on average deliver 46% higher ARPU than DSL consumers[3]. Misleading advertising can undermine the transition from low to high speed since uninformed consumers don't realise the difference and would not be prepared to pay for better service. Such misleading advertising would artificially depress the fibre premium.

If consumers do not understand what they are buying then they cannot send appropriate investment signals to market operators.

The FTTH Council acknowledges on-going efforts to increase transparency of network performance and actual vs advertised speeds though notes also the continuing delays in that timetable. In the interest of consumer protection, the Council believes that published results should make possible a comparison of network technologies and service providers[4].

The FTTH Council would emphasise that the issue of network transparency is not simply one of user rights (though these are important) but it is also an issue regarding the development and take-up of advanced networks and services which will have an impact on the general economy.

---

[2] https://ec.europa.eu/digital-agenda/en/news/quality-broadband-services-eu-samknows-study-internet-speeds

[3] http://www.diffractionanalysis.com/2012/05/09/free-webinar-successful-ftth-service-strategies/

[4] Similar comparisons exist in other parts of the economy such as energy see for example http://www.vreg.be/vergelijk-doe-de-v-test-en-vind-uw-ideale-leverancier

Well informed consumers with choice of suppliers will be enable a more dynamic and responsive market to the benefit of consumers and industry.

Recommendation

The FTTH Council believes that NRAs should monitor and collect accurate network metrics from network operators which are published. This would allow NRAs to judge the correspondence of actual versus advertised broadband speeds in the name of transparency and the assessment of network management. NRAs must have the ability to sanction blatantly misleading advertising.

Creating an appropriate commercial environment

The FTTH Council is concerned that DG Connect trusts markets that exhibit market failure will make appropriate technology choices in the absence of regulatory interventions. Every physical access market in Europe has a dominant entity that faces restrictions in terms of its business choices but not in terms of its technology choices. The Digital Agenda targets as currently constructed allow cheap, market foreclosing technologies to be rapidly deployed by dominant entities. The broadband targets need to be upgraded to something that is both realistic and future proof. A strong preference for fibre-first should be expressed.

Today in Europe there is no difference in regulatory treatment of FTTH over upgraded copper solutions although a future proof FTTH technology is preferable from a socio economic perspective and it might be expected that some preference for a better technology would be put in the regulatory treatment of these technology choices.

FTTH has many desirable properties such as higher bandwidths, symmetrical bandwidth, lower latency and jitter which Policy makers with upgraded targets would wish to see deployed.

This fact is acknowledged in the Cost Reduction Directive which seeks to lower costs for new network deployments. This measure is useful but needs structural funds to help implement the measures.

Other factors such as the length of time to switch copper networks services to fibre based service delivery also needs to be reviewed. While the FTTH Council believes only competitive markets will drive take up (and investment) where sufficient wholesale access is available over fibre, operators should be in a position to switch of their copper networks when they want. Minimum notification periods should be abolished.

When a FTTH network is being deployed a review of the Weighted Average Cost of Capital (WACC) should be conducted with an additional percentage available for FTTH assets above the prevailing copper based WACC in line with recital 18 of the Framework Directive.

Recommendation.

The FTTH Council would like to see a series of business friendly policies set out to promote FTTH over other forms of network deployment. A guaranteed WACC for FTTH investments should be envisaged for prolonged periods which increases depending on the form of industry structure.

Enabling legislation such as the cost reduction legislation should be adequately financed to ensure a proper implementation.