



Creating a brighter future

BoR PC04 (14) 01

Response to the consultation on the 'Draft BEREC Work Programme 2015'

24 October 2014

Introduction

The FTTH Council Europe welcomes the opportunity to comment on the draft BEREC work programme 2015.

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 enhance the quality of life, contribute to a better environment and increase economic competitiveness. The FTTH Council Europe consists of more than 150 member companies. www.ftthcouncil.eu

Comment

The FTTH Council likes the overall structure of the work programme and is glad that this has been kept in line with last year's programme. The focus of the FTTH Council is particularly on Competition and Investment but it is also interested in the other areas.

The FTTH Council notes that there is considerable uncertainty right now concerning 2015 given the change in Commission and the precarious nature of the TSM package as well as the requirement to bring forward a new legislative proposal placed by President Juncker on the relevant incoming Commissioners. Therefore it is sensible to proceed on the basis of what we know but to make provisions for a series of short term interventions if and as appropriate. The flexibility foreseen in the proposal is therefore fully warranted.

Comment on the Legislative Evolution 3.2.3 – More ambition is needed

While with respect to 3.2.3 (a) The FTTH Council agree that it is prudent to anticipate something new depending on how Vice-President Ansip and Commissioner Oettinger react to their letters of appointment and how quickly they move on their legislative mandate.

However, with respect to section 3.2.3 (b) on Review of the Framework, the FTTH Council believes that a broader and deeper review of the issues that need to be addressed in the next Framework Review is required beyond anything conducted in the context of the TSM review. Industry structure (vertical integration), the treatment of technological neutrality, the role of public and private finance, the scope of the framework (should content be included) all need to be considered in detail.

Technological Choice

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) in 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, policy makers washes its hand and says it is none of their business. By not taking any position on technology policy makers allows the cheapest market foreclosing technology choice to emerge.

The FTTH Council does not expect policy makers to specify the actual technology it would like to see but it should, at a minimum, specify the characteristics it would like to see in technology choices (technology parameters, openness, development paths etc.). That policy makers do not specify these characteristics does not make sense in the context of the European regulatory framework.

The FTTH Council Europe hopes and expects the new Commission to set targets which are realistic network usage targets and let the technologies fall where they may. The FTTH Council believes policy makers should express preferences for technological characteristics by allowing preferable returns and conditions to apply to such technologies. Where technological choices must be made there should be a fibre-first principle in operation. A fibre first principle would mean that the starting position should always be that a FTTH network is built but allows that with justification this could be altered in specific instances. The basis for technological neutrality is Recital 18 of the Framework Directive but that Recital explicitly allows specific services to be promoted where justified and the FTTH Council believes such a justification exists for the promotion of FTTH over copper solutions.

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

This needs to be addressed as the priority issue by BEREC in its 2015 work programme.

Industry Structure, Competition and Investment

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 a 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 rerouted. Other industry players are also talking about ‘layering’ whereby the services part of the business would be treated at arm’s 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.

The FTTH Council believes that BEREC should examine themes such as structural separation, co-investment, government guarantees etc. on the policy agenda. Involve activist shareholders to discuss opportunities to release value and promote investment.

Role of State Actors in developing the network economy

Government needs to re-examine the organisation and delivery of public services and how delivery can be organised around the new technology choices FTTH enables. Investment in NGA also needs to form part of a much broader plan (national plans) which needs joined-up thinking across a large number of service areas. Each business area (whether Health, Education, Transport) must realise and highlight the benefits that such networks can deliver in their area so that a holistic approach can be adopted and so that services can be developed and delivered which take advantage of the new infrastructure.

The FTTH Council Europe believes that the use of public funds to support a widespread deployment of FTTH is justified since it will facilitate enormous benefits for the economic and social development of any country that deploys and uses FTTH

networks. Many of the potential uses of FTTH, such as home working and home-based eHealth applications have significant impacts associated with them which can be classified as positive economic externalities. In the case of home-working, this could be relief of traffic congestion allowing other commuters to save time as well as positive environmental impacts.

In the context of positive externalities, greater public intervention can be justified (indeed this is the rationale behind State Aid in the first instance) and indeed, where investments are being systematically blocked and impeded by actors in the private sector, the State may justifiably move into the network ownership mode itself (in part or in whole) so that the externalities can be realised.

The FTTH Council believes that the NRA community, through BEREC, could fulfil this important role and should seek to assume a position of ‘coordinator-in-chief’ for public funding activities.

Comment on Broadband quality of service and net neutrality 3.3.1

The FTTH Council believe that section 3.3.1 looking inter alia at traffic Management should also consider the accuracy of advertising of speeds. The FTTH Council has noted a significant discrepancy between advertised and delivered speeds a phenomenon remarked upon by BEREC and the Commission but it is not something being actively monitored.

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 delivered¹.

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

¹ <https://ec.europa.eu/digital-agenda/en/news/quality-broadband-services-eu-samknows-study-internet-speeds>

consumers on average deliver 46% higher ARPU than DSL consumers². 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 providers³.

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.

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

The FTTH Council believes that BEREC 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.

Other issues and comments by Section

3.1 There is an open question whether market concentration is a big issue since it's mostly concentrated in the Mobile Space and is also subject to DG Comp conditions. It may be that future consolidation in fixed networks should be facilitated and planned for via standardisation of fttH networks. Questions about standardisation and interfaces ought to be considered.

3.1.1 The FTTH Council consider that there should be an assessment of the impact of virtual access products on investment and on physical access products.

3.1.2 The FTTH Council would be happy to participate in a public workshop on Geographic Segmentation and the recommendation on Relevant Markets.

² <http://www.diffractionanalysis.com/2012/05/09/free-webinar-successful-ftth-service-strategies/>

³ 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>

3.1.3 The FTTH Council are happy to participate in this project. It would be good if NRAs could decide on a common role for their members. The FTTH Council Europe has always felt that a role as ‘coordinator in Chief’ would be appropriate and the cost reduction directive really needs someone to fill that role.

3.1.4 Seem to be coming to this late, the lack of a standardised set of all-IP access products is a statement of inaction and the need for co-ordination is clear with NRAs further along the network development path with those who are further behind.

3.1.5 The FTTH Council wonders what the objective of this work stream is and fears that it is a prelude to more regulation of tight oligopolies whereas the FTTH Council believe that less regulation would be appropriate.

In an ex ante context it is not clear that (a) the form of equilibrium in an oligopoly will warrant regulation and (b) even in the event of a less competitive outcome, the case for regulation outperforming (imperfect) competition cannot be assumed. Therefore there are pronounced regulatory risks associated with Regulation based on such a market structure.

The FTTH Council will be pleased to participate in the workstream and the public consultation.

In general though, BEREC are correct to anticipate activity and to make a provision in their work programme.

3.2.5 The FTTH Council would again express concern about the objective of the report on OTT Services. In general, the FTTH Council believe less rather than more regulation ought to apply in the future, particularly in markets where long term barriers to entry are not evident.

If this work is undertaken it should also feed into 3.2.3(a) as might the activity on 3.2.6 and on M2M.

4.3 Stakeholder’s forum. The FTTH Council believes that BEREC has been best in class for taking these initiatives. It’s hard to strike the right balance between a lot of public consultations which are a burden on everyone and ensuring sufficient participation. BEREC’s workshops and stakeholder fora have struck a very good balance and the FTTH Council support a continuation of that balanced consultative process.

4.6 The FTTH Council welcome this work and believe NRAs across the world can learn from each other’s successes and failures.