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Response to the BEREC Public Consultation on the draft BEREC Work Programme 2015.

- Non-Confidential version-

Company Description

Founded in 1997, WIND Telecomunicazioni offers integrated mobile, fixed-line and Internet services that markets under the “WIND” brand name and the “INFOSTRADA” brand name.

A young, innovative and fast-growing company, Wind has always been committed to bringing out the best in the features that most reflect its values: a top quality network, excellent customer service and transparent and affordable pricing.

In 2010 Wind reaches the threshold of 20 million subscribers in mobile telephony and is awarded Best Customer Satisfaction for Mobile Consumer customer between telecommunications companies in Italy.

Since 2011 Wind has been part of the VimpelCom Group, is one of the world’s leading integrated TLC operators, offering voice and data services using a series of mobile, traditional and broadband technology.

In 2011, Wind wins frequencies LTE/4G and launched "Wind Business Factor", an initiative designed to support the creation of start-up and growth of innovative enterprises.

In April 2012 Wind launches "Minuto Vero" for mobile phones: the minutes included in the Wind options and plans "All Inclusive" are all priced on a per second.

In August 2014, Wind confirmed its position as third leading mobile operator in Italy with 21.9 million customers, and the leading alternative operator in Italy for fixed line communications with **2.9 million customers**, of which **2.1 million** using broadband.

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Introduction

Wind welcomes the BEREC public consultation on the Draft Review of the BEREC Work Programme 2015 and appreciate the possibility to give its point of view as leading Italian Alternative Operator since the market liberalization in Italy.

In this respect, this document reflects the structure of the BEREC's document, with suggestions about those elements that are essential for a proper assessment of future regulatory mainstreams as well as those elements in the current public consultation that may have impacts on the market. Therefore, Wind invites BEREC to take into account both elements in order to evaluate their inclusion within the final document.

BEREC Strategic Priority 1: Promoting Competition and Investment

The current market situation, in which telecommunication companies are competing, is characterized by a story of retail price decrease and increase in quality and innovation provided to end users mainly thanks to the paramount role of alternative operators across EU. This fact is more evident if compared with other sectors, in particular for other utilities which gained years after years by increase in prices (see Figure 1).

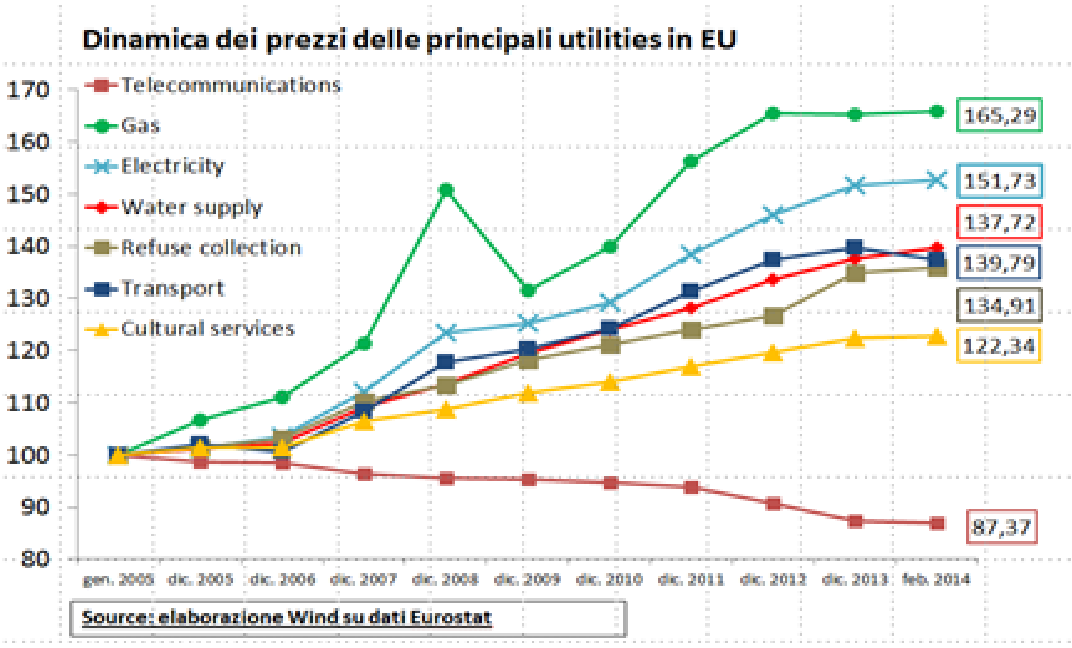

Figure 1. Retail Price trend for EU Utilities and telecommunication services, from 2005 to 2014. Source Wind estimation on Eurostat Data.

To make some few example, on average, prices for the Energy sector grown more than 50%, at the same time Gas grown more than 65%, Water and Transport respectively grown more than 37% and 39%. Bearing in mind these considerations, the role of BEREC, as the European group of National Regulators, remains of great importance especially considering how regulatory decisions may impact on investments, innovation and competition.

Wind is of the opinion that BEREC is facing several regulatory challenges also from the European Institutions, that should be duly take into account to make a proper settlement of the next main work-stream for BEREC, in particular Wind refers to the ongoing Single Market proposal, which from Wind's point of view introduces the risk of a substantial shift in competition as well as the weakening of LLU access obligations. It is important to guarantee a level playing field also towards a reduction of LLU prices and ensure [OMISSIS].

The LLU access obligation remains a key regulatory measure in almost all European countries, especially in those countries where CATV is not present, so were there are no wholesale "alternatives" for access seekers. In fact while in presence of Cable Operators, Incumbents Operators are forced to compete with cable networks at wholesale level, in countries like Italy and Spain the only wholesale access network is copper-based and is owned by the incumbent, therefore the main regulatory measure is LLU and it will remain LLU for a long time period, considering that evidences demonstrate that in the absence of cable operators, incumbents are not stimulated to invest in NGA networks (see Figure 2).

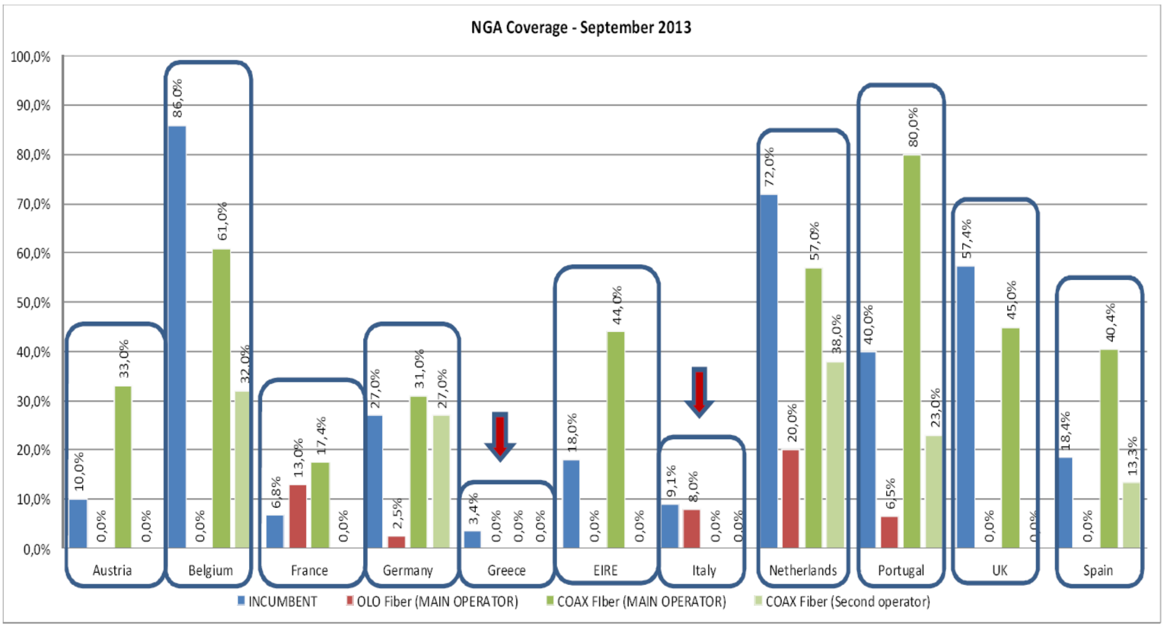

Figure 2. NGA Coverage benchmark - Cullen International data

For what concern the issue related to Virtual and Physical products, Wind believes that considering that the physical and virtual products are far from being fully comparable and substitutable, physical LLU obligations is again an important access mechanism also in case of NGN networks. It is clear from incumbent's intention and investments across EU that FTTC solution (namely fiber *plus* copper) are forcing competitors to consider virtual access products in their development plans but this entails a weaken in competition dynamics if this solutions will not bring to multi-operator vectoring or actual sub-loop availability.

For the reasons above mentioned, Wind very much welcomes the Report on Virtual Access Products and the related public consultation.

The other point of attention is the forthcoming implementation of the new Recommendation of Relevant Market Review, in this light Wind very much appreciates the BEREC Workshop on the implementation of the Recommendation on Relevant Markets and Common Position on Geographical Segmentation, stressing that this would be fully open to contributions by all stakeholders. In fact one of main regulatory issue is both the removal of market 1 and 2 and the new perimeters of wholesale access markets.

For what concern the first point, Wind underlines that if Market 1 would be removed by an NRA this should not lead in any case to a loss of the availability of WLR wholesale input, which is still a strong tool for competition to reach customers in those areas where unbundling is not available. [OMISSIS].

Therefore Wind shares BEREC's point of view on wholesale line rental and call origination, in particular on the fact that they will continue to be important drivers of competition in downstream retail markets in the short to medium term in the majority of Member States and it is premature to remove Markets 1 and 2 from the list of markets susceptible to ex ante regulation. Considering that BEREC asked to the European Commission to mirror this acknowledgment with respect to Market 1 and includes a transitional period, Wind remarks the need to maintain such a view in particular for what concern the transitional period, which should include the ongoing Market Analysis as well as the next round of market analysis as well underlined by the Commission in its explanatory note accompanying the Recommendation on Relevant Markets 2014/710/EU:

- *Each of the markets in the current edition of the Recommendation corresponds to a market present in the 2007 edition*[1]
- *The transition between editions of the Recommendation raises issues for all stakeholders. The underlying principle is that remedies that have been imposed should stay in place until a new market analysis is undertaken. Allowing a regulatory measure or remedy to run its course, without risk of it being reversed mid-term, is an important element of regulatory commitment which reinforces the predictability of regulatory intervention*[2]
- *if an NRA notifies to the Commission a draft decision that reflects the market definition(s) set out in this Recommendation, having already conducted a public consultation on the basis of the market definition(s) set out in the 2007*

[1] Explanatory note, Chapter 5, TRANSITION TO THE NEW RECOMMENDATION page 53
[2] Explanatory note, Chapter 5, TRANSITION TO THE NEW RECOMMENDATION page 52

Recommendation, the mere adoption of this Recommendation should not per se require that NRA to conduct a new public consultation[3]

In markets characterized by bottleneck features such as the fixed access markets, maintaining these markets in the list, and the effective availability of wholesale offers is an evident prerequisite for the existence of competition *per se*, and for a level playing field. It is widely recognized that, before the launch of a new offer, any SMP operator's retail offer should be verified in terms of its replicability by means of the current set of wholesale offers, [OMISSIS].

In light of the three criteria test it cannot be ignored that since the beginning of liberalization and up to date, ex-post regulation doesn't address the competition problems caused by the anticompetitive behaviors of incumbent operators which still persist. [OMISSIS].

Indeed, to briefly summarize these evidences, it is clear that incumbents still have doubtless the power and the tools to distort competition, firstly on price, with non-replicable offers or through a squeeze of competitor's margins, secondly on quality, with the possibility to technically boycott the alternative operators. [OMISSIS].

For what concern the transition to all-IP networks, Wind underlines that it does not imply any need to a switch-off of the copper networks. It is a matter of fact that there is no correlation between the development and use of an IP-technology and the switch-off of copper network and at the same time there is no doubt that in some areas copper will continue to be key for competition since its use will last for a very long time frame, also considering that the existing lines are still able to deliver traffic at a suitable bit rate for market needs. Having said that, Wind asks BEREC to open to public consultation its Report on migration to "all-IP networks" and asks to assure that all stakeholders will be able to participate to BEREC work streams and workshops on "all-IP networks".

BEREC Strategic Priority 2: Promoting the Internal Market

Wind welcomes BEREC activities in monitoring the market evolution of M2M and its role in evaluating, as Wind whish for, the needs for a light regulatory approach in order to assure a level playing field for all market players creating a suitable level of competition granting long term customers safeguards both on economics and privacy issues.

Wind very much appreciates the efforts made by BEREC on mapping, monitoring and evaluating the overall telecommunication sector, in particular considering that this include Over the Top Players. Therefore Wind welcomes the BEREC Report on OTT

[3] **Explanatory note, Chapter 5, TRANSITION TO THE NEW RECOMMENDATION page 53**

services and its related public consultation and asks for its anticipation at first quarter of 2015.

It is a matter of fact that today Content and Application Providers are broadly exempt from regulation and even from regulatory tools, leaving almost of the costs and risks upon telecommunications network operators, gaining revenues from end users. The pace at which the current distorted ecosystem is moving is fast, Application and Content providers reached huge dimensions in several cases and their bandwidth-hungry products are exploiting such a regulatory gap as well as investments made by network operators, therefore Wind believes that the assessment by BEREC is welcome and necessary as soon as possible.

Wind also welcomes the BEREC's leading advising activity regarding new roaming regulation, as alternative MNO, Wind always participated to all public consultation issued in this field and encouraging readers to refer to Wind's contribution on each consultation, focused on different aspects of roaming, hereafter are listed some of the most relevant points expressed within the last contribution on Fair Use Policies.

Wind believes that the Fair Use Policies (FUP) must be introduced jointly with eventual RLAH introduction in order to avoid opportunistic behavior of customers and MVNO.FUP introduction shall be gradual, at least over three years, and should foresee:

- A usage limit for RLAH based on a maximum number of day per year, in order to avoid permanent roaming ;
- A minimum set of daily minutes for voice communications received and originated, number of SMS sent and an amount of MB of data, therefore allowing customers to use tariffs like at home;
- Any other service provided should be based on the Euro tariff,
- The opportunity for Mobile Operators to provide domestic offers without roaming services, in order to propose commercial offers tailored for those customers not interested at all on roaming services.
- The opportunity for customers to renounce to RLAH and Euro tariff and replace them for commercial offers more convenient for their specific needs.

As a matter of facts traffic collection prices for roaming services are likely higher than collection prices for domestic services due to seasonal and geographical location of roamers customers compared with domestic customers, which on the contrary are almost stable allowing operators to have economies of scale.

As reported in the WIND's contribution to the "Questionnaire on roaming market and regulation in the EEA area" of June 2014, operators in country with relevant touristic activity have to provide additional capacity in summer time with extra costs compared with operator in less visited countries. In this context Wind remarks the importance of the MTR level across EU, far from being harmonized with a maximum level at 3,455 cent/min[4], indeed very far from the lower's ones. It is worth noting that in several European countries[5] (like in Italy) the level of MTR reached very low values, therefore Wind underlines that further reduction are not sustainable, so Wind invites BEREC to encourage the possibility to differentiate the level of MTR rate applicable to call coming from extra EU countries that can benefit lower MTRs coming from EU regulation

It is a matter of fact that without these necessary considerations and subsequent actions by regulators, current measures such as for example the Telecom Single Market, especially if reflects the Parliament proposal, would affect single member states asymmetrically. Operators of countries typically "roamers-exporter" (i.e., Germany) would experience an impact of reduction of retail price jointly with a volume increase of calls originated and terminated on their customer base while travelling in EU.

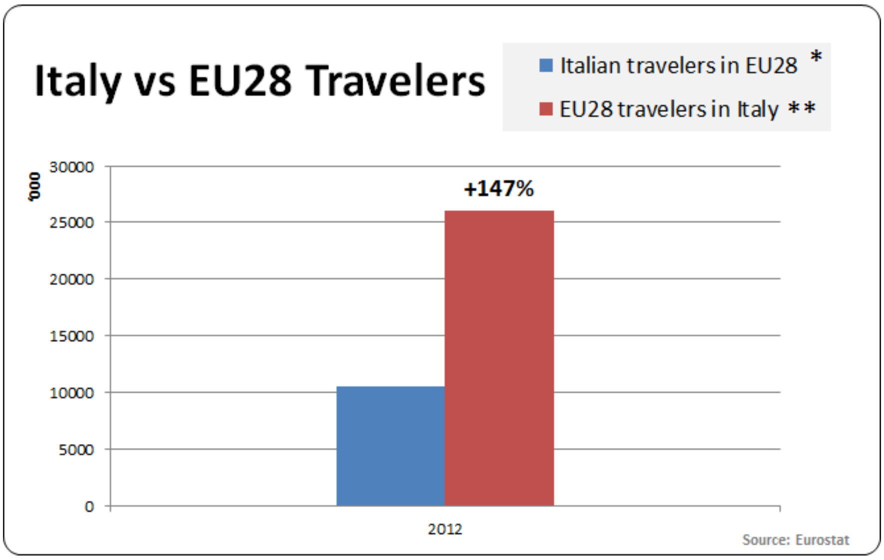

Figure 3: EU28 travelers in Italy versus Italian travelers in EU 28 during 2012[6]

Data available from Eurostat (see Figure 3) shows that there are more EU travelers from the 28 MSs visiting Italy than Italian travelers visiting all other EU countries. Percentage are referred to the Italian travelers in EU.

Some type of data referred to the whole 28 member states, become more impressive if calculated within the so called BIG 5 perimeter: Italy versus UK, Germany, France, Spain (see Figure 4).

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4 BoR (14) 55 Termination Rates Benchmark Snapshot - pag. 4 - Average MTR per country – January 2014

5 BoR (14) 55 Termination Rates Benchmark Snapshot - pag. 4 - Average MTR per country – January 2014

6 * Data is not available for Luxemburg, Estonia, Cyprus, Latvia, Lithuania, Finland and Slovak. Data for Sweden, Hungary, Slovenia, Romania, Portugal, Poland, Malta and Ireland are referred to 2011. ** Data is not available for Poland and Estonia.

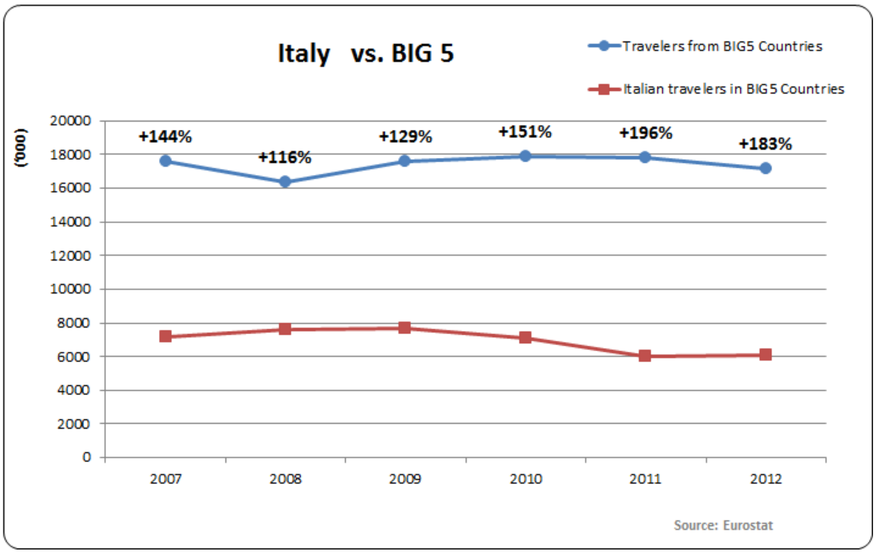

Figure 4: Travelers form UK, Germany, France, Spain visiting Italy versus Italian travelers visiting the same countries

Comparison with Germany becomes even more impressive, showing how steady is such habit (see Figure 5).

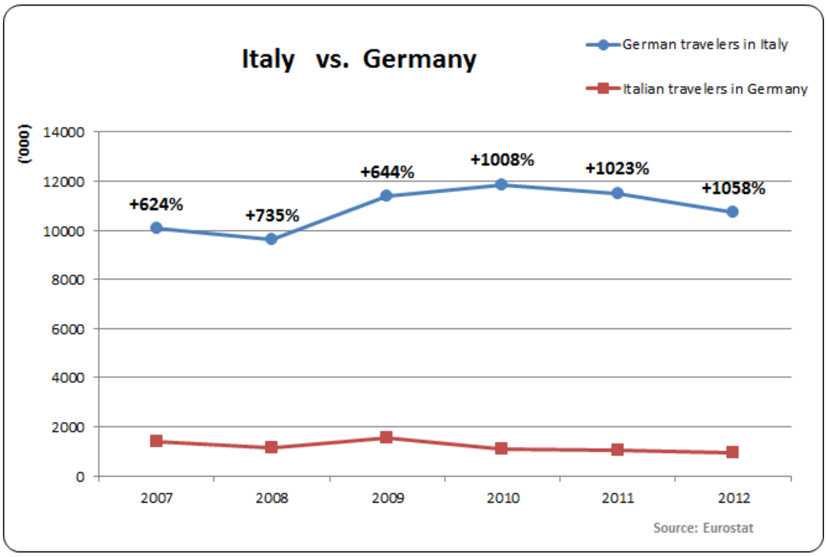

Figure 5: Travelers form Germany visiting Italy versus Italian travelers visiting Germany

The pictures above show how impacts on operators are clearly not uniform across Europe, to the detriment of most visited countries like Italy or Spain, and such discrimination should be carefully evaluated in order to avoid competitive distortions.

Such reduction can be roughly estimated in around 40 million[7] euro in terms of VAT loss of incomes for a country like Italy with 60 million of people; assuming an European

[7] Internal estimation

population around 500 million people[8], 8,3x times Italian population, the EU VAT loss is around 332 million euros, probably to be recovered through other forms of taxation.

BEREC Strategic Priority 3: Empowering and Protecting End-Users

Wind welcomes BEREC's efforts on Net Neutrality field, and asks to open to public consultation the report on Ecosystem dynamics and demand side forces in Net Neutrality developments from an end-user perspective, considering that talking about ecosystems implies to take into account also the operators' view, allowing BEREC to have a more comprehensive approach on the Ecosystem dynamics (namely including the offer side forces).

Wind calls upon BEREC on the real needs to run a Traffic Management Investigation considering that only on specific Member States were highlighted problems, as correctly stated by BEREC itself with the conclusion of the previous round of investigation.

Moreover, Wind asks BEREC to consider a study on best practices of calculating the net cost of Universal Service. As it is laid out in the Annex IV (Section A) of Universal Service Directive (2002/22/EC) the net cost estimation should take into account the indirect benefits enjoyed by the operator providing universal service, among which is noticeable the brand loyalty, in particular:

"*Taking into account intangible benefits means that an estimate in monetary terms, of the indirect benefits that an undertaking derives by virtue of its position as provider of universal service, should be deducted from the direct net cost of universal service obligations in order to determine the overall cost burden*."

More recently the European Commission[9] remarked the importance of indirect benefits within the calculation of the net cost of the Universal Service:

"With regard to the process, the Commission recalls the need to take into account all tangible and intangible benefits when determining the net cost, and to maintain a high level of transparency for all parties involved in the compensation mechanism."

Wind suggests BEREC to plan and include a study in the work Programme on the correct methodology to calculate indirect benefits and unfair burden criteria, including best practice, considering that:

- significant differences exist in practices to calculate the net costs of universal service in different Member States;
- in several MSs universal service net cost has been considered null or not an unfair burden;

[8] ONU estimation al 01/07/2009
[9] 15th Progress Report on the Single European Electronic Communications Market – 2009 (http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/15th/index_en.htm).

- in several Member States number of public payphones have been reduced or the related obligation has been removed from universal service obligation;

Quality of BEREC's output and operational efficiency

Wind urges BEREC to focus on developing a report on best practices on the performance of the *ex ante* "Economic Replicability Test", which is one of the most valuable key feature for assuring competition.

Generally speaking It is of paramount importance that alternative operators will have the possibility to economically replicate all downstream offers of the SMP operator, starting from regulated wholesale inputs available by the incumbent, avoiding likely abusing price flexibility by the incumbent itself. For this reason Wind is of the opinion that 'flagship products' remains an open issue of gaming by incumbents and it is important to stimulate NRAs to impose the "Economic Replicability Test" even in presence of regulated wholesale access prices on NGA wholesale inputs. [OMISSIS].