



Regulatory, Antitrust, Privacy and Wholesale Affairs  
Regulatory and Antitrust Affairs  
Via C.G. Viola, 48-00148 Roma  
Tel. +39 06 83111  
Fax +39 06 83113983

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**Response to the BEREC Public Consultation on the BEREC  
Guidance on the regulatory accounting approach to the  
economic replicability test (i.e. ex-ante/sector specific  
margin squeeze tests)**

**- 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.

### Contact person:

For any question related to this document, please contact

Diego Padovan at [diego.padovan@wind.it](mailto:diego.padovan@wind.it)



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## Introduction

Wind welcomes the BEREC public consultation on the BEREC Guidance on the regulatory accounting approach to the economic replicability test (i.e. ex-ante/sector specific margin squeeze tests) and appreciates the possibility to give its point of view as leading Italian Alternative Operator since the market liberalization in Italy.

In this respect, Wind's document reflects the structure of the BEREC's document, with suggestions about those elements that are essential for a proper assessment of mid-term 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.

## General Considerations

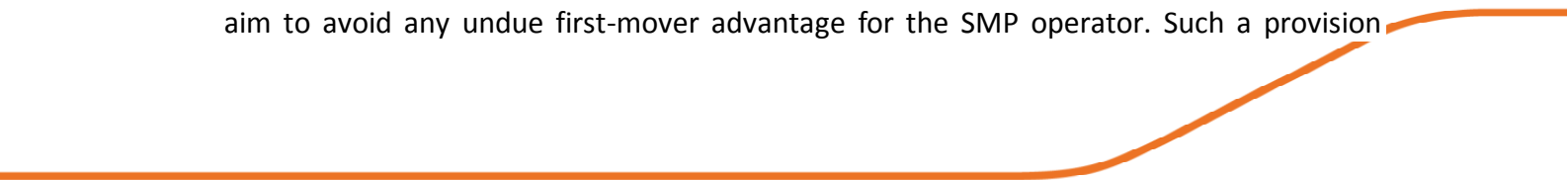
Wind is of the opinion that cost-orientation of wholesale access charges (ensuring a fair return on investments [OMISSIS]) to fixed telecoms networks is the cornerstone of the current telecoms regulatory framework in order to prevent excessive prices and margin squeeze by the dominant/monopolist fixed network owners.

It should be considered that the costs of copper access networks objectively differ across Europe. The current variations in the copper LLU charges are mostly driven by objective differences, for example in the cost of labor and the length of the copper lines (the copper local loop) and from Wind's point of view a level playing field today can be fostered implementing a reduction of LLU prices, ensuring also that all operators are able to compete on quality [OMISSIS] delivered to end-users also through [OMISSIS].

Generally speaking, the availability of a Wholesale Offer is an evident prerequisite for a level playing field in a market characterized by bottleneck features like the access one, at the same time it is clear that in presence of cost orientation, even on wholesale services the price test must be guaranteed so as to avoid that incumbent could act in a anti-competitive way, namely proposing retail products "under costs", that are not replicable by Alternative operators.

Timing is the subsequent issue, considering that if such opportunistic behavior by incumbents are not quickly identified by regulators through a proper test, that encompasses *all* wholesale offers, this means a preemption of the market due to the actual impossibility by ex-post measures to intervene as quick as the market dynamics impose.

Wind is of the opinion that a proper margin squeeze test should be the pre-requisite to allow incumbents to launch each single offer, namely any SMP's retail offer must be verified under a replicability test by means of the current set of wholesale offers, with the aim to avoid any undue first-mover advantage for the SMP operator. Such a provision



implies that new retail offers by the dominant access provider are notified to the Regulatory Authority well in advance to their launch, jointly with all the information needed for a proper evaluation<sup>1</sup> to allow the NRA to perform a detailed replicability test.

From Wind's point of view, the replicability tests should be performed with access seekers collaboration, in order to reduce, as much as possible, the NRA information asymmetry regarding commercial and technical aspects and an appropriate set of actions should be foreseen if replicability test fails, like a reduction of related wholesales offers.

Wind believes that margin squeeze test should be applied always, without any restrictions. The most expensive architecture should be considered, in order to assess replicability even in the worst case for an Altnet which is trying to be competitive in *all* areas of the national country, not only in those areas where technical conditions are less expensive. In this light and in order to properly evaluate replicability, it is necessary that downstream costs are estimated on the basis of alternative operators' costs rather than SMP operators' ones, because for example the latter has different and higher economy of scale than the Altnets.

To this end, Wind believes that *all* relevant downstream costs should be estimated on the basis of the REO approach, as a matter of fact the REO test is considered the most appropriate because it is the only approach that guarantees the recovery of the costs incurred by an efficient alternative operator.

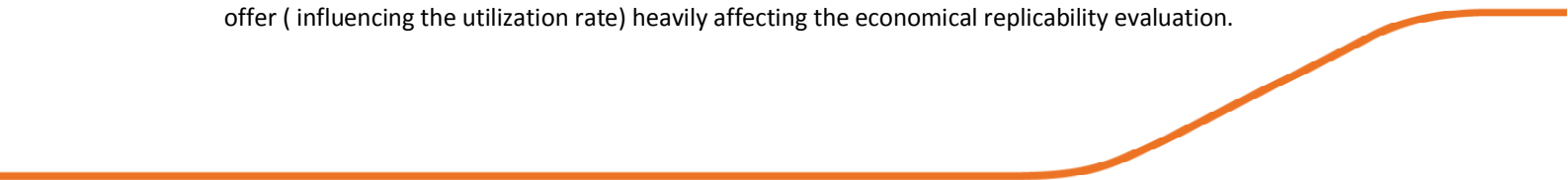
Wind firmly believes that margin squeeze test must be applied to *all* kind of retail offers, not only to "flagship offers" proposed by incumbents as a way to by-pass regulation, starting from the fact that the definition of flagship products is too vague.

In this view, it is important to base tests on a Period by Period analysis , which allows NRA to considered properly all the offers, separately, otherwise incumbent has the possibility to have its whole offer considered replicable, but which include some of its underlying offers that are actually not replicable, with the consequence to pass the test but foreclose Altnets from the market. An example is when incumbent launches one "big offer" which is fully replicable in conjunction with many small - but very captive for a consumer point of view - offers which are not replicable on a standalone basis

Wind firmly remarks that each test should be referred both on copper-based offers and fiber-based offers and invites BEREC to consider that when assessing effectiveness of EOI, NRA shall evaluate also the level of contestation and fines issued to NRA and NCA [OMISSIS]regarding the implementation of EoI (Equality of Input), as well as inefficiency related to EoO (Equality of Output) approaches.

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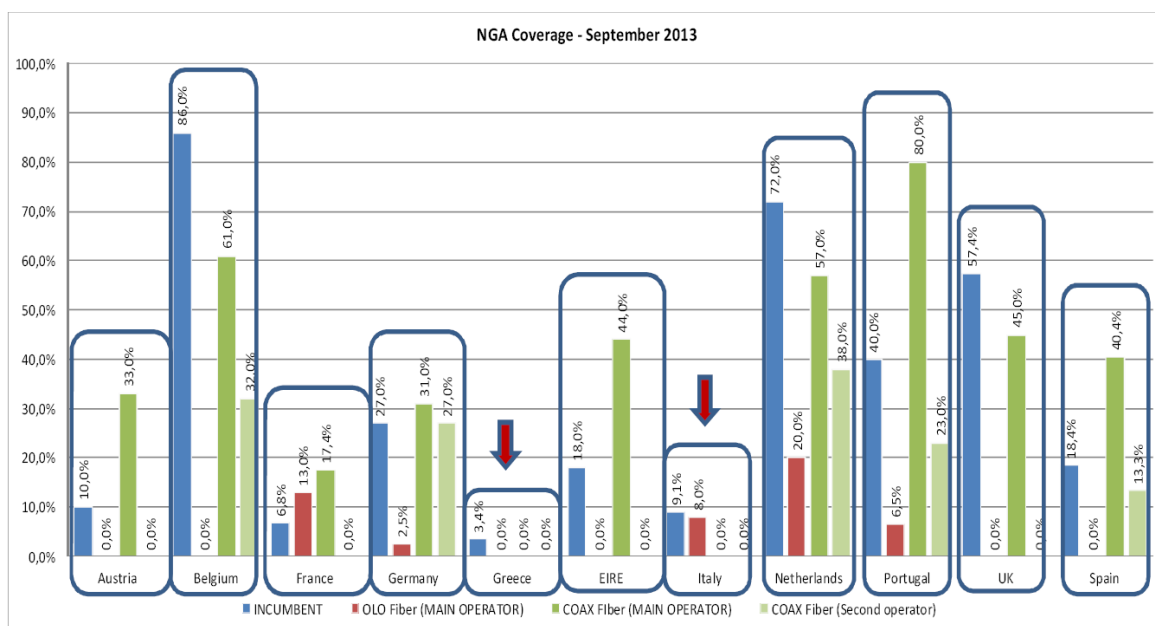
<sup>1</sup> The typical commercial information are not enough to allow NRA to evaluate retail offer replicability. Typically are needed also technical information often related to hypothesis like the adoption rate of the offer ( influencing the utilization rate) heavily affecting the economical replicability evaluation.



## Specific Comments

Wind points out to BEREC that, even if the Recommendation on costing and non-discrimination is referred in particular to NGA products, the comments proposed in this document are applicable and remains valid also to copper-based products. In particular, countries where copper network is the only viable access network for all Altnets, like Italy, and fiber is evolving toward FTTC solutions, it is not possible to make any distinction, therefore Wind’s considerations refer both to copper and NGA access networks.

In order to understand this point, it is demonstrable that the presence of Cable Operators on incumbents “willingness” to invest in NGAN in EU is a crucial point and *vice-versa*, their absence underlines the reluctance by incumbents in Italy and Greece to leave their advantages on copper networks. Moreover Wind highlights to BEREC that the presence of a CATV networks fostered the deployment of fiber networks by incumbents operators. In fact, analyzing the Cullen international’s report on NGA coverage across EU (see Figure 1) it is possible to conclude that Italy and Greece (the only countries where, historically, incumbents deployed their own copper networks and CATV networks never entered into the market) have been left behind in terms both of coverage and competition of NGAN due to the absence of CATV Operators.



**Figure 1. NGA Coverage benchmark - Cullen International data**

These considerations demonstrate how important is for Italy and Greece in particular an adequate ex-ante test which encompasses both copper and fiber networks, in fact in other countries Altnets can ask access to different wholesale networks, they indeed have an alternative, while in Italy there is no alternative solutions but copper owned by Telecom Italia.

More specifically to the text proposed by BEREC in this consultation , Wind wants to highlight that disagrees on the statement at pag.30 where it reports that:

*The primary objective of the ex-ante economic replicability test is to safeguard competition in cases where no other cost-oriented price regulation pursuant to Art. 13 Directive 2002/19/EC is imposed. Moreover, the ERT is used to ensure non-discrimination and transparency, preventing exclusion from the market.*

Wind underlines that ERT and cost orientation are NOT alternatives, ERT is a timely effective refining tool allowing a constant verification if cost oriented regulated prices still provide an effective and efficient competitive tool during the lifetime of their cost oriented definition.

As a matter of fact, cost orientation is often defined on the basis of relatively old data unaltered for a relatively long time periods ( i.e. one year) while market and related offers can rapidly change over time even for reasons not related to the industrial structure. Moreover cost orientation cannot grant that for any technical arrangements coherent pricing comes out. As a simple example please refer to bitstream reference offers where bandwidth is priced quantized on large steps. Only the ERT, jointly with technical replicability tests, can grant that for particular technical arrangements SMP offer is replicable.

Wind is of the opinion that the ERT and technical test shall be defined by NRA in order to improve effectiveness of cost orientation.

Regarding the level of efficiency of the operator, WIND believes on the opportunity to adopt *REO or at least adjusted EEO to promote Altnet penetration in the market, favoring acquisition of proper economies of scale and recovery of investment ( useful to SMP operator too)*. The REO approach is based on Altnets costs therefore allows NRA to recognize if there is a proportionate and adequate margin for Alternative Operator to compete, while the EEO approach consider incumbent's costs which doesn't allow a proper evaluation in terms of economy of scale and scope.

Regarding the Regulated wholesale costs, typically the test for economic replicability is performed using costs for a wholesale service evaluated individually or as a mix of the relevant wholesale services. When a mix of relevant wholesale services is used, such a mix shall be defined not only on the basis of the adoption of such wholesale inputs as used by the Altents, but also considering procompetitive measures aimed to promote the NGA market entrance of a large number of Altnet . In this way low infrastructured wholesale solutions shall be over weighted in the mix of wholesale services adopted in order to grant margins even for late entrant relying to bitstream-like solutions, while acquiring enough customer base to makes effectively a migration to a more infrastructured solutions.

For what concern the non-regulated input costs (including own network costs), it can be considered that some NRAs adopted a BULRIC methodology, however Wind believes that

the most valuable methodology is the FAC/FDC (Fully allocated/distributed Cost), considering that it takes into account efficiencies and economy of scale of different alternative operators. Moreover such a methodology allows also to include the s.c. *common costs* without requiring specific estimation that could lead to errors, on the contrary due to the adoption of Altnets' investments it implies a more actual estimation of the costs, which reflect the optimization and aims to efficiency on the choice of network elements by Altnets (i.e., less costly than incumbent's ones).

Regarding the time period, WIND agrees that the relevant period for the ex-ante economic replicability test should be set in accordance with the estimated average customer lifetime. Suitable verification steps should be performed during offers lifetime in order to verify if lifetime expectation, and in general any hypothesis performed *ex ante*, are confirmed during offer lifetime. BEREC assume that for NGA a useful indicator might be the average customer lifetime of copper broad-band products, while Wind believes that such indicator should be downgraded (namely reduced) in order to address the higher volatility of a new market.

Having said that, a time frame for *the average customer lifetimes two years to five years* is too long, in fact Wind believes that both for FDC methodology and a Period-by-period approach it should be shorten, considering that the frequency of incumbents' launch of new offers/promotion on retail market is lower than 2 years, as well as the average user lifetime (e.g., in Italy).


For what concern relevant retail products, Wind shares BEREC's view that if bundled products are relevant in the market, they need to be included in the analysis and in any case all bundles containing regulated services are subject to the test and on that the NRAs would determine the way these components are taken into account according to national circumstances.

Margin squeeze test must be applied to *all* kind of retail offers, not only to "flagship ones" which are actually proposed by incumbents to by-pass regulation, considering that "flagship product" is a too vague definition (as indicated in the par. 2.4 of EU Costing and Non Discrimination Recommendation). Again, ERT should be always applied, not only *in cases where wholesale price regulation should not be imposed*.

For what concern the Promotions and temporary discounts, Wind assumes that promotions and temporary discounts shall be considered *previously* to the commercial launch of the offer and must be explicitly allowed with proper conditions, like:

- Be limited in time and number of activation
- Be limited only to certain sales channels that hypothetically allow for a certain cost reduction

A test conducted after the launch on the market is not sufficient and inefficient, allowing *de facto* the promotions and temporary discounts can simply be a tool to by-pass ex ante replicability tests.





Regarding the Procedural and transparency issues, Wind invites BEREC to specify that the replicability test should have the following feature in order to be effective:

- NRA shall impose to SMP the obligation to communicate each offer 30 days before its commercial launch jointly with *all* the information (even hypothetical) to allow NRA to duly verify if the new offer is included in the flagship product or not and to properly conduct the ERT
- SMP Offer can be commercialized *only* if approved by NRA
- flagship product must be deeply analyzed in order to avoid by-pass phenomenon of ex ante replicability test;
- economic test must be performed jointly with a technical replicability test
- replicability should be verified also at later stage, for example at least after 6 months, in order to verify if ex ante test and hypothesis are confirmed.

At the same time, on costs Wind supports one of the view reported in the benchmark by BEREC's, in particular for each type of wholesale input (with potential geographic differentiation). In this case, the test is carried out considering only one option for each needed wholesale service.

On commercial costs, for those identified as "*retail costs*", Wind believes that they should be calculated as percentage of the network costs, otherwise if they are considered as single values to be added to network costs, they should also entail a mark-up, which should be differentiated on the basis of the channel of sale adopted.

Wind supports also the assumption in par.6.2 in which it is specified that NRAs efforts should be concentrated on ex-ante tests rather than ex-post evaluations, which are of competence on NCA.

Finally Wind stresses that the ex-ante replicability test should be included among the tools available for each NRA considering its role in safeguarding short and medium term competition dynamics of the market , irrespective that wholesale prices are cost oriented or not. Such a tool shall be assumed as mandatory especially when access market and its competitive conditions depend on one SMP access network.