

Issues for BEREC to consider when reviewing ERG Common Positions on Remedies

Wholesale Unbundled Access ERG(06)70 Rev1
Wholesale Broadband Access ERG(06)69 Rev1
Wholesale Leased Lines ERG(07)54

Horizontal issues (1) – technology development

1. Updates needed to address *technology* development

- **Ethernet** is becoming the transmission platform for all fixed services (including self-supplied wholesale inputs by incumbents)
 - BEREC CP needs to ensure that **Ethernet WBA and wholesale Ethernet LL** are effectively available throughout the EU
 - Adoption of Ethernet is an **opportunity** for EU-wide convergence of the manner in which wholesale offers are structured and delivered in the Member States (e.g. MEF9 and MEF14 standardise Ethernet interworking across network boundaries and could be endorsed by BEREC)

- **Next Generation Access** (including xDSL and FttX) is developing, and raises **new access and migration issues**
 - ERG(06)70Rev1 does not address unbundling of fibre loop at MPoP, fibre terminating access, virtual unbundling, migration from legacy to NGA, etc. → clearly needs **updating**

Horizontal issues (2) – market development

2. Updates needed to address *market* development

- **Multi-Play bundles** (including IPTV) are becoming the retail service norm in consumer markets
 - ERG(06)69Rev1 does not even mention *bundles*, *IPTV* or *NGA*
 - clearly needs **updating**

- BEREC should develop a **minimum-set of parameters and wholesale pricing principles for Ethernet multicast WBA** to support mass market services, as this is essential to enable consumers to benefit from competition in non-unbundled areas (non-unbundled areas may increase with move to NGA)

- BEREC should revise the ERG's CPs' discussion of **margin-squeeze**, to take full account of multi-play bundles, promotions/discounts (cf. also EC NGA Recommendation; REO preferred)

Horizontal issues (3) – differentiation and replication

3. Updates needed to ensure *both* differentiation and replication

- In order to achieve **dynamic markets** in which the evolving demand expressed by customers is effectively met, alternative operators must be able *both* to:
 - **differentiate** their services from those of the wholesale input provider, i.e. be able to **define their own product specifications and pricing**, i.e. be able to introduce technical and commercial innovations, and
 - **replicate** services provided by the wholesale input provider, i.e. at least be able to **match the dominant operator on product without the risk of being margin-squeezed** by the vertically integrated dominant operator

- ECTA asks BEREC to explicitly address both differentiation and replication in the revised CPs

Horizontal issues (4) – non-discrimination and KPIs

4. Updates needed on non-discrimination obligation, and its policing

- The 2006/7 ERG CPs represented progress at the time on the interpretation of the obligation of non-discrimination, but included prudent wording such as “NRAs should consider...”, “may therefore need...” giving NRAs wide discretion (incl. discretion NOT to act...)
 - The EC NGA Recommendation (Annex II) introduced strict equivalence (for civil infra access) and several NRAs have detailed non-discrimination, and a very small number have mandated equivalence of input
 - The Commission is working on further guidance on the interpretation of the concept of non-discrimination
- BEREC should now issue a CP recommending to NRAs that they should adopt **Equivalence of Input as the minimum standard** for non-discrimination, subject only to duly justified explicit exceptions
- BEREC should commit to **collecting and publishing KPIs** demonstrating whether or not there remains discrimination in practice for WLA, WBA, LL

Business-grade wholesale inputs

Focus needed on fit-for-purpose business-grade WBA

- ERG 06(69)Rev1 makes a single reference: *“Access should be sufficient to allow competitive provision of bitstream services in both the business and residential market segments”*; ERG 06(70)Rev1 make no reference
- A systematic rewrite is needed (of ERG 06(69)Rev1) to ensure that:
 - each section of the CP provides for an explicitly differentiated approach to both mass-market and business-grade WBA
 - Business-grade SLA parameters are included for WBA
 - KPIs specific to business-grade wholesale service delivery are required
- For ERG 06(70)Rev1, SLAs and KPIs must enable the verification of non-discrimination specifically in the delivery of services to businesses (access delivery, fault clearance, migration, associated facilities, etc.)