

## **Telefónica's comments on ERG consultation**

### **“wholesale business connectivity services”**

#### **(ERG (09) 51)**

##### **Introduction**

Telefónica welcomes the opportunity to participate in this ERG consultation about business connectivity services. Telefónica thinks that it is a complex issue that has to be approached with care. As the ERG points out, any adjustments to the regulatory framework in this field are likely to touch the more complex and sophisticated measures, which, by their nature, are less easy to specify perfectly or to assess.

Telefónica agrees with this statement of the ERG, and would like to point out that the needs of the business segment, apart from being complex, tend to be country specific, and many times case specific. So it will certainly be difficult to lay down a greatly detailed framework for wholesale services that has to be applied across the EU. We would advise the ERG and NRAs to base their regulatory decisions on a sound assessment of the costs and benefits that introducing further detailed and sophisticated regulation may imply.

##### **General comments - the rationale of the exercise.**

There are certain issues in the ERG document that show a lack of conclusion about the need to deepen the regulatory conditions for business connectivity services, among them we can quote:

- “The exercise has not proved or disproved a lack of effective competition for supply of services to multi-site large business.”
- “A considerable degree of competition is evident...”
- “..The preliminary work does not lead to firm conclusions as to the impact of these features on market definition.”
- “The lack of wholesale remedies harmonisation is not a problem in itself, as there are often different ways of achieving the same result.”
- “There have been not many complaints ...”

Given the complexities involved and the extra work that the investigation of a complex and specific market would mean, Telefónica would suggest that the ERG and NRAs try to look first at some parameters that can shed some light on the extent of competition and quality of the services for business customers.

There are some parameters that are readily available in different (national and European) studies<sup>1</sup> and that can provide preliminary but valuable information about the fulfilment of users needs, such as:

- BB penetration in the business segment (companies of different sizes)
- LAN penetration in the business segment (Idem)
- Percentage of companies that have a web page
- ...

A look at these parameters, probably in the context of a benchmark study would provide relevant information about the development of ICT services in companies, and where some problem may arise. The problems may arise in the offer of communications services or in the demand side.

Another important point - that should be looked at jointly - is to take into account that electronic communications and its cost have a relative weight in the package of ICT solutions that companies buy<sup>2</sup>. Electronic communications services tend to be a minor part of the package of ICT services. Today, behavior of business users is dependant more on IT than on price of connectivity and therefore, while analyzing the market, the importance of IT solutions has to be taken into account.

Many times the purchasing decision of an ICT solution will be due to the improvements to the production process, the additional revenues it may facilitate and the cost of the IT solution. The price of connectivity does not play an excessive role in the decision making process by companies. Some data about the relative weight of electronic communications and IT costs for companies are normally available at national level, and this can provide a useful insight for deciding the course of the exercise.

In fact, players that compete for the final business users are usually players of the wider ICT market, that provide integrated solutions and not only players of the pure connectivity market. Since many years ago, players compete with integrated solutions, that include both electronic communications and IT solutions. And many times IT companies are the strongest competitors in this field.

## **The ERG proposed plans for future work**

The ERG proposes four work streams for future work:

1. Common principles for market definition or remedies differentiation
2. Remedies to enforce non-discrimination

---

<sup>1</sup> For example, the Europe's digital competitiveness report

<sup>2</sup> As reflected on page 6 of the ERG consultation document

3. Pay attention to the needs of business users in the monitoring exercises
4. Consider special obligation for new wholesale services (not self-supplied by the SMP player)

Telefónica considers that the amount of work proposed is too wide, and given the complexities involved, would propose to have a simple and pragmatic approach to handle the issue:

**The first step** to be looked at would be to have a better understanding by NRAs at national level of the degree of ICT penetration and use in the business segment, and to assess to what extent electronic communications is a significant part of the cost of the ICT solutions that companies buy. This has been explained above, and could help to have a simple and first check point for the need to undertake further work.

**The second step** would be to have a minimum set of key services or features available for the provision of wholesale services to business users. For example, it may appear reasonable –subject to the conditions below– that in a majority of national situations the SMP player provides:

- Some Bitstream services for business customers
- Ethernet interface leased lines
- A minimum set of KPIs that is made available to the NRA and that could serve to check compliance with non-discrimination conditions.

These features could probably meet the core of the requirements for wholesale service provision and the issues identified by the ERG document. A general periodic survey of the availability of these features could be useful. The exercise can be undertaken in the context of the preparation of the monitoring exercises of remedies in the broadband and leased line markets (the third work stream proposed by the ERG).

Availability of these features would nevertheless have to be made bearing in mind:

*Analysis at national level is required*

- About the specific national situation and the demands of the market. As has been pointed out above, the users' needs are very national and case specific, and what may be reasonable in one Member State may not be reasonable in another.

*Cost benefit analysis*

- in the context of deciding what specific features have to be available, it is necessary to make a cost/benefit analysis in order to assess what could be proportionate in a given national situation. The moment for deciding would be in the context of the market analysis of the relevant market.

*Focus should be on end-users, investment and innovation*

- In the geographic areas where LLU or alternative infrastructures are available (for example, with 2 or 3 unbundlers and/or cable), there is very little room for obligations of sophisticated wholesale services. The focus should be on fulfilment of final users' needs and promotion of investment and innovation. Players that invest in infrastructure and/or avail of unbundling can provide (or self-provide) high quality bitstream services or SHDSL solutions (with full ULL). And this provides them with more flexibility than buying a regulated wholesale service.

The discussion about the lack of a merchant market on page 11 of the consultation document should be complemented by an analysis of the satisfaction of final users' needs and the study of the role of LLU and cable for the provision of services to business customers. Otherwise, the regulatory framework would be more directed towards the viability of some players that have a specific business plan rather than to end users.

## **The case for new access obligations**

The ERG proposes to further study if NRAs should impose obligations for new access products that the SMP players do not self-supply to themselves. As the ERG points out, this is a general question that goes beyond the issue of business services.

Telefónica thinks that the SMP player can develop new wholesale services on a commercial basis if there is market demand. However, taking it to the regulatory area would imply that the regulator is able to decide the course of the market, choosing the technology and the services that will better match business users needs. It will also imply that the SMP player has to make considerable investments without a clear demand and take the risks that this implies. Today, the access obligations for wholesale services are mainly directed towards the replicability of the retail offers of the SMP operator. The associated obligations of non-discrimination and pricing regulation are determined to ensure fair competition in the downstream markets. A change of approach whereby the NRA may determine new types of wholesale services would imply a turn towards a fairly more interventionist regime, introducing considerable uncertainty about the basic principles for regulation and the risk of a considerable increase of conflicts.

## Conclusions

Given the complexities of the regulation of this market segment, and the conclusions from the questionnaires, Telefónica would suggest to follow a simple and pragmatic approach for the work streams that the ERG has proposed. The approach would consist of two main work streams:

- NRAs to study the current status of take up and use of ICT services by companies in each country and the position of telecommunication access services in complex solutions provided by system integrators. Most of the data is already available in the form of the several existing studies existing at national and European level.
- Follow periodically the availability of some wholesale services and features that are considered key for provision of services to the business segment (see above). This would be done in the context of the ERG monitoring exercise of the Common positions in broadband and leased lines markets. Availability of these features should take place in any case after a cost/benefit analysis, taking into account national conditions, and studying if upstream access remedies (such as LLU) or alternative infrastructures are enough for fulfilment of users' needs.

1-02-2010