

Comments on the ERG REPORT ON “BEST PRACTICES ON REGULATORY REGIMES IN WHOLESALE UNBUNDLED ACCESS AND BITSTREAM ACCESS”

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General Comments

Arcor AG & Co. KG (Arcor) wishes to thank the ERG for the careful and advanced analysis of the regulatory challenges of Wholesale Unbundled Access (“WLA”) and Bitstream Access (“WBA”). Arcor supports the approach to integrate the two subjects of Best Practice in WLA and Best Practice in WBA into one document. This analytic procedure acknowledges not only that problems in both markets are often similar, but also that both markets are interdependent to a high degree. Therefore regulation of products in both markets should take place concurrently and by regarding the interdependency.

Arcor agrees, that the problems of Quality of Service, migration and richness of Reference Offers, and pricing issues are of utmost importance for today’s and future regulatory decisions. We appreciate in particular the fact that this draft document is much more detailed on consistency of pricing between WLA and WBA than any ERG document before.

Hereafter we suggest to elaborate on two issues and to phrase the final document more concisely in some paragraphs. We strongly believe that our proposals will be applicable not only from a German point of view but also in the wider European context.

ad 2.1. Bulk migration

Arcor agrees, that migration from a downstream wholesale product to any upstream product, allowing entrants to generate higher value added, is crucial to facilitate effective competition and efficient investments.

Minimum contract durations of the downstream wholesale product could easily disable such an effective migration process and subsequently investments in infrastructure. Therefore an additional best practice regarding bulk migration should be included in the Reference Offers: Provisions about contract durations should not apply if entrants change from one wholesale

product to another, especially from a downstream product to an upstream product (of the same carrier).

ad 3.2. WLA - WBA Economic Space

Arcor welcomes the ascertainment of the fact that WLA and WBA exhibit different types of costs, showing economies of scale to very different degrees. Arcor also supports the intention of ERG to assure in this context, that the economic space between WLA and WBA should be wide enough to avoid eviction pricing and to encourage entrants to invest in alternative infrastructure instead of relying on downstream wholesale products.

However, the underlying problem is formulated much clearer in the “Rationale”-column than its solution in the “Best Implementation Practices”. To avoid misunderstandings it should be stated clearly that the “economic space practical monitoring scheme” takes into account

- costs of collocation that only emerge for local loop unbundling operators.
- costs of collocation that only emerge by investing in access to SDF.
- not only LLU roll out prospect but also the actual situation of unbundling. This is necessary to factor in investments in collocation (or other components of network infrastructure) that have already be done or are under way. By estimating the relevant economic space needed for an efficient operator, verifiable investments, among other factors like roll out prospects, should be considered.
- disadvantages in economies of scale compared to the incumbent by producing WBA due to smaller market shares.