

TP comments to Report on ERG best practices on regulatory regimes in Wholesale Unbundled Access and Bitstream Access.

1. QUALITY OF SERVICE

Point 1.1.1 SLA conditions on delivery time (WLA & WBA)

In annex ERG has presented two charts showing relation between delivery time and LLU adds in 1 year as % of PSTN lines. In ERG opinion countries having maximum delivery time of 7 working days are able to cope with significant access delivery volumes. We do not agree with ERG opinion, because it seems that there is no proof that correlation between those two factors exist. There is too many differences between countries on charts. For example on Figure 3 three countries with delivery time longer then 7 days have higher LLU adds then most of countries with delivery time shorter then 7 days. We should look for such relation in scope of other local conditions, which are different in each country.

As we wrote above there is no correlation between those two factors. We recommended that delivery time and other factors related to maintenance and technical parameters of wholesale services should be equal to conditions of retail services delivering by SMP player. Imposition of more restricted obligation such as shorter delivery time then in retail offer will discriminate subscribers of SMP operator. In other side fulfillment of regulatory obligation in case of shorter delivery time will require additional employees to hire and it may increase cost of delivery (process of delivery in significant part is not realized automatically – it needs manual works).

We understand that proposition of 7 days regarding delivery of active loops only. In case of non-active loops (in Poland non-active loops are defined as loops without termination on subscriber's premises) delivery time should be defined as minimum 21 days. Realization of delivery process of non-active loops within 7 days is not possible in current condition in Poland.

Point 1.1.2 SLA Conditions on delivery precision (WLA & WBA):

In case a done message is sent and the service requested is not working it can be caused by meantime problems which occurred between sending done message and checking if the service is working. In this case additional time to repair the problem should be given before compensation will be paid.

Point 1.2 Compensation of failure to fulfill the agreed SLA (WLA & WBA) page 12 and 13:

"According to ERG member states experience, forecasts conditions should not be more detailed than the following level:

- Period: Quarter;
- Time granularity: month;
- Geographic granularity: SMP management areas (regional);
- Tolerance: at least 30% and at least 40% for a starting up market."

Investment plans for network development are prepared for 1 year (3 years for medium term planning). Forecast conditions (with 3 months period and 30% of tolerance) are insufficient. This is a potential threat for proper preparation of network development to fulfill other operator needs. In addition, such high tolerance can cause some problems - it can happen that all forecasts will be 30% higher. It is very probable case because other operator will want to satisfy their future needs without any cost. As a results, the network will be implemented and part of it will not be used effectively. Who will pay to SMP player for such network extension (all increase) for WLA Access/WBA Lines?

Proposed tolerance 30% and 40% is not acceptable on market, because in each year operator has possibility to make mistake about 185% and 284%. In our opinion there is no reason to differentiate level of tolerance between "starting-up" and "maturity", because each effective operator must be able to cope with risk on market. Incumbent should not carry on risk of alternative operators, because there is no possibility to cover costs related to such huge network extension. We propose level of tolerance about 12,5%. Our proposition give alternative operators possibility to yearly mistake on level 60%.

Geographic granularity should be related to defined nodes of operator delivering service, because management area/region may include more then one access points. It causes that it is required in order to precise which part of network will be extended in future. Especially it is important in WBA service.

2. MIGRATION PROCESS AND REFERENCE OFFERS RICHNESS

Point 2.4 Collocation of equipments (WLA)

ERG propose that competitors will collocate any equipment that is indispensable to offer existing or new services to the customer with no technological restriction. Today we have some restriction in collocation. Operator can use only access system without routers, switches etc. Such equipment as routers and switches allow to deliver not regulated

services. Restriction is reasonable in the light that collocation is a regulated service and it is offered on cost-base. For this reason collocation should be used for regulated services only. For not regulated services are other "collocation" services, which are offered on commercial base. Alternative operators have always possibility to choose regulated or commercial collocation.