

ERG draft Common Position on Geographic Aspects of Market analysis

- QSC AG; Germany response August 2008-

General Remarks

QSC understands that segmentation may be considered objectively justified under a market analysis. But this is valid only in some specific circumstances and has tremendous implications not only concerning the specific markets involved but also markets higher up and down the value chain. Segmentation of markets may therefore, if not done consequently throughout the value chain and with complete information about the effects, exhibit more harmful long-term consequences for competition, businesses and end users than incumbents and their political supporters may want the – informed – public to believe.

It is of utmost importance to recognise that this is a technical and complex tool, and not a political objective for NRAs. Nor is 'deregulation' at any cost an appropriate goal given the fact that "regulation" in many markets is the only saviour from re-monopolization and customer rip-off. It would therefore be worthwhile to highlight that the primary objectives of regulators are to promote competition and protect user interests (including citizen-consumers and professional users). Segmentation should be evaluated only where it can be demonstrated that segmentation would support – and not undermine these goals – in theory or in practice.

In particular in view of their objective to promote and protect competition, NRAs shall provide evidence that the level of effective competition in a specific area would be at least be maintained (and preferably continue to increase) following deregulation of that region. This is necessary as the current and especially the future framework (in discussion) do provide only rudimental support for cross-market or cross-region protection against leverage of market power.

QSC does support the response by ECTA, of which QSC is a member, in its entirety.

Detailed Remarks

Different needs: Business Services Markets

As its only divergent view from ECTAs response to this consultation, QSC is of the opinion that Business Services markets may warrant some special attention, but do not differ that much from other markets. If NRAs do determine that sub-national markets for some products do exist, then retail or business services markets do not exhibit characteristics to alter the response differently. As QSC does offer wholesale products for consumer oriented operators as well as business oriented operators, our observation is that both demand uniform products over all geographic areas. The needs for business operators differ materially from those of consumer operator, but in terms of geographical differentiation, there is none. Therefore NRAs should take a special look especially at the Business Services markets, but with a view to differentiate them from consumer markets. The criteria used to determine if sub-national markets are applicable should then be used on both markets.

Criteria: Existence of wholesale supply

The existence of wholesale supply is an important criterion for determining, if actual and sustainable competition is taking place on some sub-national markets. Especially in a situation where regulated wholesale products are introduced and compete with existing

competitive supply, the full brunt of ex-ante regulation (including LRIC) may lead to market exit of competitive supply and less competition. In such a case regional differentiation of remedies (not different markets due to risk of anticompetitive behaviour) may offer a way to reconcile mandatory regulatory access and competitive supply.

It must be said that QSC would not have built its ULL-based network in the first place, if WBA (asymmetrical and symmetrical) had been mandated (and available) under LRIC conditions.

About QSC

Cologne-based QSC AG (QSC) is a nationwide telecommunications provider with its own broadband network, offering businesses of all sizes and premium residential customers a comprehensive portfolio of high-quality broadband communication options. QSC implements complete enterprise networks (VPNs), including managed services, operates voice and data services on the basis of its Next Generation Network (NGN) and provides leased lines in a wide variety of bandwidths - ranging all the way to 400 Mbit/s via microwave technology. In the Wholesale line of business, this network operator additionally supplies national and international carriers, ISPs as well as strong marketing partners in the residential customer market with unbundled DSL upstream products. QSC operates on a nearly nationwide scale, connects over 200 German cities with populations of more than 40,000 and currently employs a workforce of 770 people. QSC is listed on the TecDAX.