

ECTA response to the public consultation “Draft BEREC report on relevant market definition for business services”

Summary

Analysts estimate that the EU’s retail market for business communications to multi-national corporations alone is in excess of €60bln per annum as part of a global market worth nearly €260bln¹. Competitive problems in this market have been repeatedly highlighted at EU level by both users and specialised providers of business communications. These problems were confirmed in a BEREC survey of end-users in December 2009 which found that a large number of businesses had demands that were cross-border, less than half of business users surveyed had a choice of more than two credible suppliers (even less when users sourced themselves rather than from a single communications supplier) and that most relied on the incumbent for the majority of their services.

In this context, ECTA and its members serving the business community both nationally and across Europe, are very disappointed that this BEREC consultation on market definitions appears to disregard the findings of the earlier work carried out by BEREC on this subject and proposes an approach which would perpetuate the fragmented treatment (or non-treatment) of business services across the EU, thereby undermining the single market and adding to the cost of “non-Europe”.

We urge BEREC to treat this issue as one of its top priorities during its first full year of operation to demonstrate its effectiveness in handling regulatory inconsistencies which affect the single market. If BEREC fails to deliver on an issue that so clearly has a cross-border dimension, the European Commission should step in to ensure a coherent approach through a Recommendation on this subject.

We have several comments on the detail of this paper. However, because a more holistic approach is needed for business services addressing remedies as well as market definitions, we suggest that BEREC follows up this exercise in 2011 with a common position covering all aspects of business provision, which:

- Recognises (following the earlier BEREC analysis on this issue) that retail demand from business users is uniform across the EU and that a market exists for the provision of **retail** business communications which includes the provision of transnational services (national business markets also exist, but the requirements are similar).
- Recognises that the wholesale inputs required for delivering communications services to businesses are national in geographic scope (or follow the

¹ Gartner 2007

geographic boundaries of dominant firms), but that the nature of wholesale demand is consistent throughout the EU.

- Establishes common EU-wide parameters for business-grade products with reference to the technical and service level characteristics that distinguish such products from mass market or small business products.
- Sets a common approach to market analysis relevant to communications for businesses including but not limited to markets 5 and 6 which:
 - i. Ensures technological neutrality thereby including FTTx infrastructures and Ethernet interfaces
 - ii. Includes only those technologies which have characteristics appropriate for business communications. In this context, neither mobile nor cable currently provide effective substitutes for the relevant xDSL or fibre technologies.
 - iii. Does not limit markets by speed, as speeds evolve continuously with the development of equipment
 - iv. Presumes markets are nationwide. Exceptions should only be permitted in regions (if any) where multiple infrastructures exist specifically suitable for provision of business-grade communications and competitive access is supplied to meet wholesale business demand.
- Requires access on non-discriminatory terms including technical characteristics and service levels appropriate for businesses. Allows “reasonable requests” for higher grades or more specialised wholesale offers, and requires transparency including publication of internal and external KPIs for business-grade service levels.
- Ensures that access is available at points which aggregate sufficient business customers to make coverage viable by operators lacking mass-market consumer scale.
- Provides that charges for business-grade wholesale inputs should normally be cost-based.
- Ensures that business needs are explicitly considered separately from residential needs within market 5. This can be in the form of separate business-grade bitstream remedies if the geographic scope and competitive characteristics do not differ widely between residential and business services. However, this can also be done by defining a separate business segment on the basis of differential product characteristics between residential and business needs. The latter approach is especially relevant in cases where the market is geographically segmented and/or no SMP is found across part or the whole territory on the basis of mass-market competition (eg from unbundling and cable).
- Ensures the inclusion of Ethernet interfaces within market 6
- Ensures the availability of business-grade SLAs for layer 1 (physical access) market 4 (wholesale physical network access) to enable downstream competition on the basis of such access.

Introduction

1. ECTA welcomes the continuing study by BEREC into the way communications regulation meets the needs of business. We very much support completion of the task commenced by ERG and carried on by BEREC in identifying and solving the problems encountered by those of our member companies who supply services to businesses, especially the high end businesses which are the main focus of this consultation. We are concerned, however, that the present Consultation is a diversion from the main task, and that it could well slow down the process of defining best practice for NRAs in this important area of regulation.
2. The focus of the draft BEREC report is a discussion of how national regulators could determine whether there is a separate market for business services, especially high end business services, at retail and wholesale levels. However, it takes as its basis the current fragmented approach to market definition in Europe and fails to build on the *Report on the regulation of access products necessary to deliver business connectivity services*, ERG (09) 51 or reflect the results of BEREC's user survey, which confirmed that a large number of business users demand retail services cross-border and either use a single supplier to provide such services or source themselves from multiple providers. The same survey highlighted that a significant number of users lacked effective choice whether buying from a single supplier or multiple and most were reliant on the incumbent for the majority of their services.
3. These findings, which are echoed by ECTA's members as suppliers of services to multi-national businesses, suggest that it would be useful for BEREC to start from a different focus – that there is a retail market for high-end services which includes the provision of cross-border services, and in which users experience competition problems today. BEREC should play a vital role in this context in ensuring that national approaches are sufficiently consistent that the pan-European retail market can operate effectively to the benefit of users. Part of the solution may lie in national wholesale market definitions, and the definition of specific markets for high end business services is a very relevant exercise, particularly where there is a trend to eliminate the SMP declaration in significant portions of market 5, for instance, due to geographic segmentation. In these cases, specific business markets are essential to ensure the implementation of the specific remedies for high end business services in all the territory of the European Union. . However, consistent remedies are also an important aspect.
4. We therefore comment firstly on the wider context, and secondly on the specific issues raised in the Draft Report. We then offer an ECTA view on the actions that should now be taken in order to secure a vibrant and successful market in the provision of business services, to the benefit of European ICT exploitation, and for the benefit of the European economy.

Comments on the context to the consultation

5. What characterises high end business users is essentially that they have communications needs which go beyond the services offered to residential customers. They certainly require some services, which are very similar to those bought by residential customers: fixed voice calls and mobile voice calls, for example. And because many residential customers now have a demand for extremely high bit rate data transmission, there is accordingly some scope for overlap between the two types of demand. However, standard services tend to be used as back-up solutions only and true demand by business users is typically driven by:
 - High level of quality in the service, defined by technical parameters (jitter, delay, etc.) that differentiate the service from other lower quality options. High levels of reliability backed by service level guarantees (installation terms, availability)
 - Rapid fault repair within a guaranteed timeframe of a few hours maximum
 - Wide geographic coverage.
6. One of the key differences between residential and business demand is that for many businesses telecommunications and computing services are critical to their processes. As an example, a banking company, which relies on secure, near instantaneous transmission of information is not in a position to suffer degradation of service in times of congestion or maintenance outage. In this way, the characteristics of business demand vary widely according to the nature of the user site and the nature of the use to which the communications service is put. Some user sites will require services, which are identical to consumer services (for example a remote worker's home). Other sites will require multiple very high speed symmetrical data connections with diverse routing (for example a computer centre.) Further sites will need high reliability but not necessarily very high speed (e.g. factories, branches).
7. A starting point for NRA consideration of the supply to business should be to look at the state of competition in the business market. Can businesses source their requirements from a range of suppliers? If so, are market shares divided between the range of suppliers, or is there a dominant supplier? If so, what permits the dominant supplier to maintain a high market share? Is it possible for a business customer to move to a new supplier, without financial penalty and without disruption to its processes? And ultimately, which dependencies of the level of competition to regulated wholesale access can be identified? These questions should be posed in relation to in-country service provision, and then to international provision. If a business wishes to buy fixed or mobile services from a single supplier in a number of Member States, can it equally find a range of suppliers? It would be useful if BEREC could describe the characteristics of an ideal competitive business market. This would tend to involve a number of competing core network operators, but a restricted number of access network suppliers as the economics of replication in this part of the network are difficult, particularly where services are supplied to dispersed customers across a wide geographic area.

If the supply conditions are not satisfactory – and in ECTA's view they are not today – then it is necessary to consider the reasons for the lack of competitive supply. In ECTA's

experience the key problem is likely to be found not in the provision of core network services, whether on a national or cross-border basis, but in the lack of competition in the access and backhaul segments of communications networks. Therefore BEREC needs to provide a step by step process to first examine the state of competition, and then to remedy any continuing distortions. **Specific comments on the consultation**

Paragraph 6

8. BEREC clearly does not wish to remove the discretion of NRAs, but in ECTA's view BEREC should be in a position to offer a strong lead to NRAs in ways to analyse the problem. If NRAs choose to ignore the problem, once identified, that will be a separate issue.

Paragraph 10

9. ECTA agrees that there is a need to consider remedies. It would seem desirable ultimately to provide guidance to NRAs on a programme of analysis, starting with the state of competition, moving to retail and wholesale markets, and then remedies.

Paragraph 27

10. ECTA agrees entirely with the statement that "Given the high fixed costs of building local access networks, wholesale access to these networks is key to enabling competition in retail markets." We suspect this is the key to the whole issue.

Paragraph 30

11. ECTA agrees that retail narrowband and broadband services are taken up by both residential and business customers. However, as mentioned above, it is important to recognise that demand patterns do differ in areas of guaranteed bandwidth, SLA's and service wrap as well as change rapidly as technology evolves.

Paragraphs 36 – 67

12. Whilst it is useful to rehearse the mechanics of a market analysis, in ECTA's view it would be better to move this technical material to an annex. ECTA would also point out that this form of analysis would not uncover problems for business customers who operate across country boundaries.
13. The examples used in this section concentrate overly on wholesale broadband access. ECTA would underline that the wholesale products of most use to business operators are in Markets 5 *and* 6 (bitstream services and terminating leased lines - and especially Ethernet services.)
14. The discussion of indirect constraints in paragraph 65 of the consultation comments on the dilution of the effect on retail prices of increases at the wholesale level. ECTA would point out here that absent any regulatory control, such as of equality of input, the SMP operator will be able to use the proceeds of the wholesale revenue to further reinforce its retail market position. Moreover a retail operator buying from a patchwork of suppliers (eg incumbent telco, LLU operator) will be at a disadvantage compared to an incumbent buying national coverage from the same supplier.

Paragraph 77

15. The options presented of relying on CP data or tailored data address information needs in relation to market reviews. In ECTA's view there is a wider issue which is raised by the multi-country nature of business demand, which require BEREC to conducts its own research into the consequences of "non-Europe" for the high end business segment.

Paragraph 101

16. The discussion here refers to business use of ULL. ECTA would observe that business operators rarely have the density of demand which permits them to employ ULL as a wholesale input.

Paragraph 110

17. It should be underlined that differences in quality indicators (jitter, delay, MTU, contention ratio, etc.) easily break the chain of substitution.

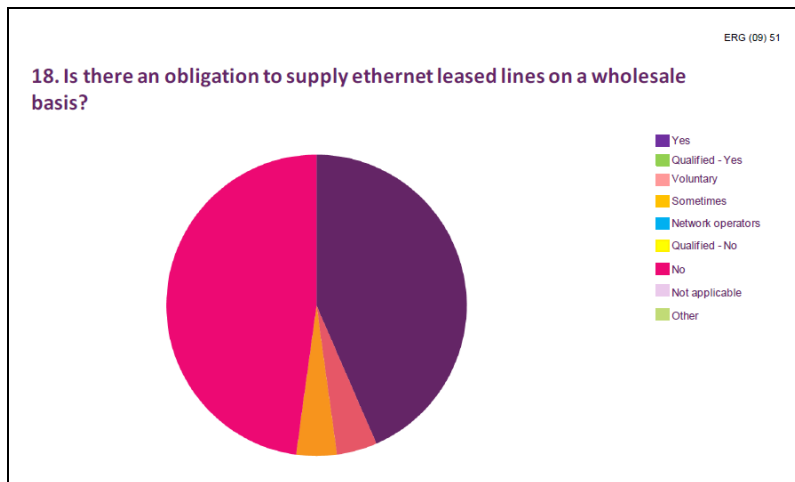
18. Traditionally, chain substitution was observed in standard services that merely differentiated in bandwidth (leased lines, traditional DSL services). As other technical parameters are taken into consideration, parameters that affect the nature of the service itself, chain substitutability cannot be taken for granted. Business operators can only build their European retail services over national wholesale products that ensure a minimum level of quality. A level of quality below the minimum European standard makes the national wholesale service unsuitable to build the European retail offer designed by the business operator.

Paragraphs 125 -126

19. The discussion of multiple site demand rightly highlights the problems for a CP in supplying a particular product in a particular place, but does not reach a solution. Multi-site, especially multi-country, demand is very real and growing requirement from high end business users, who increasingly spread their operations across Europe. In theory, it should be possible for a CP to meet this demand, buying inputs either in a competitive market or, where SMP endures, in a regulated market. BEREC's task here is to ensure that this is the case.

ECTA Recommendations for Next Steps

20. As mentioned above the ERG has already documented some of the problems which occur for business operators under the existing framework. For example ERG (09) 51 highlights how difficult it is for business operators to source Ethernet access circuits:



21. ECTA's own work on the problems affecting the business market has led to a view on the best way forward for the Commission, with BEREC's assistance. We reproduce here our preferred approach.

22. BEREC should define a Common Position which:

- Provides a framework for the analysis of the extent of competitive supply to business users.
- Recognises that retail demand from business users is uniform across the EU and that a market exists for the provision of **retail** business communications which is both national and transnational in nature.
- Recognises that the wholesale inputs required for delivering communications services to businesses are national in geographic scope (or follow the geographic boundaries of dominant firms), but that the nature of wholesale demand is consistent throughout the EU. In case regional segmentation is considered, then business markets differentiation is a priority.
- Establishes common EU-wide parameters for business-grade products with reference to the technical and service level characteristics that distinguish such products from mass market or small business equivalents.
- Sets a common approach to market analysis relevant to communications for businesses including but not limited to markets 5 and 6 which:
 - i. Ensures technological neutrality and does not limit markets by speed.
 - ii. Includes only those technologies which have characteristics appropriate for business communications. In this context, neither mobile nor cable currently provide effective substitutes for the relevant xDSL or fibre technologies.
 - iii. Presumes markets are nationwide. Exceptions should only be permitted in regions (if any) where multiple infrastructures specifically suitable for provision of business-grade communications exist and competitive access is supplied to meet wholesale business demand.
- Requires access on non-discriminatory terms including technical characteristics and service levels appropriate for businesses. Allows "reasonable requests" for higher grades or more specialised wholesale offers, and requires transparency including publication of internal and external KPIs for business-grade service levels.

- Ensures that access is available at points which aggregate sufficient customers to make coverage viable by operators lacking mass-market consumer scale, or requires appropriate backhaul services allowing business operators to reach national coverage. Backhaul services should have adequate quality parameters, in particular regarding the contention ratio.
- Provides that charges for wholesale prices for business-grade wholesale inputs should normally be cost-based.
- Ensures that market 5 (wholesale broadband access) is defined on a technologically neutral basis including Ethernet interfaces and inclusive of FTTx technologies.
- Ensures that business needs are explicitly considered separately from residential needs within market 5. This can be in the form of separate business-grade bitstream remedies if the geographic scope and competitive characteristics do not differ widely between residential and business services. However, this can also be done by defining a separate business segment on the basis of differential product characteristics between residential and business needs. The latter approach is especially relevant in cases where the market is geographically segmented and/or no SMP is found across part or the whole territory on the basis of mass-market competition (eg from unbundling and cable).
- Within market 6 (terminating segments of leased lines), ensures technological neutrality including the provision of wholesale Ethernet services.
- Ensures the availability of business-grade SLAs for layer 1 (physical access) market 4 (wholesale physical network access) to enable downstream competition on the basis of such access.