Draft BEREC report on Co-investment and SMP in NGA networks, BoR(11)69

Response by BT Group plc

Introduction

1. BT welcomes the opportunity to provide comments on the draft BEREC report. We respond primarily from the point of view of a provider of networks and ICT solutions to the major business customer segment in Europe. We believe that it is particularly important the BEREC should provide clear guidance to NRAs on issues relating to the transition from conventional to NGA networks.

NGA in the UK

2. From a UK perspective we do not currently see a strong likelihood of co-investment emerging as a model for NGA infrastructure development in the UK. We would make the point that where co-investment does occur, such arrangements should not act to reduce regulatory obligations where SMP operators are involved, nor should co-investment agreements to overrule any competition law concerns applying to companies acting in concert.
3. We would also make the point that the UK model of providing Generic Ethernet Access over FTTC and FTTP infrastructure, under "equivalence of input" arrangements, does in practice encourage competing communications providers in the UK to offer services over the fibre infrastructure, thus driving up the volumes that are essential to the NGA business case. Moreover, this approach works without the need for complex governance arrangements that 'co-investment' is likely to require.

Business operators

4. Business operators such as BT Global Services provide networking and ICT solutions to the major enterprise sector. End user companies in this sector typically require network connections across a wide geography and at a range of transmission speeds and qualities depending on the nature of the individual customer sites. The suppliers rarely have sufficient density of customer connections in any individual exchange area such as to justify investment in their own NGA networks. Instead they acquire connections from NGA operators at market rates where the market is competitive, or at regulated rates where there are NGA operators with market power.
5. For this reason it would represent a serious distortion of competition if NGA investors or co-investors with market power were able to erect market entry barriers against business operators who had not themselves invested in NGA build-out.
6. We believe therefore that BEREC must empower National Regulatory Authorities to establish whether co-investment in NGA will have an influence on the ability of third party operators to gain access to the infrastructure, and more importantly, to establish whether the co-investors will be able to have preferential access to the infrastructure or preferential terms for such access. This particularly applies to wholesale Ethernet access services which are currently the predominant form of access service required by business operators. Where they discover that this is the case they must be empowered to eliminate any anti-competitive effects they find.

Specific comments on the draft Report

7. We focus on the sections of the draft Report which consider arrangements for third party access to NGA infrastructure owned by co-investors in paragraphs 2.5 and 3.4. Paragraph 2.5 sets out arrangements in several BEREC Members States:

   France: access to in-house wiring is mandated through symmetrical regulation. "Tariffs for all other plans (in particular late entrants) are calculated similarly for operators which take part in initial co-investment, except for a risk premium benefitting to these initial co-investors."

   Italy: …"Unbundling from the central office of TI will be provided to a third party only for customers (mainly business) that will be connected with a P2P network. In all other cases Newco will provide access to dark fibre from the central office of TI to the base of the building. Newco will behave like an infrastructure operator giving access to partner and third party at the same conditions. The District authority ensures that the other two operators can have access to the passive infrastructure at no charge. Every other operator can use 1/3 of the capacity. The first operator should also provide access to third parties to a bitstream product at retail-minus price.

   Netherlands: Reggefiber is regulated by OPTA at layer 1 at the area-POP (ODF). Regulated tariffs with different CAPEX for different areas (depending on the capital expenditure per home passed), vary from 14.5 euro to 17.5 euro per month. Volume discounts per area-POP are provided based on total market volume.

   Portugal: Optimus and Vodafone have an agreement defining conditions under which the parties may have access to the other's network.

   Switzerland: access for third parties might be offered at layer 1 and layer 2 (the paper gives some indicative prices).

8. These examples raise the following issues for BT:
   a. BEREC should define the acceptable level of risk premium from which co-investing parties can benefit. They should make it clear that no other form of discrimination between co-investors and third parties should be permitted.
   b. BEREC should specify that access to third parties cannot be priced on a retail minus basis where any of the co-investors separately or severally have SMP.
   c. The Optimus and Vodafone agreement needs to include non-discriminatory third party access terms.
   d. The Swiss proposals for access terms do not seem likely to meet EU standards for non-discriminatory access.
   e. BEREC should give clear guidance to NRA on the need for non-discriminatory bitstream access over NGA infrastructure for business providers.

9. In conlusion we ask that in a further iteration of the report BEREC should address the specific issue of safeguarding third party access to NGA infrastructure installed by co-investors.

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