

BEREC's Common Position on Geographical aspects of market analysis

Public debriefing 19th BEREC Plenary

Brussels, June 2014

1. Context and previous steps (i)

- Document for public consultation approved in the 4th Plenary 2013.
- Update of the 2008 Common Position to provide further guidance on to NRAs on the issue of geographical segmentation
 - Infrastructure-based competition
 - Cases from NRAs and Phase II investigations
 - NGAs roll-out
- Period for public consultation:
 - December 10th 2013- February 7th 2014.

1. Context and previous steps (ii)

- Documents published by BEREC:
 - Update of the ***“BEREC Common Position on Geographical aspects of market analysis (definition and remedies)”*** taking into account feedback received from stakeholders.
 - ***“BEREC report on the public consultation of the Draft review of the BEREC Common Position on geographical aspects of market analysis (definition and remedies)”***

2. Content of the Common Position (i)

- **Basic principles for geographical segmentation**
 - Different competitive conditions in different areas
 - Sufficient homogeneous competition conditions
- **Main cases since 2008 Common position**
 - Comprehensive list of cases in different markets (M4, M5 and M6) as well as Phase II comments from EC.
- **Relevant indicators of necessity of geographical analysis**
 - Number of operators in each area, coverage, price conditions, etc.
 - New developments in the market (increased ULL, alternative networks, NGA roll-out)

2. Content of the Common Position (ii)

- **Markets most likely be affected by a geographical segmentation**
 - Market 5 and (less likely) Market 4
- **Analysis to assess differences in the competitive situation**
 - Starting point: Competitive conditions at retail level.
 - Two types of competitive situations: (a) LLU-based strengthened with alternative networks, (b) inter-platform based competition
 - LLU-based competition: MDF relevance for geographical segmentation.
 - Inter-platform: administrative units may be adequate

2. Content of the Common Position (iii)

- **Geographical units and areas**
 - Choice of geographical units: (a) Mutually exclusive and subnational (b) Network structure and services can be mapped onto geographical units (c) clear and stable boundaries (d) small enough for reflecting same conditions and large enough to reasonable burden for NRAs.
 - Assessment of homogeneity of geographical areas: barriers to entry, number of operators, market shares, price differences, etc.
 - Aggregation of geographical areas: single criterion, not based on identity of operator, forward looking

2. Content of the Common Position (iv)

- **Implications of NGA networks**
 - Relevance of ULL may decrease
 - Cable: more infrastructure based competition
 - Co-investments to be taken into account
- **SMP analysis and remedies differentiation**
 - When differences in competitive conditions does not justify the definition of subnational markets, it may be appropriate to vary remedies with a geographical focus.
- **Risks and benefits from a geographical analysis**
 - Analysis of “Type 1” and “Type 2” errors

3. Results of the public consultation (i)

- **14 contributions received from stakeholders**
- **Incumbents:** ETNO, Belgacom, BT, Deutsche Telecom, Telefónica, Telecom Italia
- **Alternative operators:** ECTA, Fastweb, BREKO, Buglas, Wind
- **Cable:** Cable Europe
- **Others:** FTTH Council

4. Update of the Common Position (i)

- As expected, different views from different type of stakeholders.
- In most cases, issues raised by the stakeholders are mainly matters of degree, not kind (validity of BEREC statements is not put into question)
- Some stakeholders argue for a cautious approach on geographical segmentation requesting that only actual and relevant competitive constraints should be taken into account
- Others argue for a proactive approach in reflecting the geographic differences within a national territory in the definition of relevant markets as well as the application of a forward looking approach.
- Different emphasis on risks associated to under-regulation or over-regulation.
- Some needs for clarification

4. Update of the Common Position (ii)

- The revised CP calls for a cautious and balanced approach based on effective assessment of national and local situations and not on preconceived or general assumptions
- Requests for clarification where the initial wording might have been ambiguous have been taken into account
 - The main amendments introduced are the following:

§ 36	It is now clearer that although some NRAs may have experience of geographic segmentation of markets and remedies, so far most countries have maintained a national regulation
§ 65	It is now explicit that there is still a significant number of end users with a demand for voice-only access products
§ 76 & 78	The fact that Markets 4 and 5 should be analysed together and that the relationships between downstream and upstream markets are complex is now reasserted
§ 182	Situations where fibre-based networks could reduce potential demand for LLU are now emphasised

Thank you for your attention