

FTTH COUNCIL EUROPE

RESPONSE TO THE PUBLIC CONSULTATION ON
DRAFT BEREC GUIDELINES TO ASSIST NRA'S
ON THE CONSISTENT APPLICATION OF
GEOGRAPHICAL SURVEYS OF NETWORK
DEPLOYMENTS

05/11/2020



Comment:

The FTTH Council Europe welcomes the chance to comment again on the “Draft BEREC Guidelines on Geographical surveys of network deployments Article 22 (2), 22 (3) and 22 (4)”. The Council appreciates the ongoing and active consultation process underway for more than a year.

The FTTH Council notes that these guidelines must be read (and interpreted) in the context of the BEREC Guidelines on Geographical surveys of network deployments published in March 2020 (BoR (20) 42).

The FTTH Council believes that NRAs and OCAs have a duty to gather data that can allow a consistent analysis of geographic markets that enables a common approach to VHCN delivery now and into the future across all regulatory and State functions.

The potential for the data that is collected to be used in a State Aid proceeding is clarified in the draft guidelines and is to be welcomed. It is correct to note as it is in paragraph 10 that Article 22 and state aid proceedings are instruments with different objectives.


The approach taken to forecasts and in particular forecast verification provides checks against misleading information while importantly, clarifying an understanding that future business plans are fungible and can change depending on business circumstances and uncertainty of consumer demand. This is welcomed. The clarification that the collection of any forecast is optional is also welcomed.

Nevertheless the location of VHCN is relevant in all of these areas since many aspects of the code are specific to a context in which the relevant network is designated as VHCN

The FTTH Council Europe advocates a geographically differentiated approach to regulation with a strong preference for infrastructure based competition in urban areas and open fibre networks beyond that area, either relying on private investment for commercially sustainable areas or, if commercially necessary, public financing. Regulation, existing and signalled, has a profound impact on market operations. Credible, predictable and stable policies create a framework in which capital can make strategic choices over the longer term. It is in everyone’s interests to have market boundaries that are stable, not for the administrative burden it might impose on Regulators but rather because of the uncertainty it can create in a context where returns may take 20 years to be realised. It is better if investors understand what rules will play where.

The FTTH Council believes that BEREC’s approach to determining the drivers of geographic segmentation of markets with an ex ante and ex post assessment strikes an appropriate balance. The FTTH Council welcomes the use of objective and durable data such as population density and topology (as well as experience) in the ex-ante assessment. Population density is a major indicator of network build cost (as well as derived indicators such as cable routes lengths per household) which in turn has a major impact on the scope of commercial network deployment. The FTTH Council welcomes this approach.

The fact is that over a forward looking time period, some areas can support competitive entry by private investment in physical VHCN networks (i.e. FTTH/P) whilst other areas have much less capacity to do so. Whereas population density as an indicator remains stable over time (population density therefore is a very important parameter) other factors will change over time. Innovation on construction methods on the one hand will constantly move the cost function making former marginal areas accessible to private investment. Superior analysis of current conditions on the ground will allow for a much-needed differentiation in construction conditions and therefore investment conditions.



The ex post verification is not only more complex and costly (as recognised by BEREC in these guidelines) – it is also subject to changes in build practices and changing business conditions. Forward looking assessments work less well in identifying areas where network will not get built, as noted already deployment costs can vary due to innovations in deployment and the boundaries of where networks might get built change.

There is acknowledgement of this in the discussion on forecasting, but it needs to be made clear that the ex post verification process will take due account of changing technical, operational and business conditions.

The frequency of assessments should be aligned with market analysis procedures – there is no required periodicity but the suggestion of annual reviews in section 2.4 seems excessive. BEREC notes that the main purpose of designating areas is to signal to potential investors where opportunities might exist. The FTTH Council would note that long term investors in FTTH need continuity and stability in order to make rationale business investment decisions.

Finally, the FTTH Council notes the procedures related to publication of information and the invitation to declare intentions to deploy networks. It seems unlikely that entities considering deployments (and often deploying very significant amounts of capital) will be dependent on this information from either an NRA or OCA in order to identify a market opportunity. The reality is that these large-scale investments will be carefully researched and calibrated over a long period of time. There are risks however in such a mechanism of signalling in the market and BEREC ought to consider risks of coordinated effects in their approach to invitation to declare an interest to deploy.

The FTTH Council notes the diagram in Annex which provides a clear overview of the approach proposed.