

## **Vodafone Group response on the draft BEREC report on fixed and mobile backhaul**

**12 November 2021**

We appreciate the opportunity to comment on this consultation and trust that our comments are helpful to BEREC and National Regulatory Authorities (NRAs) as well as to other stakeholders. We remain at your disposal to discuss our submission to the consultation, or any other aspect relevant in the context of the latter.

To inquire about our response please contact:

Ana Baide  
Senior Policy Manager – Market & Deployment Lead  
Market Structure & Network Policy  
Group External Affairs  
+44 7500 883876  
[ana.baide@vodafone.com](mailto:ana.baide@vodafone.com)

### **General comments**

Vodafone supports BEREC's work on fixed and mobile backhaul, and in particular the questionnaires and data gathering on this topic in order to provide the snapshot of the current regulatory treatment for both fixed and mobile backhaul, how it is being deployed by different operators and thus inform how this topic should be treated in the future.

As noted in the draft report, adequate backhaul access is fundamental to the effective deployment of 5G networks. We are supportive of this study and future work in this space to ensure efficient and competitive 5G deployment across our markets.

The BEREC draft report strikes an appropriate balance in analysing the current regulatory landscape, NRA practices and operator needs to conclude that fixed and mobile backhaul regulation should be monitored by BEREC, with a focus on 5G deployment and the application of the new recommendation on relevant markets.

Backhaul is most likely to be regulated in the context of a different, wider market on the relevant markets list rather than a standalone market itself. For instance, through remedies relating to dark fibre access, rental of leased lines or access to ducts and poles. As such, we support BEREC's observations in the report that NRAs should avoid both false positive and false negative errors in their market analysis in order to avoid both excessive and insufficient regulation/deregulation when assessing backhaul within the context of different markets and remedies.

### **Backhaul regulation for mobile networks**

We propose that the report ought to highlight one missing but important point. In those markets where remedies such as access to ducts and poles or dark fibre for mobile are not available, specific remedies for regulated backhaul access should exist.

Deploying 5G networks requires many more locations compared with 4G. In most markets it is most likely to be the incumbent operator that holds the greatest percentage of passive infrastructure for historic reasons.

Vodafone agrees with BEREC that mobile markets across the EU are generally competitive. However, the report then notes that, irrespective of whether alternative access is available via passive infrastructure or dark fibre for instance, backhaul access may be regulated where the three criteria test is satisfied and there is a competitive failure in the relevant retail market. However, this is likely to lead to one of the mentioned false positive/negative errors in situations where, on the one hand, mobile markets do not have a competition problem but alternative access for backhaul (ducts, dark fibre) is not available.

In Vodafone's view, this is a clear gap that ought to be recognised and addressed.

In order to ensure a level playing field for access to passive infrastructure in the context of future 5G deployment we would propose that such a gap could be addressed by ensuring that, where regulatory remedies relating to passive infrastructure access are limited to fixed networks, these should be complemented by dark fibre access for mobile base stations.

The new recommendation on relevant markets did not establish a new market for access to physical infrastructure. As such, Article 72 continues to provide the standalone remedy in this area. As noted by the Commission in the review NRAs would still be able to define relevant markets at a national level which are particularly relevant where a single operator owns a physical infrastructure which is ubiquitous and suitable for deployment of alternative fibre networks, thus setting up a cross-market wholesale remedy that could enable both fixed and mobile access to backhaul.

Article 72 of the EECC provides a standalone remedy of first resort for access to physical infrastructure. The EECC recognises the need for this in order to avoid the issues identified by BEREC above where such remedies were previously only ancillary to other wholesale products or services. Thus, the remedy regarding access to civil engineering, as envisaged by Article 72(2) may be imposed irrespective of the exact scope of the relevant market as determined by the market analysis.

Vodafone proposes that this issue be highlighted in the final BEREC report, and that it be taken up in future regulatory guidance.