



Deutsche Glasfaser Holding GmbH • Am Kuhm 31 • 46325 Borken

BEREC

Zigfrīda Annas Meierovica bulvāris 14,
Centra rajons, Rīga, LV-1050, Lettland

Erik Massarczyk, Ph.D. of Management (THIICO NIDA)
Expert Telecommunications Regulation

**Feedback to Report on Competition amongst multiple operators of
NGA-networks in the same geographical region**

27.01.2023

Dear Ladies and Gentlemen,

Deutsche Glasfaser is pleased to comment on the Draft BEREC "Report on Competition amongst multiple operators of NGA-networks in the same geographical region". In our response we elaborate the views about geographical market segmentation in Europe and especially in Germany.

In the overview of the report, it can be identified that the question about the separated subnational markets is gaining importance. As a fiber network operator, especially for rural areas in Germany, the discussion affects our incentives in deploying fiber. We push the development of fiber infrastructures together with other regional and local network operators in Germany. But still the alternative operators keep the main of fiber deployment in Germany, we are far ahead of any kind of market power against the incumbent. For this reason, we urge BEREC to take in mind which operators drive fiber development and which effects any kind of regulatory behavior regarding a separation of national market would have.

From a first point of view, we support the consideration that a general approach does not work. The markets considered have different conditions and properties, which require specific observations and decisions based on their needs. In this regard, we emphasize the importance of approaches that take in view of all working operators and the outcome for fiber coverage. In this regard, it is necessary to highlight that the European broadband markets reach different status of broadband and especially fiber coverage so that they cannot be considered as equal. Where Denmark and Sweden are mature markets in terms of fiber coverage, Germany rises but is still on the way to leave the children's shoes.

On that basis, the overview given by BEREC is too general. Truly, it is correct to consider the various kinds of products, prices, remedies, and competitive conditions. However, if such a consideration is chosen, it is necessary to deal with specific modalities.

Deutsche Glasfaser Holding GmbH

Kontakt: Am Kuhm 31, 46325 Borken • www.deutsche-glasfaser.de • info@deutsche-glasfaser.de • Service-Nr. 02861 890 600

Geschäftsführer: Thorsten Dirks, Guido Eidmann, Angie Hagemann, Jens Müller, Ruben Queimano, Roman Schachtsiek

Sitz der Gesellschaft: Gronau **Amtsgericht:** Coesfeld HRB 14044 **USt-IdNr.** DE283703813

Bankverbindung: Hamburg Commercial Bank AG IBAN: DE-75 2105 00001001 3815 96 • BIC: HSHNDEHH

1. Definition of Competition

We support the view to consider the competition on a national level. For a greater separation, some preconditions need to be evaluated. It is necessary to assess the current level of deployment of broadband infrastructures, especially fiber infrastructures. In the report, the markets evolved quite differently in terms of their broadband and fiber coverage. However, the coverage of NGA and especially fiber networks determine the level and type of competition. In mature markets like Denmark and Sweden, fiber networks are already deployed nationally. There is a working infrastructure competition between fiber and coax cable as well as copper infrastructures. In some cases, it is possible that different deployed fiber networks compete. However, this only evolved due to the previous deployment of fiber with close national coverage. Because of the national fiber coverage, it is possible that alternative operators can compete with the incumbent and his copper and partly fiber network.

In fiber evolving markets like Germany, fiber networks are not deployed in general. A few regions have good coverage of fiber infrastructures but on a national level, the other kinds of broadband infrastructures, copper, and coax cable, are dominant. In this regard, only in a few regions is there a working infrastructure competition regarding fiber. As the degree of fiber coverage is low (but evolving), we are not in the opinion to speak about a kind of infrastructure competition. In the current state we determine a kind of deployment competition in Germany. Different network operators compete to be the first mover to serve fiber networks in urban and rural areas. The alternative operators try to grab the customers of copper network from the incumbent by serving a better quality and higher bandwidth through deploying fiber infrastructures. The incumbent tries to hinder the deployment of alternative operators by duplicating fiber infrastructures. From this point of view, the alternative operators face many obstacles to deploy fiber. A geographic market segmentation would raise even more obstacles.

In a limited geographic market, an alternative operator has deployed fiber by its own financial resources. By doing so, the alternative operator has grabbed customers from the incumbent. Even if the alternative operator can face the incumbent in that specific region and has possibly a greater market share, the alternative operator is not in a market power position.

Four points need to be considered:

- a. The incumbent has the financial and capacity resources to intervene in each specific region by duplicating the fiber infrastructure. Because the most customers in Germany rely on copper accesses, the incumbent can migrate them to his own fiber infrastructure. If the incumbent follows this approach, he will reach a greater degree of utilization as the alternative operator. Based on such a possibility any kind of market segmentation and regulatory treatment would destroy investment incentives. Alternative operators have to face the behavior of the incumbent. If any intervention by the regulatory authority would raise remedies for the alternative operator in the specific region, since he has currently a greater market share than the incumbent, alternative operators would stop their investments due to the uncertainties. For that reason, it must be determined that competition between infrastructures does not exist until a coverage of fiber is reached in an equivalent way than the coverage of copper or at least coax cable infrastructures. Until this point is not achieved, fair competition between opponents on the same level cannot be secured. A real infrastructure competition does not exist/evolve. Therefore, it is to emphasize to speak about a deployment competition, which should not be interrupted by remedies.
- b. Through the non-existing full coverage of fiber networks in Germany and the development of fiber deployment, regulatory behaviors need to consider, how any kind of remedies would influence fiber network operators, which are pushing forward to deploy fiber. The European Union and Germany have highlighted the target that everyone should have the opportunity to connect to Gigabit bandwidths. For this reason, in states and regions, where fiber is not fully deployed, regulatory authorities should not implement prerequisites. Any kind of remedy hampers the fiber rollout, especially from alternative operators, which use their own financial resources, and which do not benefit from financial returns from a past monopolistic market situation. In terms of deployment competition, any remedy for alternative operators leads to a benefit for the incumbent. The incumbent has the financial and customer resources in the back, whereas any other operator slowly gains further customers. Here, a remedy would strengthen the position of the current biggest operators, which would not allow any kind of competition from new operators with new

infrastructures. Based on huge infrastructure investments for fiber infrastructures, investors have to rely on stable regulatory conditions. Therefore, every remedy for an operator, which has no market power on a national level, implies a manifestation of incumbent market power.

- c. Lastly, in the report BEREC considers competitive conditions caused by the existence of VHC networks. However, it must be scrutinized if infrastructure competition is the right anchor for considering competition. On the one point, in the report the information determines that the presence of multiple networks does not imply a sufficiently different kind of competition. Furthermore, from a customer point of view, customers want to have a selection of services and providers with several offered products. In general, customers care about the product bundle, the delivered bandwidth, and the price. The technology of the infrastructure is only relevant in case customers want to have specific (high) bandwidths (because several technologies cannot provide all kinds of bandwidths). Coming from this argumentation, it is to raise that for customers service competition is far more important than the infrastructure competition, which BEREC relies on. It cannot be comprehended why BEREC does not consider service competition in the level playing field. Especially alternative operators offer numerous opportunities for wholesale products and network access. On this basis, operators, or providers, which demand access, can get access. The opened network and free access help in preventing any case of competitive distortion and play a key role for a competitive environment.
- d. Together with the point before, if BEREC wants to stay on the aspect of infrastructure competition, it is necessary to emphasize a combined view. In general, infrastructure competition on the same fiber can be enabled by allowing network access and the use of unbundling the local loop. Through the opening of the infrastructure, other providers can compete on the same infrastructure (and already deployed infrastructure). Based on the level of infrastructure usage and necessary technical implications, unbundling cannot be fully added as a kind of service competition like the provision of a bitstream access. Therefore, unbundling offers the opportunity to develop competitive conditions on the same infrastructure. Unbundling in combination with bitstream options illustrate different opportunities to emphasize the development of competition on infrastructure as well as service level.

2. NGA infrastructures

The overview of the report illustrates that price variations are the result of broadband access provided by different technologies. It is fully agreed that various access technologies imply different access costs and quality parameters. These differentiated factors lead to the ability to implement price variations. However, this kind of differentiation does not show any detail, why in terms of NGA network consideration only fiber networks are considered in the report of BEREC. Although technical variations are mentioned, the analysis of geographic market segmentation only considers the fact of the presence of further fiber networks. In terms of a consideration of Gigabit capable broadband access networks, it is also an obligation to consider coax cable infrastructure. In case a regulatory authority is in the opinion to separate the market, the market share, distribution, and coverage of coax cable networks need to be determined too. A sole consideration of fiber infrastructures is not in line with the definition of NGA networks. For that reason, we ask BEREC why coax cable networks are not considered in detail.

Besides the consideration of coax cables infrastructures, two further points need to be acknowledged.

Firstly, the European Commission acknowledges in their market analysis that operators of fiber networks should be treated differently than the historic copper infrastructures regarding regulatory behavior. The main reason here is that alternative operators deploy fiber networks and therefore, old market conditions break open. Furthermore, through different fiber network operators no operator gains a market power position on national level. In relation to the determined market analysis, a consideration of geographic market segmentation and the possibility to set remedies for fiber operators seem to be the opposite view of the addressed market analysis. Surely, the European Commission opens the opportunity that on national base different decisions regarding the regulation of network operators can be implemented. However, as determined in the report, there are/were a couple of complaints and caveats towards the geographic segmentation in Denmark and Sweden. From this point of view, approaches to

separate the national market into different subnational parts are not in line with the actual market analysis by the European Commission. Therefore, we urge that no approach should be chosen to intervene in the deployment of fiber infrastructures by separating the market into geographic subnational areas.

Secondly, before a geographic market segmentation is considered, regulatory behaviors should take a greater view of the given market power of the incumbent. For fiber markets, there is a high potential of a market power transfer from copper infrastructures to fiber infrastructures. In Germany, the national regulatory authority was not successful by solving the advantage of the incumbent from the past. The incumbent with his copper infrastructure has around 70% market share (40% on his own + wholesale accesses). With this high demand and market power in the back, the incumbent has the incentive to overbuild deployed fiber infrastructures with own infrastructure and keep all access seekers on his network. Such an approach the incumbent is able to pursue in all regions in Germany. From this point of view (and through the high proportion of service providers on the network of the incumbent), the incumbent can easily join a regional market and can transfer the market power from copper to fiber infrastructures. Based on such a development, we see no need to pursue market segmentation.

3. Unit of Differentiation

As a last point of criticism, the ways geographical market segmentations are analyzed and tackled needs to be reconsidered. The most regulators, which use geographic market segmentation, separate the market on the base of administrative units, even in Sweden. However, there are no homogeneous administrative units.

On the one hand, the regions differ in terms of their number of households as well as their land area. If a grouping of geographical units is applied by the national regulatory authority, the segmentation is not in line with administrative or governmental boundaries. Therefore, such a procedure would end in conflicts with administrations about the authority over decisions and belongings. In other words, such an approach would not seem to work for separation. For this reason, the choice to separate regions on the base of administrative units is comprehensible, even if the regions are not similar anymore. Due to the lack of similarity, it is hardly possible to evaluate the regions for equal markets conditions.

On the other hand, administrative units are too varied for geographical market segmentations. There are districts with bigger cities in it, whereas wide areas are rural with a low population density. Based on the heterogenous distribution within a district, even the cost of deployment as well as the number of operators are not comparable. Due to the costs of deployment are different, network operators with higher expenses for fiber rollout have to take greater efforts (e.g., higher prices) to regain financial investments. In contrast to the described situation in rural areas, operators working in a city (within the district) do not face the same degree of financial burden. The choice of administrative units is not subtle enough to illustrate the differences between regions, especially between rural and urban areas. A market segmentation, which includes such a pathology as administrative units do, indicates a wrong assumption from the beginning. Therefore, we support the assessment that no sufficient boundaries for a market segmentation can be currently drawn.

From a German point of consideration, a geographic market segmentation on the base of administrative units would imply a substantial number (294 districts and 107 cities) of regional markets. In this regard, we share that a high number of subnational markets is burdensome. The regulatory authority must cover all regional markets and must justify the decisions for each regional market. Network operators, which operate in several regions, would face different conditions and treatments by the regulatory authority. Such treatment would mean further enormous expenses for network operators. Furthermore, a simple market overview would not be possible. More regional markets entail more operators, which need to be evaluated. If all regions are differently treated, conditions between the regions cannot be compared. More subnational markets lead in this case to greater market fragmentation. This cannot be the target of a regulatory authority. Also, the regulatory authority incurs huge expenses if a new operator joins a region and the possible market conditions change.

Through the current deployment competition and changing market conditions, it is not possible that an administration can quickly adjust the regulatory environment. As a result, regulatory decisions lag the current

market developments. Therefore, we urge no implementation of market segmentations in the situation of deployment competition. After rollout of fiber is completed and national coverage is reached, the situation of infrastructure needs to be considered again, not before this status is achieved.

4. Conclusion

The arguments should identify that the assumptions from BEREC are too general. This results from the missing specification, which kind of competition is considered. The determination of a working infrastructure competition is only acceptable in countries and regions, where fiber coverage is fully achieved. Before full fiber coverage is reached, BEREC should not imply a working infrastructure competition in terms of fiber. It is even more important to determine the market conditions under terms of a working deployment competition. The given examples for Sweden and Denmark do not display the right conditions for the most European countries, because both countries are close to reach full fiber coverage. Therefore, it is necessary to raise the fact that regulatory authorities do not engage in a working deployment competition by implementing remedies for several network operators. If such an approach is pursued, it must be assumed that investors will not invest further, and further fiber broadband deployments will not happen. A further reason is that in the report the power and might of the incumbent is not considered accurately. From a German point of view, the incumbent has the financial background to intervene in each regional market if he wants to do so. How could be thought about market segmentations in case incumbents have the still the opportunity to overwhelm any alternative operator? On this account, we urge BEREC to not leave from a consideration to regulate on national level. The relevant criteria should not be only the kind of competition and the number of competitors. It is to consider the degree of deployment competition together with the achievement of full fiber coverage and working service competition.

As a last point, the feedback of regulatory authorities that they are not able to answer due to lack of data availability is dubious. Regulatory authorities should have all the necessary data.

Best Regards,

DocuSigned by:
Erik Massarczyk
C072241BC2CB48B...

i.A. Erik Massarczyk, Ph.D. of Management (THICO NIDA)

DocuSigned by:
Charlotte Weber
4F099B900F5541B...

i.A. Charlotte Weber