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Body of European Regulators for Electronic
Communication (BEREC)

Fixed Network Evolution (FNE) Working Group
Co-chairs, Alexander Thelen, Wilhelm
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**Public consultation on the draft BEREC Report on competition amongst multiple operators
of NGA networks in the same geographical region**

Dear Mr. Thelen,

Dear Mr. Schramm,

Dear Sir / Madam,

The German Broadband Association, BREKO, welcomes the opportunity to comment on the recently published draft BEREC Report on competition amongst multiple operators of NGA networks in the same geographical region, which gives an overview on geographical analyses by different NRAs across Europe.

BREKO generally agrees with the consideration of this highly relevant topic and the comprehensive comparison and overview of different approaches by NRAs. The BEREC report demonstrates that discussions on geographical market segmentation are gaining importance even in countries where there is still one single national market, and that the regulation varies strongly between markets and NRAs. Given the EU Commission's push for more regionalized market analyses and granular assessments regarding functioning competition it is important that this happens in a transparent framework which provides telecoms operators with sufficient predictability and legal certainty.

In BREKO's response to the public consultation, we will comment on specific aspects of the report and then elaborate our view on potential future geographical segmentations in Europe and Germany. We strongly concur with the statement that "regional operators of VHCN / NGA networks play an increasingly important role on the broadband market in many countries". In our yearly Market Analysis, we give a thorough overview on the German fibre market and the role of regional and alternative network operators. The study shows that in Germany, alternative network operators are responsible for 70% of fibre deployment, making them the most important players in the market¹. Thus, alternative operators are key drivers of infrastructure investment and significantly participate in the digital transformation of the EU and its members. A large part of those alternative networks is operated on a local and regional level by municipal and city carriers. The significance of alternative operators must be reflected by regulatory decisions that take the special role of these actors appropriately into account.

BREKO also supports BEREC's emphasis on "competitive conditions" in the markets (cf. p. 5, p. 16 etc.). However, we see the need to further differentiate between competition in deployment, infrastructure, and services. In this context, it is particularly important to clarify that infrastructural competition must encompass competition for the best technology, i.e., fibre networks in comparison to copper, cable etc., but not between multiple fibre networks in the same area. Overbuilding of fibre networks must be avoided.

Furthermore, we welcome the comprehensive data laid out in chapters 2 and 3 that highlight the differences between the surveyed countries. Regarding future developments in the markets and regulation therein, the information on other NRAs' practices and market properties, such as differences in retail prices and product characteristics, can help pointing out best practices and particularities of certain countries.

At the same time, the differences in data are pointing to the crucial fact that there is no "one size fits all" solution for market segmentation. On the contrary, as we see in chapter 2, each of the 31 investigated markets has inherent properties and particularities that require solutions tailored to the specific needs of individual Member States by the respective NRAs. These differences underline the significance of differentiated, well-balanced approaches that consider national circumstances and ensure fair conditions for all market players, especially alternative network operators.

¹ BREKO Market Analysis 2022, p. 15: https://www.brekoverband.de/site/assets/files/24389/breko_market_study_2022_en.pdf

Chapter 3.1 shows: Even in countries that already implemented geographical market segmentation, we see significant differences in the implementation. The case of Sweden, that is elaborated on in chapter 3.2.4 is a good example for the complexity of market segmentation. Sweden already has very strong fibre deployment and is a mature market. The NRA PTS proposed a solution where it recognized the presence of regional market but still regulated the incumbent Telia to be a (national) SMP operator. When the NRA PTS proposed this, “the EC vetoed this conclusion, and the analysis is currently under re-evaluation by PTS” (p. 28). Furthermore, the complexity is well-demonstrated by the fact that “geographical markets defined to accurately reflect the competitive conditions in such circumstances might be burdensome to administrate” (p. 29). In Denmark, on the other hand, the NRA proposed a segmentation based on electricity distribution areas. From the 21 geographic markets that were supposed to be regulated, the EC expressed serious doubts about five. This resulted in the NRA withdrawing four of the five geographic markets, while “the EC withdrew its serious doubts regarding the SMP designation of the remaining operator” (p. 16). The cases of Sweden and Denmark demonstrate that even in well-developed markets with fibre deployment numbers close to 90% or higher, regional segmentation proves to be a highly complex issue. This complexity not only results in phase II procedures by the Commission, but also in the need for different approaches for each country. Despite the similarities between Sweden and Denmark, the (regional) regulation of their markets differs strongly.

Bearing in mind the vast differences and complex processes, we find it essential that BEREC, NRAs and the EC recognize that most European markets show unique characteristics which have to be fully accounted for in order to provide legal certainty and a clear regulatory framework. Additionally, the examples show that it is important to recognise the role of incumbents also in countries with regional segmentation.

The German Bundesnetzagentur (BNetzA) does, along with 14 other NRAs, so far not impose any geographically segmented regulations. In BREKO’s view, this is a reasonable decision considering the status and properties of the German market.

Currently, Germany is displaying a strong momentum in fibre deployment, including clear fibre targets by the German federal government, new investors entering the market with ambitious deployment targets and strong progress by especially by alternative network operators. Regional networks by alternative operators often view Open Access, in the form of free negotiable network access, as an increasingly essential part of their business case. Open Access not only prevents overbuild, but

also helps preventing competitive distortions. Open networks are a crucial part of an open competitive environment.

Despite this strong momentum, the German market is still far less developed than other markets like Denmark or Sweden. This means that a premature geographical segmentation of (NGA networks) markets would be linked to several risks, overall leading to a slowed down deployment of fibre networks and insecurities with private investors. A geographical segmentation would lead to a large number of new "SMP operators" on the regional level. The regulation of these operators could remove incentives for private network deployment, where companies would pull back from certain markets out of fear of regulation. This is linked to the fact that business cases in fibre deployment depend on long-term planning, stable market conditions and clear regulatory criteria. If geographical segmentation would lead to large numbers of regional and alternative network operators withdrawing from the market, the former incumbent Deutsche Telekom (which is already regulated as an SMP) could push into these markets, strongly increase its market share and therefore lead to the transfer of market power from the copper to the fibre market.

Lastly, the concrete implementation of a geographical segmentation raises a number of concerns, regarding how and when the market will be geographically segmented. Small countries like Denmark are already divided into 21 sub-markets. Considering the size differences, a country like Germany could end up with hundreds of regional markets, which would bring bureaucratic and regulatory problems. Furthermore, a segmentation based on administrative units (as is the case in many countries) would lead to a significant heterogeneity of markets. While some administrative units are large but only include a low number of households, others, like metropolitan areas, are comparatively small with large population numbers. Costs of deployment, the number of operators and market shares usually differ strongly between these different regions, which would therefore lead to an imbalanced and heterogenic regulation.

In conclusion, the BEREC Report on competition amongst multiple operators of NGA networks in the same geographical region gives a detailed analysis of market properties, status of and potentials for geographical market segmentation in 31 European countries. The apparent differences between markets emphasize the need for tailor-made solutions that take into account factors like the size of the market and the deployment status, as well as the status of already deployed infrastructures, which builds the base of market shares. As a concrete example, the German market is not ready for a geographical segmentation, which would lead to curbed deployment and a transfer of market power from copper to fibre markets.

Should you have any further questions, please do not hesitate to contact us at any time.

Yours sincerely,



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