

Business services PC

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General information

During the 53rd BEREC plenary meeting (8 December 2022), the Board of Regulators has approved the draft BEREC Report on the regulatory treatment of business services for public consultation.

This report provides a snapshot of the regulatory treatment of business services by BEREC members and observers, based on a comprehensive questionnaire responded in June 2022 by all BEREC members and six observers (33 NRAs). It focuses on wholesale regulation for M2/2020, M1/2020 and M3b/2014, the upstream markets for business services, including when relevant information on passive infrastructure access and symmetric regulation in the context of business services. Aspects as geographical scope and the remedies applied in the context of business services, as well as of the challenges on data collection and references to good practices by NRAs are also addressed.

You are hereby invited to participate in the below public consultation on the draft report.

Your details

* Language of your contribution

English

* First name

Erik

* Surname

Massarczyk

* Email

[REDACTED]

Organisation name (in case you are replying on behalf of your organisation)

Deutsche Glasfaser Holding GmbH

* Country of origin

Germany

I agree with the [personal data protection provisions](#).

Practical details of the public consultation

Stakeholders are invited to comment and provide their views on the different chapters of the draft report following its structure:

Executive summary

Chapter 1 - Introduction and objectives

Chapter 2 - General overview of regulated markets used as an input for retail business services

Chapter 3 - Retail business products and related wholesale markets

Chapter 4 - M2/2020

Chapter 5 - M1/2020 in the context of business services

Chapter 6 - M3b/2014 in the context of business services

Chapter 7 - Relevance of passive infrastructure access for business services

Chapter 8 - Symmetric regulation in the context of business services

Chapter 9 - Data collection, reports, and good practices by NRAs

Chapter 10 - Conclusions

Chapter 11 - Future work

Annex I: Questionnaire sent to NRAs

Annex II: NRAs responding to the questionnaire

Stakeholders may also upload a document as a part of their contribution, see below.

In order to facilitate the processing of the responses, the comments provided should clearly refer to certain sections/subsections/paragraphs of the draft report.

Contributions should preferably be sent in English.

Stakeholder may submit their contributions **by 3 February 2022 close of business**.

In accordance with the BEREC policy on public consultations, BEREC will publish all contributions and a summary of the contributions, respecting confidentiality requests. Any such requests should clearly indicate which information is considered confidential, see the respective section at the very end below.

Public consultation

Please indicate comments on the Executive summary and Chapter 1 - Introduction and Objectives

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The report of BEREC states that market power is identified in case one operator has at least a market of 50%. We want to point out that such kind of definition is not adequate. It is necessary to specify, in which market the market power is reached, since BEREC has identified that in several national markets, the distribution of operators is differently between the markets 1 and 2. Furthermore, it is also needed to consider, which kind of market power one operator takes. Here, it must be differentiated if the market share about the mark of 50% is reached in direction of customer contracts and services or if the market share is assessed on the share of infrastructure usage. In case only market shares are considered from the position of customers/business customers, there is a possibility that the market share over the infrastructure is higher. Regarding Germany, the incumbent has 40% market share in terms of connected customers. In this example, the incumbent would not have market power. However, in regard of the infrastructure usage and wholesale demanding providers, the incumbent has round about 70% of customers on his infrastructure. We highlight here that BEREC needs to clarify how to measure market power and how the gap between customer and infrastructure share is quantified.

Please indicate comments on Chapter 2 - General overview of regulated markets used as an input for retail business services

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Please indicate comments on Chapter 3 - Retail business products and related wholesale markets

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Please indicate comments on Chapter 4 - M2/2020

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Before a geographic market distinction is addressed, it is necessary to assess the current level of deployment of broadband infrastructure, especially fiber infrastructure. Markets have 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 fiber network.

In fiber evolving markets like Germany, fiber networks are not deployed in general. A few regions have good coverage of fiber infrastructure but, on a national level, the other kinds of broadband infrastructure, 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 do not see the possibility to speak about a kind of infrastructure competition. In the current state we determine a kind of deployment competition in Germany. Different network operators are competing 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 infrastructure. The incumbent tries to hinder the deployment of alternative operators by duplicating fiber infrastructure. From point of view, the alternative operators face many obstacles to deploy fiber. A geographic market segmentation would raise even more obstacles.

Lastly, only the incumbent is able to serve fiber on the national level to cover all sites of a business customer. Due to a lot of business customers are spread over the whole nation, only the incumbent can serve them, since no fiber operator is currently large enough to serve nationwide. This precondition indicates that in the first step, any kind of market power needs to be determined on the national level, because the incumbent has here the advantage so serve these business customers.

Please indicate comments on Chapter 5 - M1/2020 in the context of business services

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The consideration of the regulated wholesale products misses to highlight the more complex developed business contracts. It needs to be illustrated that the more complex products regarding SLAs, repairment times and symmetric bandwidth have a different pricing than the products for the national market. Therefore, we emphasize BEREC to take care about the differences in the development of the wholesale products and to not simply compare them as equal.

Please indicate comments on Chapter 6 - M3b/2014 in the context of business services

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Please indicate comments on Chapter 7 - Relevance of passive infrastructure access for business services

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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 like regulations for using passive infrastructures and dark fiber for alternative fiber operators. 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 has to slowly gain 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.

It is further to emphasize that in Germany we believe the market for fiber and mobile backhaul as well as for dark fiber usage is competitive. For this reason, we reject any kind of approaches to regulate the named wholesale products.

Please indicate comments on Chapter 8 - Symmetric regulation in the context of business services

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As mentioned, in Germany there is a low degree of fiber coverage. Therefore, fiber operators are hardly able to compete with the incumbent and its copper and fiber (as mentioned above). For the reason that fiber needs to be deployed in the main areas in Germany, there is no situation that an alternative operator can serve nationwide. From this point of view, a symmetric regulation is not accurate, since no operator is able to deal with the incumbent. On this account, the incumbent directly benefits from a symmetric regulation. If this happens all providers have to provide the same level of access, which only the incumbent can provide. With such an advantage, any alternative operator is not able to compete.

Please indicate comments on Chapter 9 - Data collection, reports, and good practices by NRAs

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Please indicate comments on Chapter 10 - Conclusions and Chapter 11 - Future work

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Please indicated your comments on the Annexes

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Please upload your file, if any.

* Please specify which part of your contribution should be treated as confidential, if any.

nothing

Thank you for your participation in this public consultation.

Contact

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