



Full fibre for a digital and sustainable Europe

Response to the Draft BEREC Report on the Regulation of
Physical Infrastructure Access

19 February 2025

Introduction

The FTTH Council Europe appreciates the opportunity to provide feedback on the Draft BEREC Report on the regulation of physical infrastructure access (PIA).

The FTTH Council is an industry organisation with a mission to accelerate the availability of fibre-based, ultra-high-speed access networks to consumers and businesses. The Council promotes this technology because it will deliver a flow of new services that enhances the quality of life, contributes to a better environment and increased competitiveness. The FTTH Council consists of more than 150 member companies. Its members include leading telecommunications companies and many world leaders in the telecommunications industry (additional information at www.ftthcouncil.eu). Setting a concrete date for switching-off legacy copper networks as proposed by DG Connect in its White paper and echoed by the Draghi report is critically important, even though switch off will probably be carried out gradually, due to capacities. Shutting down copper networks requires careful planning and management but it gives confidence to investors and operators about the path ahead, driving investment and addressing demand issues. There are difficulties and challenges with moving to copper switch off. BEREC is uniquely placed to help the industry and stakeholders to make that transition.

Sharing of Physical Infrastructure can be an important mechanism to facilitate FTTH deployments in Europe by lowering costs and by lowering the carbon footprint of deployment. There are complex competition issues concerned, infrastructures built recently and for the purpose of deploying FTTH are not comparable to access to legacy copper infrastructures for instance. The manner in which PIA access is given, the legal basis, whether symmetric or asymmetric all impact on the process and efficacy and impact of the access given. The FTTH Council Europe welcomes the publication of this draft report and gives its comments below.

Comments

The FTTH Council notes that for access markets, in general, there are still high barriers to entry which, even if overcome in certain instances will at best lead to limited entry. The resultant problems are likely to require ongoing management and supervision that occurs in a timely fashion and which is not efficiently dealt with under competition law. Nevertheless there have been important developments in access markets with the adoption of the GIA and the 'bedding in' of the broadband cost reduction directive and its successor. Taken together with the extensive physical infrastructure sharing provision of the EECC which are applied both symmetrically and in the context of SMP operators, these mark an important change in the scope for entry (and the demand for PIA products).

The reality is that in a number of European markets where physical access remedies have been well developed, over longer periods entry has occurred in multiple instances and has been effective in those instances (E.g. Spain, Portugal and even France). Nevertheless, even in these advanced countries there is a strong geographic limit to the scope of such entry such that in less densely populated areas, entry has not occurred and is unlikely to occur in the future. In these circumstances, some form of virtual access will remain essential. It is also true

that in the vast majority of Member States, physical access remedies are less developed and it remains to be seen whether it will result in competitive entry in all instances. Where entry has occurred it has resulted in a small number of new entrants. The evolution and use of PIA across the EU is an important topic and important to the development of access competition and network entry in Europe. With regards to the EU's sustainability goals and the challenges in connection with the shortage of skilled labour, it must be taken into account that considerable resources can be saved by effective resharing of physical infrastructure.

The quality of the data collected and the reporting outlined in this draft BEREC report is commendable. The detailed and extensive remedies section, which outlines the obligations imposed, is particularly impressive. The pricing data presented in tables 4 and 5 are very useful; however, there is a noticeable lack of consistency in the measurements used—some are in kilometres while others are in metres, for example. Standardising these measurements could enhance the clarity and comparability of the data.

What also stands out in the report is the significant variability in how PIA obligations are imposed, the manner of imposition, and the types of obligations applied to different entities. This variability highlights the complexities and challenges in establishing a uniform regulatory framework across different jurisdictions and raises the question of whether a “one size fits all” approach does justice to the diversity of the European telecommunications landscape.

The section on symmetric regulation is also noteworthy and illustrates the varied and interesting experiences of the National Regulatory Authorities (NRAs). It is striking to observe that NRAs do not view the Broadband Cost Reduction Directive (BCRD) as a substitute for PIA via Article 32 (previously Article 7) measures. Significant Market Power (SMP) obligations appear to remain crucial for resolving issues related to setting specific prices and conditions for in-building access, which symmetric instruments alone do not seem capable of addressing.

However, there is a general concern that the report, while rich in data and observations, does not adequately draw conclusions from these data or make appropriate recommendations. A more analytical approach, deriving clear conclusions and offering actionable recommendations, would greatly enhance the report's impact and utility for policymakers and stakeholders.

One observation would be that, despite the United Kingdom's departure from the European Union, it has significant experience with PIA. It could have been beneficial to have the experience of the UK, as their insights could prove valuable. If they were indeed consulted and chose not to participate, that is understandable; however, if they were not approached, it represents a missed opportunity.

Finally, it is unfortunate that the responses to the report are not more exhaustive. For certain questions, as few as 4 or 5 responses were received. This lack of completeness impedes the formation of a comprehensive understanding of the situation and potentially limits the effectiveness of the report's conclusions.

Conclusions

The Draft BEREC Report on the regulation of physical infrastructure access is a valuable document containing high-quality data and insights. Despite some gaps in responses and the need for more comprehensive conclusions, the report is a significant contribution to understanding PIA regulation across different markets.

NRAs appear to be reluctant to move from SMP based remedies to remedies based on symmetrical regulation owing to the lack of price setting powers and the inability to specify certain conditions in the access notice. However, in the meantime this may be an important consideration in the context of the revision of the Recommendation on Relevant Markets. It would be premature to move to symmetrical remedies and retaining access market(s) remains important.