

Stokab's comments on Draft BEREC Report on the regulation of physical infrastructure access

Introduction

Stokab is a wholesale-only operator providing passive infrastructure in the form of optical fibres (known as dark fibre) to the market on equal terms (only business to business), i.e. to operators and service providers as well as other companies (including SMEs), authorities, and public institutions (e.g. banks, hospitals, retail chains, real estate owners, universities etc.). Stokab is a limited liability company which is wholly owned by the City of Stockholm. Stokab is only active in the Stockholm region, with its focus within the Municipality of Stockholm.

Stokab is grateful for the chance to comment on the Draft BEREC Report on the regulation of physical infrastructure access (**Draft Report**).

General comments

The Draft Report provides a thorough and well-structured overview when it comes to asymmetric and symmetric regulation of access to physical infrastructure in Europe. The Draft Report therefore provides good data on what types of regulated Physical Infrastructure Access (**PIA**) has in fact been used in different Member States. In addition to the presentation of the collected data, in Stokab's view it would have been both interesting and useful if the Draft Report also contained a deeper analysis of the facts. For example, for the purpose of better understanding under which market conditions regulated PIA is likely to be suitable and when not, as well as what role it could play in the future, it would be of interest to see some further conclusions drawn based on the presented data.

In the case of Sweden, the Draft Report simply reports that the predominant alternative for physical infrastructure is own physical infrastructure and that the national regulatory authority has only imposed PIA in a few cases under the Broadband Cost Reduction Directive (**BCRD**). Stokab would note that Sweden is characterised by well-built and extensive fibre networks that are widely available (principally due to the fact that municipal networks have built out their own networks consisting of exclusively optical fibre and thereby pushing the incumbent to also deploy fibre). The reality in Sweden is that access to dark fibre is readily available from operator neutral players, such as the municipal networks, at very low rates and this allows operators to enter the market in whatever manner they want. Operators are free to control as much or as little of the value chain as desired, to innovate on their network and services to whatever extent they want. There is consequently a low threshold for operators to enter the market in Sweden.

Operators and other access-seekers prefer access to dark fibre based on voluntary commercial agreements instead of mandated regulated access that would also require the entrant operator to invest in and rollout their own physical networks. As an outcome of the market dynamic in Sweden, there are a large number of operators present on the Swedish market with the effect that end-users enjoy a market that is characterised by strong competition, low prices and a high degree of innovation.

As a result of the above, there is little or no need, and consequently no demand, for PIA in order for an operator to deploy its own fibre network in Sweden. This is also the reason why the national regulator has revoked the previous obligation on the national SMP (the incumbent) to offer access to ducts, as well as for the absence of PIA imposed via the BCRD. These circumstances are rather a feature of what is a very successful FTTH market. This kind of analysis would help to put the data in the Draft Report in a context that could inform the reader.

The approach described above has worked well in Sweden with high build-out and take up rates, good competition and good results for consumers. Other approaches might be more relevant elsewhere, but without more extensive analysis it is difficult to compare and contrast the different approaches and experiences throughout Europe. Stokab is of the view that in order to understand under which market conditions regulated access to physical infrastructure is likely to be suitable (and when not) the data presented in the Draft Report needs further context and analysis.

One final observation, and qualified by the previous point, is that where PIA is deemed necessary there is limited success in its implementation based on either symmetrical access or based on a specific PIA market. At a high level this makes sense, measures applied to all operators must be limited in their scope while a generic PIA market would likely include many other infrastructures (with figure 1 showing the range of infrastructures under consideration). While the small number of national regulatory authorities dealing with PIA as a separate market limit their analysis, it is not clear how sustainable such an approach will be over time. It appears to be premature to consider separate PIA markets and, where regulation is required, it makes more sense to address PIA via an SMP assessment on traditional access markets. This is also the case because, focussing on a PIA market risks detaching the analysis from the market outcomes – even if there is a very concentrated PIA market (even monopoly provision), if there is competition and good outcomes for end users in the broadband market, then it would not make sense to impose regulation. Traditional access markets will mitigate against such type II regulatory errors.