

BEREC's position on the Symmetrical Regulation of the DNA

Key messages

- BEREC overall welcomes the symmetrical rules set out in the DNA proposal, in particular Article 69(5) of the DNA, which provides clarity with respect to NRAs intervening on their own initiative.
- BEREC sees the opportunity to further strengthen and simplify the symmetric regulation framework. In particular, the list of exemptions to symmetric measures should be replaced by a simplified requirement to take into account the principle of proportionality.
- The possibility to apply symmetrical regulation in the in-building segment of the network should be independent from the possibility to apply symmetrical regulation beyond the first concentration and distribution point.
- The tools of Article 71 should, in principle, be applicable by NRAs irrespective of the context of copper switch-off in order to foster FttH roll-out and take-up as well as overall deployment efficiency.

Commission proposal:

The Digital Networks Act (DNA) confirms that symmetric regulation remains a recognised and integral part of the EU regulatory framework. Symmetric measures are explicitly preserved as an appropriate response to high and non-transitory economic or physical barriers to replication.

Articles 68 and 69 empower national regulatory authorities (NRAs) to impose access and interconnection obligations outside the framework of remedies based on significant market power (SMP). This approach is consistent with that of several NRAs, in which symmetric regulation has been used to promote efficient investment and infrastructure sharing, sustainable competition and tangible benefits for end-users, notably within buildings and at key concentration or distribution points which may be located outside buildings. The DNA, therefore, in principle contributes to continuity at the EU level, confirming symmetric regulation as an objective, proportionate and non-discriminatory regulatory tool.

BEREC's assessment:

BEREC takes note that Article 69 largely continues the provisions of Article 61(3) EEC. Whereas such a continuation of the provisions is necessary as the absolute minimum, BEREC sees the need to further strengthen and simplify the symmetric framework for the following reasons.

Replication of networks in the access segment remains one of the main challenges in the electronic communications sector, which NRAs have to address. The reason for this is that deployment of FttH networks requires high investment in civil engineering infrastructures, and in particular, a second mover often faces large challenges in achieving take-up.

Given that markets continue to be fully or partially characterised by high and non-transitory barriers to entry (as is often the case for markets 1, 2 and PIA), BEREC regards this as evidence that barriers to network replication persist, except for specific circumstances.

Consequently, it needs to be considered that infrastructure competition is an important objective to the degree that such competition can be regarded as **efficient** (Article 3.1 (e) DNA). Recital 160 of the DNA, similar to Recital 27 of the EECC, notes that an efficient level of infrastructure-based competition can only be achieved to the extent that investors can reasonably expect to make a fair return on their investment. Given the high amount of investment required and the need to compete against a first mover to achieve take-up and market share, the reality is that infrastructure competition will often not develop in the access segments in the entire territory. In BEREC's view, this should be reflected more strongly in the DNA. This observation also seems to be outlined in Recital 19 of the DNA, but the current provisions in Article 69 of the DNA, as discussed below, seem to fall short on this observation.

On the other hand, BEREC notes that there is a tendency in Member States towards ever more network operators other than the incumbent deploying fibre. However, these operators do not necessarily roll out in the same areas given the economic constraints involved. This tendency raises the question of local monopolies regulation, calling for the application of ex-ante measures (potentially symmetric).

BEREC considers that **normally** there will be no (full) infrastructure competition in the access segment. Even in cases which can not be reasonably addressed by SMP remedies, bottlenecks will often persist, which might require symmetric intervention. The statement is even stronger when looking at the potential for replication of in-building wiring and cables under Article 69(1) of the DNA, which is normally impracticable and may have an impact on end-users. The expectation that in-building wiring and cables can be widely replicated seems to be overly optimistic.

Against this background, **(i) the level of justifications required to impose symmetric obligations should be reduced and (ii) the exemptions laid out under Article 69(3) of the DNA should be limited. BEREC considers the current list too extensive.** This might hinder the wider application of symmetrical measures across the EU, even in cases where such measures would be justified.

BEREC also considers that the EC should, at the very least, not have a unilateral veto position on remedies based on symmetrical measures¹.

BEREC welcomes the introduction of Article 71 of the DNA as an additional symmetric tool in the context of copper-switch off, despite some further clarification being needed, as detailed below.

Moreover, BEREC welcomes the reference in Article 71(5) to Article 68(1) and Article 69 of the DNA in order to ensure access to such bottleneck infrastructures.

BEREC therefore suggests the following amendments to the current provision of Articles 69 and 71 of the DNA.

¹ See BoR (26) 88_9 BEREC's position on SMP Remedies (incl. Harmonised Access Products) of the DNA, 2.06.2026, see: [link](#).

Alternative proposals:**Possibilities to impose obligations under 69(1) and 69(2) should be independent of each other**

NRAs should be given more flexibility to impose symmetric obligations under Articles 69(1) and 69(2) independently of each other, as these two provisions address two different replicability and competition problems, which are often not related to each other. BEREC considers that in many cases barriers to replication of in-building wiring and cables or up the first concentration or distribution point are going to persist. However, the existence of a replication barrier in the in-building segment of the network should not be a precondition to determine barriers to replication of the access network beyond the first concentration or distribution point, in particular as ownership of those network segments may differ. Instead, Article 69 (2) DNA should assess whether high and non-transitory economic or physical barriers to replication exist in the access network and whether an existing or emerging market situation significantly limits competitive outcomes for end-users.

Removal of exemptions and simplification of Article 69(3)

The exemptions in Article 69 (3) of the DNA should be replaced by a simplified requirement to take into account the principle of proportionality when determining access conditions. Such a requirement could foresee, once assessed not to be too burdensome, that NRAs assess any pre-existing voluntary open access offers (e.g. for certain cases of wholesale-only operators) and verify whether such offers allow for access under fair and reasonable conditions meeting the requirements of the NRA and take into account existing SMP obligations. The guiding principle should be that end-users have sufficient choice between operators. Business cases which are based on the assumption of a persistent monopoly should not be granted protection by any regulatory exemptions, such as those in Article 69(3). Moreover, as the deployment of fibre networks is increasingly carried out by alternative operators of varying sizes, predictable access conditions will be extremely important to reduce transaction costs and support effective competition. This requires solutions independent of individual cases.

BEREC notes that the exception from Article 61(3) subparagraph 4 of the EEC to such exemptions is not continued in the DNA. This exception allows the imposition of obligations on wholesale-only providers and other providers of VHCNs, where the network concerned was publicly funded. Effectively exempting publicly funded networks from symmetric regulation under the DNA would only risk leading to market fragmentation, raising transaction costs, and ultimately rendering wholesale access even less attractive in the least attractive areas. In any case, it should be clear that publicly funded networks in particular should not be exempted from the symmetric regulation under Article 69(2) of the DNA, including wholesale-only operators.

Opportunity for further simplification

BEREC welcomes Article 69(5) of the DNA, which provides clarity with respect to NRAs intervening on their own initiative, if the market structure requires symmetric intervention. At the same time, BEREC considers that further clarification of relevant circumstances would be

beneficial, and BEREC stands ready to provide support. BEREC sees an opportunity to further improve and simplify the provisions of Article 69 of the DNA, which should not be missed. This tool, if constructed as effectively and as unbureaucratically as possible, has the potential to contribute significantly to simplification goals in the DNA by avoiding further microanalysis and market fragmentation, in particular in environments where different operators deploy fibre networks. Such a step would also be a contribution to strengthening competition through a greater standardisation of access conditions, while also greatly contributing to overall simplification.

As regards the EC veto on symmetrical remedies, BEREC suggests removing this veto, in the pursuit to simplify the telecoms framework and reduce additional administrative burden.

Amendments to Article 71

BEREC also welcomes that Article 71 further strengthens the symmetric toolbox in the context of copper switch-off, enabling NRAs to address bottlenecks in final connections and in-building infrastructure. However, BEREC expresses reservations as regards the criteria set out in paragraph 1, on which **further clarification is necessary**. The notion of “is present in the area” is unclear because sometimes there are several operators present in the same area without there being any overlap of their footprint (with regard to the actual “premises passed” by said operators). Clarification would also be welcome as to whether such symmetric measures could be imposed in areas where the copper switch-off has already been announced prior to the entry into force of the DNA and would therefore not have been “mandated” within the meaning of Article 54 of the proposal. **BEREC believes that this tool should, in principle, be available to NRAs in areas other than those where copper switch-off has been mandated** (whether or not a copper switch-off plan is already in place) to foster FttH roll-out and take-up as well as overall deployment efficiency. The provisions under Article 71 are deemed useful both in cases where copper switch-off is (i) not yet advanced or (ii) already in its final stages (or completed), to ensure that all end users are connected.