

Vodafone Response to the BEREC Public Consultation on the ERG Common Positions on wholesale (physical) network infrastructure access at a fixed location (WLA), wholesale broadband access (WBA) and wholesale leased lines (WLL)

Vodafone welcomes the opportunity to comment on the Draft BEREC Common Positions on the abovementioned markets..

1. General comments

BEREC's review of the 2007 ERG CP's takes place in the middle of important technological and policy developments. In July European Commissioner Neelie Kroes announced a new policy which is intended to encourage investment in the next generation of superfast fibre broadband networks in Europe.

The proposal means that national regulators ensure that the monopoly network of the incumbent be required to offer 'equivalent' services to both their competitors and their own retail business. The new Recommendation must aim to achieve a step change in both NRA and SMP operator performance in the implementation of obligations that have existed for many years but have not been implemented adequately in the past. The Commission will publish Guidelines providing more detail early next year. It is vital that these Guidelines and the implementation thereof have real teeth.

The second area where regulators need to improve relates to the pricing practices of the incumbents. Again, it is well established in European competition law that vertically integrated companies may seek to 'price squeeze' their competitors by inflating the price of the network services they sell to competitors whilst cutting the price of their own retail services. The Commission is therefore proposing that national telecoms regulators now take a much more proactive approach to the policing of margin squeeze, requiring incumbents to submit details of proposed offers and the associated costs, before they launch them in the retail marketplace. But these are often crude tests, and differ significantly in the way that they are applied in different Member States. Many other regulators do nothing other than simply wait for complaints. Based on detailed Guidelines, NRA's will need to impose cost accounting requirements so that they can obtain the data they need to undertake routine tests effectively. Regulators will need tough sanctions if incumbents ignore the test and go ahead and launch, as some have done in the past. And they will need to be much more vigilant when dealing with offers, promotions and other attempts to circumvent the rules.

Commissioner Kroes' proposal implies a step change in the approach of non-discrimination and pricing regulation, as well as the roles of BEREC and NRA's. None of this is currently reflected in the common positions (CP's). Therefore BEREC cannot finalize the CP's until the Guidelines have been published and the consequences thereof have been duly reflected and incorporated in these CP's.

Hereinafter we will provide our comments, subject to the reservations above.

2. Comments on BEREC's CP on WLA

Vodafone supports the review of the CP's to take account of the NGA deployment and the new dimensions this creates. Vodafone will address a number of area's where it believes BEREC should set standards for NRA's to into account to ensure a consistent response to the latest technological and regulatory developments.

BP6. (FttH - GPON2) In this stage of the market development only P2P topology can be effectively unbundled. It is important that in case the SMP operator rolls out a point to multipoint topology network, the NRA imposes the obligation to provide effective unbundling through WDM as soon as it becomes commercially available. Both hybrid Time and Wavelength PON (TWDM-PON) and "pure" WDM technologies

can be unbundled at the wavelength level and have been chosen by the FSAN as the leading technologies for the next generation of PON networks for standardisation at the ITU's Telecommunication Standardization Sector. We ask that BEREC clearly endorses this from the outset in its CP's to steer standards and vendor development for unbundlable WDM to become a reality.

BP7. (FttC – vectoring) The CP's fall short of their ambition to set standards that take into account the new dimensions of NGA roll out, if they do not address the impact of vectoring on the competitive landscape.

Vectoring requires a single vendor environment in the cabinet. Due to its technical limitations, vectoring marks the definitive end of SLU as a means of creating competition in the cabinet. In response to early vectoring plans NRA's have agreed or are considering the removal of the obligation for the SMP operator to provide sub-loop unbundling (SLU) once vectoring is deployed, provided it supplies an 'appropriate' bitstream alternative. BEREC's CP on vectoring should take account that these policy responses only lead to re-monopolisation of fixed networks in Europe and add to the failure to use effective NGA access as an instrumental tool to achieve the objective of the Europe 2020 strategy. We call upon BEREC to seize the opportunity vectoring creates for an alternative operator to compete for exclusivity in the cabinet (or a group of cabinets) with the incumbent. The CP's should be used to revolutionize the model for deployment of fibre to street cabinets, because vectoring creates interdependency if its deployment is not a preserve solely for the incumbents.

We call upon BEREC to use the CP's to play an active role in ensuring competition for physical access to cabinets is able to emerge which creates this dynamic of interdependency in the market for NGA wholesale products. In this respect we ask that BEREC develops a regulated procedure that promotes a level playing field for competition for cabinets.

We ask BEREC to use the CP's to define a best practice for vectoring cabinet access. Vodafone believes such best practice should include the creation of a common inventory to map existing backhaul ducts and cabinets and any planned FttC deployment. Launching operators should be obliged to publish details of their deployment plans, including at a minimum information about configuration of the cabinet, technology choices, a reference offer for a virtual unbundling access (VULA) and an invitation for interested operators to participate (co-invest) in the plan. The announcement of a deployment plan should trigger a beauty contest whereby interested operators may also decide to compete with the plan and will win if their plan represents the better economic offer. The review of the CP's offers the platform for proposed rules for such beauty contest and a basis for the regulatory environment in which a standardized VULA product can be developed.

Monopoly in the cabinet also raises the bar for regulatory involvement in the design of NGA Access Products (VULA). In the absence of a "build" option in the cabinet and in order to be a true virtual unbundling product, the characteristics of a "buy" product should replicate as much as possible the benefits of an unbundled product. The CP's should set a standard for VULA that offers access seekers 1) control over technical parameters that allow them to innovate and differentiate from the SMP operator in the cabinet and 2) commercial conditions that mirror the commercial conditions an access seeker would achieve by actual unbundling.

We will share more detailed views on the role for BEREC and the NRA's in the development of national industry standards for NGA wholesale products in our comments on the WBA CP later.

BP9/10/11/13. (Passive Backhaul access) The CP's should endorse the principle that (in addition to active wavelength and Ethernet access) the SMP operator has to provide cost based duct access. This is essential if investment in parallel fibre networks is to occur. Regardless whether duct access is provided, SMP operators need to be mandated to make cost based access to dark fibre available. This position needs to be reflected

more clearly in BP 13 which currently suggests that dark fibre should be conditional on an unspecified necessity and also considers that dark fibre could be a subsidiary and not a concurrent remedy to duct access.

More broadly Vodafone calls upon BEREC to encourage NRA's to open up access to incumbents' physical infrastructure to ensure ubiquitous high-speed and rich data coverage. BEREC should take account that as long as the regulated costs of bandwidth remain broadly linear to scale (because incumbents recover a far larger proportion of common costs from high bandwidth services) rather than reflecting the underlying cost structure, which is that there are very low marginal costs incurred in the provision of additional bandwidth for an established route, this will not happen. Vodafone believes there should be no difference in treatment between backhaul access to a cabinet and backhaul access to a mobile site, especially not where the Commissioner views LTE, alongside copper, as a competitive constraint to fibre prices. Vodafone therefore asks BEREC to specifically support in the CP's that physical access should be opened for all purposes, but in particular also for mobile backhaul..

BP16. (Colocation) The development of vectoring and other bandwidth enhancing technologies may require different forms of access to a cabinet in the context of multi-cabinet solutions. The CP should be flexible enough to accommodate, where physically possible, any form of in-cabinet access to enable the deployment of such technologies by alternative operators.

BP17-35. (level playing field) BEREC's CP's do not reflect the step change that is required in the role of BEREC and NRA's under the new Guidelines.

BP41-48. (pricing) The CP's should be more explicit in the position that existing 'cost orientated' pricing rules as outlined in the existing NGA Recommendation should continue to apply to all products, including fibre until such time as a robust ex ante margin squeeze test and Equivalence of Input have been implemented in accordance with the Guidelines.

BP49. Vodafone believes BEREC's CP on ex ante margin squeeze tests does not reflect the standard of a sufficiently robust margin squeeze test that can replace existing cost orientation pricing rules. Such a test must be based on a REO test and on forward looking cost methodologies at a sufficiently granular level to remove incumbents' possibilities to game the system by very aggressive promotions or individual tariffs. Therefore, this position can only be defined after the Guidelines have been published.

BP50. SLU is not an effective NGA Access remedy (in its current form, see comments above on BP7) and therefore there is no infrastructure investment to protect and no basis for NRA's to apply a margin squeeze test between VULA and SLU (so no consistency with the ladder of investment principle applies). Vodafone asks BEREC to include this in BP50.

BP53. Vodafone asks BEREC to specifically recommend that duct access should be priced at historic costs.

BP 56-58. (Discounts) In response to the changing economics cost structure of NGA networks (low marginal costs incurred in the provision of additional bandwidth) BEREC should endorse wholesale pricing structures whereby the recurring per line charges form only a proportion of the total wholesale charges. The price should approximate the use of the resources required to produce the service and elements that should be charged for separately are:

- service enablement through a one off set up fee and a semi fixed recurring fee, depending of life of the underlying switching and transmission equipment,
- recurring line rentals.

Vodafone believes that if VULA is truly to be virtual unbundling, then the commercial terms for the product must mirror the commercial conditions an access seeker would achieve by actual unbundling. The pricing should be cost based, emulating the financial profile that actual unbundling would achieve. The proposed pricing approach helps to accelerate the uptake of NGA services compared to a mere linear NGA access price reduction.

The CP's should recognize the benefits of such pricing models and encourage NRA's to explore these further.

3. Comments on BEREC CP's on WBA

The CP's on WBA should express the ambition for BEREC and NRA's to play a pro-active role to ensure that best in class VULA is being developed, supported by harmonized business processes and interfaces among SMP operator and access seekers to allow homogenous retail offerings by individual service providers within the relevant market that can compete with the customer experience offered by cable..

NGA access product – Service characteristics

In order to compete effectively with the SMP operator, access seekers need to revert to a wholesale access regime that offers control over the technical parameters that allow them to innovate and differentiate their retail offers from the SMP operator. There is industry consensus about the technical parameters for VULA. These should be included in the CP's as minimum requirements: 1) flexible support of the CPE (two boxes and wires only), 2) flexibility on points of interconnection (national, regional, local), 3) control over the quality of service delivered to the end customer (e.g. Germany offers 4 classes: voice, video, critical and best effort) and 4) the ability to offer multicasting. Service definition should be based on Ethernet Layer 2 (not only IP or ATM) sufficient to support business services. Access should be provided uncontended, secure and service agnostic. Experience in the UK has demonstrated that it is critically important that standards for VDSL are sufficiently well developed among all participants in the national industry to permit access seekers to source, install and support their own VDSL modems. Exceptions to these minimum requirements should be motivated, have the support of SMP operator and access seekers and be subject to a plan to implement later.

NGA Access - Seamless interoperability

Equally important for a superior customer experience and for the avoidance of discrimination is that SMP operators, access seekers (and content providers) harmonize their business processes and set standards for seamless interoperability. The CP's should require that NRA's actively encourage in-market industry working groups to harmonize business processes and interfaces in support of VULA. This requires SMP operator and access seekers to define, describe, standardise and ensure implementation of the relevant business processes and use cases like service provisioning, cancellation and provider changeover. Work on the definition of a generic industry standard is most advanced in Germany where the industry working group fully described and defined an NGA interface, customised to all architectures (LLU, bitstream) supported by a Test and Certification Centre, ready for IT implementation. Work that is ongoing in Ireland and in the UK can easily be adapted to form the basis of a standard that is national, but harmonized with the best practices in other markets. BEREC should encourage NRA's to coordinate and –where possible- harmonize explicit standardisation at a national level and ensure endorsement of the industry standard in national regulation.

BP1-5. We refer to our comments above on BP7 and BP50 of BEREC's CP on WLA.

BP6/7. We refer to our comments above on BP9/10/11/13 of BEREC's CP on WLA.

BP9. Examples of current violations of these principles can be found in Spain (no access >30Mbps) and Germany (no layer 2 multicasting). Eol should make an end to any exception.

BP10. We refer to our comments above on BP16 of BEREC's CP on WLA.

BP11-20. Needs to be revised against the Guidelines.

BP23-24. We refer to our comments on BP7 of BEREC's CP on WLA and our general comments earlier in this section 3.

BP25-27. Needs to be revised against the Guidelines

BP28. We refer to our comments on seamless interoperability above in this section 3.

BP34-50. We refer to our comments above on BP41-50 and BP56-58 on BEREC's CP on WLA

4. Comments on BEREC's CP's on WLL

First of all, the CP's should set as a standard that WLL covers traditional leased lines for trunk and tail segments (PHD over copper and SDH over fibre) with 1:1 guarantees, as well as data communication networks using IP/Ethernet/ATM over copper and fibre for VPN services to create local area networks for business customers (High Quality Broadband Access). These are both wholesale services that offer guaranteed bandwidth and high quality by availability guarantees and service levels. The structure of a VPN is that every location may have a different type of access to the network and for every connection a different capacity or quality can be established over the same physical access line. Also, certain connections can be tied to certain services. DSL can be equally symmetric as leased lines (DSL is recognized as symmetric transmission technology up to 2Mbps or higher after pair bonding and vectoring) and be made equally dedicated. They are building blocks for enterprise network services and fixed telephony. They are considered gradual substitutes, whereby technical full symmetry and 1:1 dedication is not decisive for enterprise customers, but they are increasingly exchangeable in terms of functionality, price and quality. Future technologies that should be considered in this context include WDM. BEREC should recommend that NRA's review WLL in combination with WBA to ensure that effective remedies can be applied to failure in the enterprise market.

In its comments on BP9/10/11/13 on BEREC's CP on WLA, Vodafone calls upon BEREC to encourage NRA's to open up passive access to incumbents' physical infrastructure for all purposes, but in particular also for mobile backhaul, and thus opening up significant competition in link provision, to create a step change of achieving the Commission's policy objectives. To the extent BEREC believes mobile backhaul should not be treated as an ancillary service for WLA, Vodafone asks that passive access to physical infrastructure for the purpose of mobile backhaul is explicitly included in the scope of WLL.

BP8-17 and 22-29. Needs to be revised against the Guidelines

BP30-37. Needs to be revised against the Guidelines.

In conclusion, Vodafone repeats its request to BEREC not to issue the CP's now but to revise them following the Commissioner's Recommendation so that the implications thereof and the new dimensions this creates can be duly reflected.

Vodafone Group plc, 18 October 2012

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