

**Telecom Italia response to
BEREC consultations on
the revised BEREC Common Positions on best practice in remedies on the markets
for Wholesale Local Access, Wholesale Broadband Access and Wholesale Leased
Lines**

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General comments

Telecom Italia welcomes the opportunity to express its opinion on the issues regarding the Common Positions and Best Practices in remedies on the markets for Wholesale Local Access, Wholesale Broadband Access and Wholesale Leased Lines.

Telecom Italia notes that the Common Positions put an emphasis on the SPM obligations without taking into the proper account the symmetric regulatory approach that should be applied in a NGAN scenario.

In fact, the roll-out of fibre access networks across various local areas by alternative operators is creating, in many circumstances, non-duplicable “structural bottleneck”, as recognized by the CPs themselves bottlenecks with reference to entries to buildings and in-house fibre wiring.

In this scenario, a key challenge for NRAs is the application of symmetric obligations to prevent new NGA bottlenecks from emerging and ensure competition for end-users, avoiding the creation of vertical access “new monopolies” in the buildings cabled by non-SMP operators.

A symmetric regulatory approach should be taken into consideration also in the case of information regarding the database of the civil engineering work. Since for the NGNs the access could be provided by alternative operators having access to the civil works of other utilities, Telecom Italia deems very relevant for the development of NGNs the symmetric opening of this kind of information by all the subjects detaining these infrastructures (public utilities, local municipalities).

Moreover, some obligations such the availability of data regarding the network roll out and the technical aspects of the architecture should be made available by all the operators in order to grant a more homogeneous approach to the roll out, also in order to favor the achievement of the Digital Agenda targets.

The regulatory dimension of an operator (the SMP qualification) is a matter of the geographical scale of the markets considered by the NRA, and this issue will become more and more relevant with the emergence of local access network operators. In many cases, the roll out of the NGAN occurs in limited and well defined geographical areas but nevertheless the local operator control the access to a real bottleneck, even if on a regional rather than national scale.

Telecom Italia suggests the promotion of voluntary agreements among operators (co-regulation) to solve technical problems related to symmetric access provision, also through the creation of inter operators’ fora chaired by the NRA. Mandatory interventions by the NRAs should occur only in case of disagreement among operators. This approach could limit the waste of time and resources in litigations that could hinder the development of the new infrastructures.

Telecom Italia believes that, as a general principle, also the obligations regarding the technical solutions for the access, the introduction of new wholesale services, and the setting of KPIs for non-discrimination monitoring purposes should be, preferably, defined on the basis of an agreement among operators, in order to promote self-regulation and limit micro-regulation by NRAs.

Comments on specific common positions (WLA, WBA, LL)

WLA: BP2

WBA: BP2

LL: BP2

The principle of the ladder of investment is recalled as a basis of the CPs in the foreword and is better dealt in the BP2. This principle has been recently questioned by the Berec's Chair: *"It is worth noting that the concept of "ladder of investment" was instrumental for opening the market. However, it became obsolete when it comes to fostering investments in a new infrastructure"*. Telecom Italia shares this view: the ladder of investment was introduced as the mean to facilitate the passage from a service based to an infrastructure based competition as indicated by the Community's jurisprudence (Bronner), but as of today there is not evidence of the effective functioning of the principle in the market. So considering the roll out of new networks, the regulation should utilize the regulatory tools that in our opinion are better suited to deal with the development of the NGANs such, as an example, the symmetry and the co-regulation.

WLA: BP4, BP14, BP15c, BP15d

WBA: BP4, (BP5), BP8, BP9c, BP9d, BP24

LL: BP4, BP5, BP6c, BP6d

TI believes that the issue of technical solutions or the imposition of specific wholesale products could be treated successfully in restricted and specialized fora attended by the SMP operator, the interested OLOs and chaired by the NRA.

BEREC could include in the BPs the possible mandatory creation of specialized and finalized meetings of experts with the mandate to attend in order to speed up the works to define the rules for the access.

This aspect is of paramount relevance for the fiber networks where the technical solutions for wholesale product depend on the network architecture and topology (P2P, P2MP, FTTH, FTTN,). The solutions agreed among operators are to be preferred at the present stage of development of the NGNs. There is the risk that the decisions taken by the NRA could be not completely neutral with respect to the technical aspects of the services to be provided to end users. .

Moreover, TI believes that it is not necessary to give guidance in the CPs on the product characteristics. Indeed the indication can be misleading and not clear (e.g. what is the meaning of "flexible allocation of VLAN" in WBA:BP24) or can not be feasible with the network of the SMP operator (e.g. the ability to support different quality of service levels with regard to jitter, packet loss and contention ratio).

WLA: BP21b**WBA: BP15b****LL: BP12b**

Also in case of request of new wholesale product, an agreement among operators could be suitable in order to define clearly the terms of the request and of the availability of such new service.

WLA: BP25**WBA: BP20**

The dissemination of information regarding the roll out of the network, the location of access points and the network architecture is an information bottleneck to be opened by the NRA in a symmetrical way, i.e. any operator detaining information on the development and on the status of a network should open this information to any other interested party. This could foster the infrastructure sharing amongst operators and reduce the total cost of NGAN roll-out.

WLA: BP33b**WBA: BP26b****LL: BP23b**

BEREC asks that the SLG payment should be made without undue delay and should be proactive in nature. TI has some doubts on the meaning of the sentence “proactive in nature”. The sentence can be interpreted in two different ways:

- 1) The SLG payments should entail a pre-established process for the payment and billing of SLGs, as explained in the CP text;
- 2) The SMP operator should automatically pay the penalties without the need of a request from the alternative operator.

Whilst TI agrees that the SLG payment should be done through a pre-established procedures in order to speed up the whole process and avoid the intervention of third party, TI does not agree that payment should be necessary done automatically without any request from the alternative operator. An automatic payment system risks bringing about disputes between parties and delaying the time for SLG payment.

To avoid any dispute, the process should start with the operator who indicates for which access lines and events he asks for the payment. The amounts and the penalties themselves must be then subject to a technical audit to assess data accuracy, possible mistakes in the Operator’s system, etc.

Indeed in Italy the payment is done after the request of the operator and this process has demonstrated to work well.

Anyhow, Telecom Italia believes that a best practice common position on this matter is not necessary taking into account the different approaches followed by the Member States.

WLA: BP49e, BP49f

WBA: BP42e, BP42f

LL: BP36e, BP36f

According to BEREC's Common Positions, the imposition of cost-based access addresses but does not remove the concern of margin squeeze.

Telecom Italia agrees that when an operator is found to have SMP at both retail and wholesale level and both markets are regulated, the margin squeeze concern can be addressed through a price test tool. Vice versa this test is not necessary when:

- the undertaking is not notified SMP at retail level and/or the retail market is not regulated and,
- the wholesale inputs prices are regulated with a cost orientation obligation.

In this case Telecom Italia considers as not justified to submit a retail offer to a price test with possible delays in the launch. Indeed the wholesale regulation of the underlying market (in particular the Regulatory Accounting obligations), the competitive dynamics of the retail market and the *ex-post* control by Competition Authorities are sufficient to prevent any unfair behaviours.

Comments on specific common positions (WLA)

WLA: BP28

TI believes that a general database containing all the information on ducts and other civil engineering infrastructure provided symmetrically by all the operators and all the utilities is more suitable for the NGN roll out than the only obligation on the SMP operator. This could foster the infrastructure sharing amongst operators and reduce the total cost of NGAN roll-out.

Comments on specific common positions (LL)

LL: BP21

TI believes that if the trunk segment market has been deregulated since the market has been found sufficiently competitive by the NRA, this guarantees that end-to-end wholesale leased lines are available through the relevant geographic market and any other provision is not necessary.