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contribution to the  
public consultation on BEREC common positions on:

The BEREC “Umbrella Document” – BoR (12) 105,  
The revised CP on WLA (BoR(12) 104),  
The revised CP on WBA (BoR(12) 88),  
The revised CP on WLL (BoR(12) 83),  
The Glossary of terms (BoR(12) 89).

**- Non Confidential version-**

## **Company Description**

Founded in 1997, WIND Telecomunicazioni offers integrated mobile, fixed-line and Internet services that markets under the “WIND” brand name and the “INFOSTRADA” brand name.

A young, innovative and fast-growing company, Wind has always been committed to bringing out the best in the features that most reflect its values: a top quality network, excellent customer service and transparent and affordable pricing.

In June 2012, Wind confirmed its position as the number three Italian mobile operator with 21.2 million clients, and as the number one alternative fixed-line operator in Italy, with 3.2 million clients, of which 2.2 million are broadband clients.

Since 2011 Wind has been part of the VimpelCom Group, one of the largest firms in the mobile telecommunications sector in the world, present in 18 countries with over 200 million clients.

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## **Chapter 1. Wind Introduction and comments on the BEREC “Umbrella Document” – BoR (12) 105.**

**Wind** Telecomunicazioni S.p.A. (“Wind”), one of the largest Alternative operator in Italy, **welcomes this opportunity to offer its views on the BEREC Common Positions** in Markets 4, 5 and 6 providing best practice remedies. **This review and update is clearly necessary**, given that: (i) the previous editions of the ERG CPs date back to 2007, (ii) the EU Regulatory Framework was amended in 2009 (with intended effect from 2011), (iii) the European Commission issued the Recommendation on Regulated Access to Next Generation Access Networks in 2010.

**Wind asks BEREC to include wording in the “Umbrella Document”, as well as in each CP, which makes it unequivocally clear that NRAs should ensure that access seekers are given the possibility to: (i) request wholesale input parameters [CONFIDENTIAL], (ii) request service levels [CONFIDENTIAL] (iii) that reasonable requests for such parameters and service levels must be met by the SMP operator (iv) obtain, in a timely manner, all information necessary for the access.**

Wind notes the statement made by BEREC on Page 7, last paragraph. **Therefore Wind asks BEREC to add one element**, such that the standard becomes that NRAs have to impose appropriate specific regulatory obligations. This reflects the exact terminology used in Art. 16.4 of the Framework Directive. The sentence would thus be amended to read: ***“NRAs do not have to impose all of the best practice remedies listed, but must impose appropriate specific regulatory obligations, i.e. a proportionate combination of these (in Markets 4, 5 and 6) in the light of the Framework objectives, reflecting the actual competitive situation, addressing the specific competition issues that arise in individual MSs, [CONFIDENTIAL].***

Wind remarks that a level playing field should be pursued through transparency on information, at all level of access products and within the reference offers, [CONFIDENTIAL] , but also to monitor it in the next future on NGAN, [CONFIDENTIAL].



**Chapter 2. Wind contribution to the public consultation on BEREC common position on best practice in remedies on the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location imposed as a consequence of a position of significant market power in the relevant market - BoR (12) 104.**

In general, **Wind is of the opinion that regulatory obligations should not be considered symmetrical between incumbents and Altnets**, especially until a significant imbalance remains between incumbents and Altnet from a market share point of view. In fact, in several European countries, for example in Italy, [CONFIDENTIAL] the **actual competitive situation should always be considered firstly in the evaluation**, [CONFIDENTIAL]

**Wind believes that NRAs should ensure that access seekers should be safeguarded also by addressing the specific competition issues that arise in individual MSs**, [CONFIDENTIAL].

**Moreover Wind strongly underline that competition on infrastructures cannot be fostered without the availability** [CONFIDENTIAL].


Wind remarks that a level playing field should be pursued through transparency on information, at all level of access products and within the reference offers, [CONFIDENTIAL].

This important tool will allow Altnets to discuss in front of the NRA [CONFIDENTIAL] but also to monitor it in the next future on NGAN, [CONFIDENTIAL].

**BP1:** Imposing wholesale access services, like LLU or terminating segment, should entail the possibility for Altnets to use these services for the purpose [CONFIDENTIAL].

**BP2-BP3:** In case of NGAN, BEREC should also encourage infrastructure [CONFIDENTIAL], in order to foster optimization and efficiency, rather than focusing only on deployment of different infrastructures. In this respect, a general principle can be added and take into consideration, that is NRAs should balance the need to foster NGAN [CONFIDENTIAL].

Wind underlines that a level playing field should be also pursued by transparency on information, at all level of access products [CONFIDENTIAL]. In light of this, it should be always mandatory for the incumbent a detailed justification in case of unavailability of the requested wholesale products and, if available, to propose an alternative solution (with no additional costs) with clear and detailed information on its costs [CONFIDENTIAL].



**BP6b:** It is worth noting that any Access point downstream of MPOP require the availability of wholesale product to reach the access point by OLO.

**BP7b:** Wind would remarks that [CONFIDENTIAL] the general remedy to give the possibility for Altnets to reach should also be combined with a more specific remedy to use the cabinet itself

[CONFIDENTIAL]

**BP9/10/11:** Generally speaking it is of paramount importance that in case of SMP the access is mandated from the MPoP and that the SMP is obliged to give access [CONFIDENTIAL]. Experience has demonstrated that duct access and dark fibre in the backhaul/middle-mile segment are far more conducive to promoting innovation, effective and sustainable competition[CONFIDENTIAL]. By contrast, backhaul/middle-mile offers relying on transmission-capacity tend to be charged on the basis of the amount of capacity made available, which discourages access-takers from competing on the amount of bandwidth made available to customers. On the basis of what precedes, Wind asks BEREC to amend BP9/10/11 [CONFIDENTIAL].

In addition to the above Wind underlines co-location service the importance of ancillary service with all the Access services (namely at all levels).


Wind suggests BEREC to specify that in case Altnets have already services and/or network elements necessary to use the WLA provided by Altnets, incumbents should not be able to impose any condition to buy the same service and(or network elements entailed with WLA [CONFIDENTIAL].

**BP14-15:** Wind asks to BEREC to specify that in case of access requests by Altnets, in order to avoid a lack of capacity availability, SMP should anticipate information on capacity deployment, giving Altnets the right to ask for additional capacity within a predefined frame time. [CONFIDENTIAL].

[CONFIDENTIAL]

**BP 15-19:** In case of new NGA products by the incumbents the launch of its retail offer should be conditioned by a prior availability for Altnets of all necessary wholesale products which should be operational and necessary to replicate the incumbent offer.

**B17-B25:** Wind is of the opinion that BEREC should clearly states that WLA charges must always reflect underlying economy [CONFIDENTIAL].



**BP21-25:** Wind believes that BEREC should include in its BPs the principle that WLA services should always be available well in advance of the launch of incumbent retail commercial offers and that NRAs should guarantee a technical and economical replicability. WLA is one of the wholesale inputs for which harmonisation of lead-times should be readily achievable, and such harmonisation would have single market benefits [CONFIDENTIAL].

Moreover, Wind suggest to BEREC to add the following wording in BP23: *“NRAs should ensure that alternative operators have the ability to [CONFIDENTIAL] (i) request wholesale input parameters that they may need and (ii) request service levels. [CONFIDENTIAL].*

With regard to BP25, the text should be amended, to ensure that alternative operators are consulted on the commercial viability of the access points, in line with Recommend 18 of the EC NGA Recommendation and in case of roll out by the incumbents Altnets should have enough time to participate to the project or ask for additional capacity

**Wind also propose to include a periodical comparison between Altnets and Incumbents,** for example mediated by NRA, **in order to monitor performances and solve problems,** [CONFIDENTIAL].

**BP26:** Wind propose to extend this BP to bring it in line with the EC NGA Recommendation, which provides for a maximum 6-month lead-time on the publication of reference offers, and (Recommend 24) for the rapid inclusion of unbundling of the fibre loop in the existing LLU reference offer, in particular including also the principle of transparency (both for copper and fiber) in price calculation by the Incumbent. [CONFIDENTIAL].

**BP27:** Wind believes that BEREC should suggest to NRAs that KPI performance indicators should be defined jointly between Altnets, Incumbent and NRA. In any case it should be specified that the quality related to the services provided by the incumbents for Altnets should be the same of one provided to its retail arms (namely under the Equality of Input principle)

**BP28:** Wind is in favor of a common database which include information about civil infrastructures, ducts, etc., which in turn can be a strong tool to foster competition especially in a NGN development context.

[CONFIDENTIAL].



Moreover Wind would add that BEREC could publish a list of KPIs, for instance as an illustrative annex to the CPs. Wind remarks the usefulness to collect and publish KPIs from the countries in which the NRAs are required to take utmost account of BEREC CPs. This would bring out in the open any unusual practices or inexplicable and unjustified differences, and put pressure on the countries with poor performance to make progress towards best practice on wholesale input delivery.

For what concern ROs, Wind would underline that these should be accompanied by technical parameters, SLAs, fines in case of breaches and all information necessary to buy the services by Altnets

**BP42b:** Wind underlines that only the REO test should be used, considering that it represents the only approach which assures the recoup of costs a reasonable efficient alternative operator.

**BP45:** Wind believes that BEREC clearly states that this obligations should be subject to public consultation with all interested parties in order to foster efficiency and to consider national specificities.

[CONFIDENTIAL].





### **Chapter 3. Wind contribution to the public consultation on BEREC common position on best practice in remedies on the market for wholesale broadband access (including bitstream access) imposed as a consequence of a position of significant market power in the relevant market– BoR (12) 88**

On top of all the following reasoning on WBA, Wind believes that is necessary to make some general remarks, in particular Wind asks BEREC to clearly states that NRAs should prevent in any case that incumbents could hamper competition through the denial of information provisioning necessary for the wholesale access services.

In addition, in case of service unavailability the incumbent should be obliged to provide detailed justification of such unavailability or a detailed description [CONFIDENTIAL].

Wind remarks that a level playing field should be pursued through transparency on information, at all level of access products and within the reference offers, [CONFIDENTIAL]. This important tool will allow Altnets to discuss in front of the NRA [CONFIDENTIAL], but also to monitor it in the next future on NGAN [CONFIDENTIAL].

**BP5:** Wind suggests BEREC to add the following wording: *“In case of bitstream services, it is deemed necessary that the incumbent operator provide Altnets with maximum flexibility in terms of technical parameters”*, the reasons behind this statement is basically allowing Altnets with the maximum level of self-management, improving efficiency and consequently the quality offered to customers.

**BP6/BP7:** Wind asks BEREC to amend BP6 to ensure that passive (duct/dark fibre) remedies are always made available.

[CONFIDENTIAL]

**BP10:** Wind strongly believes that co-location service should always be made available and that such availability is associated with all related services [CONFIDENTIAL] in order to foster efficiency, giving transparency on related underlying costs.

[CONFIDENTIAL]

**BP15-19:** Wind strong remarks that the lead-time for availability of WBA would remain non-harmonised, which stands in stark contrast with the EC NGA Recommendation (Recommend 32) which provides for a 6-month lead-time prior to retail launch for (NGA) WBA.

[CONFIDENTIAL].



In particular, in case of new NGA products by the incumbents the launch of its retail offer should be conditioned by a prior availability for Altnets of all necessary wholesale products, [CONFIDENTIAL].

**BP21-24:** It is of paramount importance that Altnets are informed by incumbent by all information necessary to access to its products. As a matter of fact transparency is a paramount principle for fair competition, which should be granted by the NRA. Such transparent information should be provided in a timely manner, [CONFIDENTIAL].


Moreover Wind is of the opinion that KPIs and KPOs should be always established jointly between all interested parties and NRA, for example thorough specific work tables. Therefore Wind suggests BEREC to amend this point, adding also that the quality measured through these KPIs and KPOs should follow the principles of non-discrimination and equality of input.

**BP25-28:** Wind proposes to include a periodical working group between Altnets and Incumbents, for example mediated by the NRA, in order to monitor performances and in case of problems to solve them. This table can also be useful to discuss on KPIs, which should be shared and agreed between all interested parties (see previous comments).

Reference Offers should also be accompanied by technical parameters, SLAs, fines in case of breaches and include all information necessary to buy its services.

**BP29-33:** The migration procedure must take into account the appropriate timing of the underlying assets and the costs incurred by alternatives operators, [CONFIDENTIAL]. This procedures should be established and agreed between incumbent and Altnets. The incumbent should not be able to decide a migration without having informed well in advance all interested parties[CONFIDENTIAL].

**BP42b-c:** Wind suggests BEREC to amend this point inasmuch only the REO test should be used, considering that it represents the only approach which assure the recoup of costs of a reasonable efficient alternative operator.



## **Chapter 4. Wind contribution to the public consultation on BEREC common position on best practice in remedies imposed as a consequence of a position of significant market power in the relevant markets for wholesale leased lines**

Generally speaking Wind wants to highlight to BEREC that even in transition period, looking forward to the NGN context, it is important to stress that the WLL market remains strategically for AltNets both on traditional technology and IP/Ethernet technology. Considering that Wind proposes the following comments:


**BP1-BP6:** Wind suggests BEREC to add the following wording: *“Alternative operators should be able to buy all necessary WLL services on a transparent and non-discriminatory basis, [CONFIDENTIAL].”* These principles should always been considered valid also for technical and economic condition applied by the incumbents. In addition, if Altnets require backhauling services or special solutions, incumbents should be obliged by NRA to analyze the request in a timely manner [CONFIDENTIAL].

**BP7:** Wind asks BEREC to introduce in the text the co-location should always be made available at delivery points, along with all the other facilities, [CONFIDENTIAL]

**BP8-9:** Wind suggests BEREC to modify the text including the specificity that the WLL services should be available well in advance to the retail commercial offer of the incumbent and should guarantee a technical and economical replicability. Wind is of the opinion that BEREC should clearly states that WLL charges must always reflect underlying economy of scale and scopes of the incumbent, in order to foster a level playing field between access seekers and incumbents

**BP12-15:** Wind requests strengthening of the text, by extending its wording as follows: *“NRAs should ensure that alternative operators have the ability to influence the decisions regarding characteristics of new wholesale products and new interfaces. Specifically, alternative operators should be entitled to (i) request wholesale input parameters and (ii) request service levels. In case of refusal by the SMP operator, the NRA shall assess whether requests for such parameters and service levels are reasonable, and, as applicable, impose their provision upon the SMP operator.”* It remains important that WLL services should be available [CONFIDENTIAL].

Wind proposes also to include a periodical comparison between Altnets and Incumbents, for example mediated by NRA, in order to monitor performances and solve problems which may arise. This working table can be also useful to discuss on KPIs.



Wind underlines that a level playing field should be also pursued by transparency on information, at all level of access products, [CONFIDENTIAL].

**BP18:** Wind believes that should not be any 'usage restrictions' on WLL, Wind strongly believes that WLL availability should not be restricted by technical or geographical motivations. Wind asks BEREC to fully remove this reference.

**BP17-25:** Wind believes that it can be useful if BEREC could publish a list of KPIs for instance as an illustrative annex to the CPs but also remarks that BEREC should collect and publish KPIs from the countries in which the NRAs are required to take utmost account of BEREC CPs. This would bring out in the open any unusual practices or inexplicable and unjustified differences, and put pressure on the countries with poor performance to make progress towards best practice on wholesale input delivery.

Moreover switching conditions should be shared between all players, and not prevented by service unavailability given by the incumbent to the Altnets, [CONFIDENTIAL].

Reference Offers should also be accompanied by technical parameters, KPIs, SLAs, fines in case of breaches and include all information necessary to buy its services; [CONFIDENTIAL].

[CONFIDENTIAL]


**BP30-34:** Wind believes that NRAs should ensure that access seekers should be safeguarded also by addressing the specific competition issues that arise in individual MSs, [CONFIDENTIAL].

[CONFIDENTIAL]

**BP49b:** Wind asks BEREC to amend the wording considering that only the REO test should be used, considering that it represents the only approach which assure the recoup of costs of a reasonable efficient alternative operator

**Annex1- Access:** Wind underlines that access obligation must be accompanied by all services and related accessories [CONFIDENTIAL]

**Annex1- Bitstream Access:** In case bitstream service it is worth noting that also the [CONFIDENTIAL] technology is possible, so Wind asks BEREC to consequently modify the wording.



## Chapter 5. Wind contribution to the Glossary - BoR(12) 89

Wind proposes to BEREC few suggestions about this document, in particular Wind noted that at **page 8**, the LLU is missed in the ladder of investment figure, so Wind suggests BEREC to amend the Figure introducing also the LLU service.

Moreover for what concern the definition of **Distribution Point**, Wind suggests BEREC to amend the wording adding that the distribution point is not only a splitting [CONFIDENTIAL].

