

## Telekom Austria Group's Comments on BEREC's draft Report on Impact of Fixed-Mobile Substitution in Market Definition

### I. Executive Summary

Telekom Austria Group (TAG) welcomes the possibility to comment on BEREC's draft report on fixed-mobile substitution in market definition. To a certain degree the impact of fixed-mobile substitution has already been taken into account in Austria in the market definition process and had considerable effects in the assessment of competition. We appreciate that BEREC is taking this development seriously and considers the general trend of fixed-mobile substitution and its possible effects on a European level.

In general we share BEREC's analysis that the degree of fixed-mobile substitution varies between the 27 member states. It has to be noted, however, that overall, fixed-mobile substitution effects are becoming more and more relevant in a number of markets and member states as mobile technologies are rapidly developing and therefore need to be taken into account in a forward looking way when analyzing markets and considering appropriate remedies. Moreover, convergence increasingly blurs the clear-cut borders between fixed and mobile services in many consumer markets. Given the current and future impact of fixed-mobile substitution we believe that both the amount but also the degree of current obligations imposed on fixed network operators need to be reconsidered.

### II. Comments and remarks concerning special aspects of the report

TAG herewith takes the opportunity to submit its comments to the BEREC draft report as follows:

- The BEREC draft report observes an increase of fixed-mobile substitution (FMS) increase particularly for voice services and shows a similar trend in data services, especially in the Austrian case. We are convinced that the trend towards smartphones and other access devices which allow customers to use internet services on the go as, for example, laptops, ultra books and pads increases rapidly FMS effects in data services in all those countries where mobile penetration is high and tariffs of mobile services are moderate in comparison to fixed net services.

In addition other services substituting fixed voice like VoIP or VoB need to be assessed when applying a substitution analysis. Not only FMS but all substitution effects or competitive constraints of all services together influence market conditions. With the continuing trend towards use of smartphones and other mobile broadband devices user habits are rapidly changing. Not only residential customers but also business customers change their communication behavior (e.g. being online, checking emails, e-banking, etc. everywhere at every time). In fact, business customers do also substitute their fixed voice and broadband services - in meetings, abroad and even during vacation as employees are often allowed to use their business smartphones and other mobile broadband devices for private purposes.

When taking this development into consideration in a forward looking way, it therefore, no longer seems appropriate to continue to differentiate between residential and business users.

- Furthermore the draft report presumes that FMS is mainly perceived as a retail issue which might in certain cases affect the wholesale level as well. TAG would like to stress the fact that also at wholesale level itself a lot of wholesale offers from different platforms/technologies like mobile, fixed net DSL or fixed net cable are available. The Austrian NRA lists in its latest "Telekom Monitor 4/11" the number of active wholesale lines in market 5 (wholesale broadband access/bitstream) as of Q2/11:

Technology	Number of wholesale lines
xDSL Bitstream A1	43.940
xDSL Bitstream ISPs via LLU	3.820
Bitstream via coaxial cable (open access)	22.740
mobile	10.330

Therefore it is evident that alternative, competitive wholesale offers via open access or mobile technologies do exist in a sufficient dimension which would justify FMS analysis at wholesale level. We have indications that similar situations develop in several other European Member States. Therefore FMS effects or at least the competitive constraints it has at wholesale level must not be ignored in case of market definition or market analysis.

- TAG agrees that not in all circumstances the analysis may lead to the definition of a joint retail market for fixed and mobile services. However, all competitive constraints mobile services have on fixed net operators by influencing significantly their price, positioning and product policy need to be considered when analyzing significant market power (SMP) or when determining remedies.

Thus we concur with BEREC that it is important to fully take into account competitive pressures at retail level from competing platforms (including cable where present) when analyzing the presence of SMP and imposing proportionate remedies. Moreover TAG would encourage NRAs to incorporate these findings already at an earlier stage, that is to say when performing the 3 criteria test.

From our point of view FMS effects do actually (and will in the future even more) influence the appraisal of the first and second criteria "existence of high and non-transitory entry barriers" and "the absence of tendency towards effective competition". In both cases FMS or just competitive pressure from mobile services - as well as other services substituting fixed voice like VoIP, VoB - should lead to the decision that the 3 cumulative criteria are not met and therefore the respective market should not be subject to ex-ante regulation any longer.

- NRAs should be proactive in monitoring the market and its dynamics and should apply a forward-looking approach with regard to end-users' behaviour. If fixed-mobile substitution or even competitive pressure from mobile services weaken the market position of a fixed net operator that is subject to regulation, NRAs should not hesitate to adapt or lift regulatory obligations and ensure a regulatory level playing field between the parties concerned. Otherwise the regulatory approach within a country risks not being technology neutral and regulation itself could lead to market distortions.
- The report states that the effect of fixed mobile substitution on the market until now has been mainly a loss of voice and data traffic and /or subscribers by fixed networks. But substitution effects and competitive constraints do not only occur in voice and broadband markets but also in



access markets: Austria for example faces around 2,8 Mio fixed net access lines (including those from cable operators) but nearly 11 Mio activated SIM cards. Mobile only households are substantially growing and take a significant share (48,8 % in 2011 ) as well as fixed penetration is low compared to other countries.

In this context the BEREC report observes that fixed and mobile access technologies and services are widely used in parallel but not as substitutes. We see clear indication for the opposite and fear that the report could ignore the replaceability of fixed and mobile services in a broader context. We therefore challenge such a narrow approach which risks to be biased and would favour unwarranted continuation of fixed access regulation at retail level in Europe (possibly in order to keep somewhat control over former incumbent operators concerning retail access services and prices).

We believe if the 3 criteria test und the analysis of fixed-mobile substitution effects is performed thoroughly taking into consideration all electronic communications services offered at retail level together (access, voice, broadband) the sector specific regulation of any single retail market would need to be completely reconsidered in many European Member States.

At EU level the European Commission's recent decision regarding universal service obligation already recognizes the FMS effects from a consumer's point of view. Consequently the operator designated to provide access to telephony services under the universal service regime shall no longer be obliged to implement/realize the access via fixed technologies - mobile technologies are seen as equal to fulfil the end users needs in this respect. Against this background TAG would like to pose the question why these obvious fixed-mobile substitution effects do not trigger a new assessment of the current regulatory regime for fixed access in parallel?

Moreover, the BEREC draft report puts little focus on the establishment and application of additional important criteria when assessing fixed-mobile substitution. We missed, for example, the assessment of:

- o fixed net penetration rates in a country and the direct comparison to
- o mobile penetration rates together with
- o number/percentage of 'mobile only' households,
- o price levels and positioning of comparable fixed and mobile services/offers within a grid (e.g. bubble charts showing price level, positioning and included download volume)

In order to reach the Digital Agenda targets for 2020 TAG believes that it remains vital to drive growth and innovation in both mobile and fixed sectors and to boost investment in next generation networks where only a combination of fixed access and mobile (LTE) technologies will lead to significant improvements.

More than 13 years after liberalization, current market forces and competitive trends clearly prove the need for further deregulation, especially the deregulation of retail markets.

If leading fixed net operators continue to be subjected to rigid obligations on both retail and wholesale markets 2020 targets could be put at risk.