

## **Telefónica comments on fixed-mobile substitution**

### **BEREC report on impact of fixed-mobile substitution in market definition (BoR (11)54)**

#### **Introduction**

Telefónica welcomes the BEREC report and the consultation about this topic. Telefónica thinks that this issue will have growing importance due to trends in technology and increasing convergence, as the BEREC report recognises in the conclusions.

We think it is important for market players to have a clear set of principles on how fixed mobile substitution is going to be studied in market analysis.

The BEREC document is a good starting point to achieve this aim. It makes a good summary of current regulatory practice and reviews the fundamentals of market definition and how they can be applied to fixed mobile substitution.

We think that fixed mobile substitution is important in all phases of market analysis, and not only in the market definition phase.

The BEREC document takes this into account, when it mentions PRACTICE A and PRACTICE B on page 13, and then also in the conclusions. We welcome that the BEREC report tries to be general on this issue and recognises that fixed mobile substitution is also important in all phases of market analysis.

On page 25, the BEREC report recognises that five NRAs mentioned that even where they concluded that fixed and mobile services did not belong to the same market, there were situations in which the existence of FMS influenced their conclusions regarding SMP analysis or the imposition of obligations in the markets. So, the existence of FMS may affect not only the market definition but also other phases of the market analysis.

The substitution effect in retail Access markets needs to be assessed as a matter of urgency. It is becoming increasingly common in recessionary times for consumers to select a device either fixed or mobile in a number of markets. There is clear evidence that mobile services are exerting competitive pressure in a number of markets.

## **On the detail of the guidelines**

The document is rather general about the guidelines that NRAs have to follow for taking into account fixed mobile substitution in regulatory practice. The principles to be followed are quite general, probably due to the fact that there is a need for flexibility at national level to analyse this complex matter.

Telefónica supports the view that each fixed-mobile substitution should be examined on a case by case basis, and needs a deep understanding of market peculiarities at national level. However, the growing trend to find substitution in access markets needs to be studied in NRAs analysis in more cases than now it is done.

So we would welcome more certainty about consideration of the issues by NRAs in the different phases of market analysis. The principles should be able to accommodate different local market circumstances and peculiarities, but we think market players will welcome more certainty about the fact that NRAs will look into the issue and follow a series of principles.

For example, it would be useful to assess the approach to be taken by NRAs and would welcome BEREC guidance on the relative value of different sources of data which would provide some consistency to the approach of FMS analysis by all BEREC NRAs.

## **Local differences**

The BEREC document gathers a set of figures at EU level about the impact of fixed-mobile competition and draws some conclusions on the different patterns of countries. It then distinguishes between two extreme patterns of countries:

a- Countries with low and decreasing fixed line penetration, offset by an increasing number of mobile only households (Czech Republic, Finland...*cf. Annex 1*).

b- Countries with high and steady (or growing) fixed line penetration, and a large majority of dual access households (France, The Netherlands...*cf. Annex 1*).

We think that the figures at EU level cannot be considered representative of the situation in many countries. Again, we agree with the BEREC report that *“the level of FMS and its impact on market analysis requires a deep understanding of local characteristics in each country”*<sup>1</sup>.

By the same token, we also would like to add that the level and impact of fixed mobile substitution depends also on the different geographic areas within a country, and that it is necessary to look at this from a geographically disaggregated point of view. The same way that the average situation at EU level does not allow us to assess the situation in each country, the average situation at country level does not allow us to infer the competitive situation in all geographic areas. Here the size of country and the differences in fixed and mobile availability and usage plays a role. In countries with geographically heterogeneous conditions the geographic analysis is more necessary than in other countries.

The report recognises this to some extent, as it says on page 44 that: *“Finally depending on the characteristics and coverage of the mobile and fixed networks in particular areas, it is possible that substitutability exists in some geographic areas but not others.”*

We think that this geographic assessment will need to be taken into account in market analysis in general, not only for market definition.

It is also possible that in a country falling under option b (with a large majority of dual access households), there are geographic areas where mobile voice and broadband services are exerting competitive pressure on fixed services that deserves that NRAs adjust the regulatory framework.

## **About self-supply**

Since the consultation document deals almost entirely with FMS at the retail level, the influence of FMS on the wholesale markets is mentioned only briefly and mostly in reference to BEREC report on self-supply (see page 49 of the consultation document). But given that most retail markets are now outside the framework the only reason to

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<sup>1</sup> Page 15

review FMS is in relation to retail fixed access or indirect effects on wholesale broadband markets

We think that taking into account indirect constraints and inclusion of self-supply is essential in a market analysis.

Regardless of the influence of this specific issue in fixed-mobile competition, we would like to make a comment on some of the issues surrounding self-supply that are included in the BEREC report:

The consultation document, in line with the BEREC report on self-supply, takes a neutral position on the indirect constraints and self-supply issue, making no (or very little) difference between taking them into account indirect at the market definition phase and taking them into account later on, in subsequent SMP designation/remedies imposition phases (chapter 7 of the consultation document).

Although (theoretically) it should not matter in what phase are indirect constraints and self-supply taken into account, the outcomes of relevant market analyses made by NRA support the conclusion that not inclusion of indirect constraints and self-supply into relevant market definition artificially dwarfs their impact on the analyzed wholesale market and significantly affects the outcome of the analysis.

We think that an economic approach to market definition should identify and include all relevant competitive constraints and thus should not be limited only to direct constraints (as is typically the case in EU regulatory practice). This approach produces a market definition and market share estimates which give clearer and more accurate information about the competitive conditions in the market. Taking into account indirect constraints/self-supply at later phases (SMP designation/remedies imposition) leads to narrower market definition, higher market share figures and inevitably to underestimation of impact of indirect constraints/self-supply on the competitive situation in the relevant market. Taking them into account in later phases should only be limited to the situation when this impact is supposedly low.

Application of consistent approach to indirect constraints/self-supply by NRAs is therefore an issue of paramount importance.