Telecom Italia response
to ERG draft Common Position
on Geographic Aspects of Market Analysis
(definition and remedies)

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Executive summary

Telecom Italia welcomes the opportunity to comment on the ERG draft Common Position on Geographic Aspects of Market Analysis. This Common Position represents a significant step ahead in defining a common approach for NRAs to implement geographic market analysis that, indeed, has been quite rarely applied during the first round of market analyses.

In the last few years, an infrastructure based competition model has spread mostly as a consequence of a heavy utilization of the Local Loop Unbundling by Alternative Operators. Therefore, in the UE Countries in which there has not been a significant deployment of alternative physical network infrastructures (such as cable access network), geographic market segmentation have been mainly based on alternative operators offers provided through wholesale infrastructural services, like LLU and broadband wholesale access (i.e. bitstream). The specific competitive conditions of eny area are strictly depending on the activation and the utilization of wholesale service already in place.

Alternative Operators' retail offers have have caused a differentiation in prices and available bandwidth in the broadband access services provided in different geographic areas. The number of Alternative Operators operating in MDF areas open to Local Loop Unbundling increased with a consequent increase of competitive pressure and expansion of Alternative Operators market share. In metropolitan areas, which are commercially more attractive, several Alternative Operators provide either LLU-based or fibre/cable-based triple play services and, therefore, competition is much more developed than in other areas. This evidence should be considered in evolving regulation towards a geographic-based approach that should allow either softening or withdrawing remedies in competitive areas.

On the basis of the above, Telecom Italia believes that the “forward looking approach” to the definition of geographic market analysis stated by the ERG draft Common Position is the proper approach to implement geographic market analysis, also with reference to the next deployment of NGAN.

A key methodological point is to distinguish wholesale markets from retail markets, in order to appropriately define the geographical units to which apply the competition analysis. While wholesale geographical unit could be defined in accordance with the network topology (for example the MDF covered area in case of wholesale LLU and BWA services provided on traditional copper access networks), retail markets geographical unit might be also related to administrative partition of the territory (e.g. metropolitan areas).

Telecom Italia supports ERG position suggesting the need of grouping the basic geographic areas into larger separate local geographic markets. In this case, the analysis should be focussed on the difference of competitive conditions among the different geographic areas included in the same local market rather than on the identification of perfectly homogenous conditions inside each local market.

Methodologies to adequately aggregate geographical units must be clearly defined as made, for example, in the geographical analysis of the wholesale broadband access market carried out by OFCOM that aggregated MDF covered areas on the basis of a double threshold: the minimum number of reachable customers and the minimum number of Alternative Operators utilizing LLU services.

Telecom Italia shares ERG’s view that the analysis of market shares across different geographic areas (although more important in the SMP assessment) does play an important role in identifying local geographic markets characterized by sufficiently different competitive conditions.

The key methodological aspects of the ERG draft Common Position that, according to Telecom Italia, need further improvements are the following: (i) the “two step approach” based on a preliminary screening and a full geographical analysis and (ii) the “alternative approach” between the proper geographic market segmentation and the simpler geographic differentiation of remedies.

As far as the preliminary analysis is concerned, Telecom Italia maintains that a simplistic preliminary screening of geographic markets may determine regulatory errors (failure to recognize geographical markets) and scarce harmonization across EU member States (different conclusion by different NRAs in similar competitive conditions). Therefore, a preferable approach could be based on splitting relevant markets in two groups: the ones to be directly submitted to a full geographic analysis (e.g. retail access to fixed networks; wholesale broadband access; wholesale terminating segments of leased lines) on the basis of their characteristics and the remaining markets to be sumbmitted to an improved, and more reliable, preliminary analysis.

With reference to the possibility of adopting a geographical differentiation of remedies, Telecom Italia deems that, also in this case, the simplistic approach may lead to regulatory errors (failure to recognize effectively competitive geographical areas where no remedies at all are needed) and scarce harmonization across the EU. Therefore, Telecom Italia suggest to strongly prefer, as methodologically well grounded, the basic approach of market segmentation and to consider only in limited cases, to be motivated by NRAs, the alternative approach based on remedies differentiation.

In the following each paragraph of the ERG draft proposal will be commented in detail.

1 Comments to "Introduction" chapter

The ERG draft Common Position under consultation acknowledges that the *"the definition of the geographic scope of communications markets has been an issue for NRA's since the 2002 regulatory framework was enacted*". In fact, the possibility, for the NRAs, to define, where appropriate, different relevant geographic markets for the same product market was clearly provided by the Framework Directive (2002), whereas article 15, paragraph 3 establishes that "*National regulatory authorities shall …define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principle of competition law*". Furthermore, Recital 27 of the Framework Directive, establishes that "*National regulatory authorities should analyze whether a given product or service market is effectively competitive in a given geographical area, which could be the whole or a part of the territory of the Member State*." However, the NRAs have so far refrained from identifying relevant geographic markets during the first round of market analyses.

Nowadays, the ERG Common Position, for the first time, clearly recognizes that "*the importance of geographical aspect of market analysis has arguably increased over the past few years due to an increase in coverage and market share of alternative "networks" or operators such as unbundling operators, cable networks..….*"[1]

Telecom Italia shares the ERG's view of differentiating regulation geographically, in line with the principle of proportionality, due to the fact that the new cycle of market analyses will face a completely different market scenario characterized by significant geographical variation of competitive conditions across geographical areas.

As recognized by the ERG, the issue of geographic markets has been raised also in the context of NGA development. On this matter, Telecom Italia believes that the implementation of NGA will make even more relevant the geographic approach to markets.[2] In fact, if ex-ante regulation will be limited to those enduring economic bottlenecks found at the level of specific geographic markets, since the conditions of competition significantly differ among local areas, the geographic markets approach will promote both incumbents and OLO's investments in NGA with the final result of reducing regulation and increasing infrastructure competition.

Finally, Telecom Italia shares the ERG's view concerning the necessity of offering guidance on the implementation of geographic aspects of market analysis to promote harmonization among Member States. At the same time, Telecom Italia suggests to avoid a too rigid approach to these evaluations,

[1] Since 2002 Italy is among the first European Countries for number of fully unbundled lines. Italy is now the first country in Europe for penetration of unbundled lines (16%). Italy has the lowest price in the EU for fully unbundled lines (7.64 Euro a month)

[2] See on this Amendola, Pupillo (2008) "The Economics of Next Generation Access Networks and Regulatory Governance: Towards Geographic Patterns of Regulation", C&S n. 69

because, while the literature on geographic analysis of markets for goods is quite developed, the one for network industries is still at a very early stage of development.[3] .

2 Comments to "Is there a need for detailed geographic analysis?" chapter

The importance of geographical aspects of market analysis has notably increased over the past few years due to the development of the "infrastructure-based" competition model based mainly on the unbundling of the local loop. In addition, in many countries, the WiMax frequencies auctions have provided to a number of alternative operators the possibility of providing access services, likely starting from particular geographical areas such us main cities and underdeveloped areas.

In Italy these developments have lead to substantial changes in the competitive context at geographical level with respect to the first round of market analysis:

- in the last two years, the number of ULL operators, the number of ULL sites and the number of unbundled lines have significantly increased;
- the higher competitive pressure in local areas covered by ULL facilities is witnessed by the rapid increase of the OLO's market shares of retail both narrowband and broadband access services;
- the growth of the OLO broadband connections is driven by ULL (in 2007 the increase of unbundled lines exceeded 1 million) while the number of broadband connections supplied through bitstream is roughly unchanged (in 2007 the incremental number of wholesale bitstream lines has been lower than 50 thousand); these figures further confirm that the strengthening of competition in the telecommunication industry is driven by facility based competition rather than service based competition.

Telecom Italia agrees with the ERG draft Common Position that differences in competitive conditions between geographic areas, despite the fact that these different geographic areas are covered by the network of the incumbent operator, shall lead to a geographical differentiation of the regulation. Geographic differentiation of regulation might be introduced either by the definition of local areas as separate geographic markets or through a geographical differentiation of remedies.

In ERG's view the starting point of the geographic market definition is – in line with the European Commission SMP guidelines – the hypothetical monopolist test. ERG acknowledges that the application of the hypothetical monopolist test (SSNIP test) suggests that the national territory is to be divided into smaller geographical areas. Even OFCOM[4] recently concluded that the analysis of the demand and supply side substitution suggests a very narrow market definition. Indeed Ofcom claims that the geographical market dimension shall be as small as the single building!

Provided that a strict application of the SSNIP test leads to too granular geographic market segmentations which can not be managed by NRAs, Telecom Italia agrees that practical feasibility

[3] See on this , Presentation by Pierre Larouche (2008) , "CLEC Seminar , February 2008 " Brussels

[4] OFCOM, "The geographic dimension to market definition in telecommunications" October 2007

issues call for an aggregation of local areas pooled together according to the homogeneity of competitive conditions. Telecom Italia maintains that this aggregation, while necessary, shall be done carefully and bearing in mind that the demand and supply side substitution analysis would recommend a higher level of granularity.

ERG states that the NRAs, as a first step, should determine whether there is evidence of local geographic markets or whether there is evidence of a national geographic market. To this aim, a preliminary analysis should be carried out.

ERG lists some indicators which should be used to preliminarily search evidence of geographic markets or a national market.

In Telecom Italia's opinion this approach risks to be too discretionary and to fail in achieving regulatory harmonization across the EU due to possible insufficiencies and errors of the preliminary analysis. These risks may be eliminated only by carrying out a full geographical analysis for each relevant market either listed in the EC Recommendation or defined by the NRA. However, this may bee a too demanding approach for the limited resources of the European NRAs.

Therefore, Telecom Italia believes that the most effective and efficient approach to balance regulatory effort and risk of regulatory errors is the one that foresees a list of relevant markets to be submitted, without requiring any preliminary analysis, to a complete and comprehensive geographical analysis and the remaining set of relevant markets to be submitted, at a first stage, to a preliminary geographical analysis, based on an increased set of indicators with respect to the sole two indicators suggested in the ERG document (p. 9): alternative operators coverage and incumbent's geographically differentiated prices.

The relevant markets that are strong candidate for a comprehensive geographical analysis are also referred by the ERG draft Common Position as examples of markets where geographical different competitive conditions are most likely to be found due to the existence of alternative operators which compete with the incumbent in specific areas of the country:

- retail access to fixed networks;
- wholesale broadband access;
- wholesale terminating segments of leased lines;
- trunk segments of leased lines (in case the triple test is met and a full market analysis is carried out);
- transit services in the fixed network (in case the triple test is met and a full market analysis is carried out).

Some European NRAs (e.g. TKK and Ofcom) have already carried out market analyses in some of these markets finding geographic market segmentation or applying geographic remedies.

The market analyses carried out in the first and second round in the European Countries have showed that these markets have a structure that well fits with a geographic segmentation of the markets.

The services included in three markets of the list above (wholesale broadband access, wholesale terminating segments of leased lines and retail access) are mainly provided by the alternative operators using the network access of the incumbent through the unbundling of the local loop. As said above, the alternative operators, in Italy as well as in many European countries, have considerably raised their shares in these markets in specific areas of the country where they deployed their networks. This has caused a change in the homogeneity of the competitive conditions of the national market which justifies the definition of separate geographical markets.

Telecom Italia believes that a preliminary analysis is not adequate to asses the existence of geographic segmentation in the markets listed above; only a thorough and complete market analysis is adequate to this aim. There is the risk that the use of the preliminary analysis indicators suggested by ERG could bring to an incorrect analysis of the competitive conditions in different geographic areas of the same product markets.

Only for relevant markets not included in the list, where a geographic segmentation is less likely at a first glance, the preliminary analysis could be carried out with sufficient guarantees of reliable results. However, Telecom Italia strongly suggests that this preliminary analysis should be based on the methodology proposed in the ERG document enriched by, at least, a couple of additional indicators (indeed, the first two criteria of the comprehensive geographical analysis describet in section 4.1 of the ERG draft Common Position): “number of suppliers” and, if necessary, in case of still uncertain judgement, “barriers to entry”. In fact, the assessment of these additional preliminary criteria would not impose excessive burden on NRAs with respect to further criteria foreseen for the comprehensive geographical analysis.

3 Comments to “Choosing an appropriate geographic unit” chapter

Telecom Italia agrees with the main options defined in the ERG document, i.e. administrative boundaries or units based in the network structure of incumbent and/or alternative Operators.

However, in order to appropriately define such units, Telecom Italia believes that the analysis of wholesale and retail markets have to be developed separately.

In addition to that, a forward looking analysis, should be carefully considered by NRAs, even for taking into account NGAN deployment plans (when available) as NGN-enabled areas are likely to be considered geographical relevant areas for regulation analysis.

3.1 Geographical units for wholesale markets

Telecom Italia believes that the most correct criteria, among those proposed by ERG, for geographical segmentation in wholesale market is the network structure of incumbent and/or alternative Operators.

First, Telecom Italia agrees with ERG's opinion according to which NRA's should make sure that sufficient information is available to all market parties, nevertheless Telecom Italia believes that, together with the availability of the unbundling reference offer, in many EU Countries both the incumbent and the new entrants have been providing to the NRA all the detailed information needed to monitor the evolution of the network deployment.

Thus, Telecom Italia believes that many NRAs have already been collecting in the past years data information that will result useful for the market definition and analysis based on the network structure of the incumbent operator.

Second, Telecom Italia agrees with ERG that "the geographical segmentation, and the correlated geographical units, is large enough to be subject to an investment decisions ..." by the players in the market. In other words, the operators have to be able to separately plan the investments for every single geographical unit.

As a consequence, Telecom Italia agrees with the ERG's example regarding market segmentation for the Wholesale Broadband Access services (WBA) on traditional FTTE networks, where the most suited analysis seems to be that in terms of MDF, specifically in terms of customers reachable by LLU available at MDF sites, or by any other proper means.

At the same time, in a forward looking approach, when assessing the evidence of LLU and/or WBA services on FFTN and FTTH NGA infrastructure, in case of transition to NGA networks, more appropriate geographical units should be considered. In this sense, it needs evaluating reachable users and taking also in account the additional investments on further network deployment to be sustained by all the different actors in order to offer the WBA services.
The geographical unit, in this case is strictly related to the current and forecasted NGN access deployment of different Operators and availability of suited civil infrastructures.

By referring to the ERG conclusion stating that *"it is likely to be more appropriate…to aggregate units..",* Telecom Italia, in spite of agreeing with the opportunity of aggregating units, believes that ERG might give a more detailed guidance regarding the possible methodologies with which this aggregation could be performed.

3.2 Geographical units for retail markets

Telecom Italia believes that even for retail markets, the definition of the geographical unit seems to be feasible, but its specific conditions have to be adequately taken into account.
When referring to retail markets, competitive conditions appears more related to demand substitution than offer substitution, and the analysis should probably be performed more in terms of competitive conditions in specific "geographic" or "administrative" areas, than strictly in terms of areas defined on the basis of network topologies, as defined for wholesale markets.

Consequently, Telecom Italia deems that ERG should indicate the more plausible principle on which the appropriate geographic unit could be chosen for the only relevant retail market (mk 1).

4 Comments to “Assessing the homogeneity of competitive conditions” chapter

Telecom Italia agrees with ERG on the importance of giving the right attention to the evaluation of the homogeneity of competitive conditions. In fact, it needs to be recognized that in defining the geographic dimension of wholesale markets, geographic demand-side substitution is a very weak or non-existent constraint. In fact, a wholesale purchaser would only be able to switch its demand to an alternative area if the retail customer is willing to move to that alternative area, condition very difficult to be met. The same it is true on the supply side, due to the high cost and long time associated with deploying new network infrastructure as response to SSNIP at wholesale level. It follows that, in assessing the geographic scope of a market on the basis of homogeneity of competitive conditions, it should be more helpful to concentrate on narrow areas - ad hoc geographic units - and focus on specific factors enabling similar conditions of competition.

As suggested by ERG, by grouping the geographic areas into separate local geographic markets, the analysis should focus more on the difference of competitive conditions between the geographic areas included in each market and the remaining areas, than on identifying perfectly homogenous conditions in each local market.

Furthermore, Telecom Italia, whereas agrees with the criteria suggested by ERG for the analysis of the homogeneity of competitive conditions, would like to emphasize the importance, shared by ERG, of focusing the analysis of the competitive conditions on the behaviour (rivalry) of market players, and on the necessity of having a forward-looking approach.[5]

Telecom Italia will comment now in turn the criteria suggested by ERG in more detail.

4.1 Criteria

Barriers to entry

Telecom Italia share with ERG the view that barriers to entry related to the level of sunk investments and the degree of economies of scale are key element to support competitive entry in specific geographic areas. For this reason, for Market 5, Telecom Italia suggests to consider the size of the

5 In evaluating the characteristics of workable or effective competition, some commentators stress the importance of the structure of the market (number of competitors in a relevant market), others the behaviour of producers and suppliers, still others the performance of the market (relation of prices to costs , level of profits …) As suggested by Alfred Kahn, “I have consistently expressed preference for the behaviour criterion. While in no way denying the logic of the proposition that if a market is not structurally competitive –i.e. does not contain actual competitors -is not open to competitive entry, it is not going to be effectively competitive, I also recognized that concentrated or oligopoly markets – from cigarettes to automobile to electronics, could show widely diverging kind of performance, and the definition of relevant market would itself be subject to controversies over the elasticity of demand and supply” .See Kahn , A. (2005),”Economic Justification for TELUS Two-Facilities Bright Line Forbearance Test”

central office as a key variable for the assessment of competitive condition at geographic level (entrants go first where it is easier to exploit the benefits of economies of scale) and the wide availability of LLU as sign that the sunk costs of entry are quite limited. Furthermore, Telecom Italia considers the presence of alternative infrastructures, the possibility of having access to ducts or the availability of infrastructure from municipalities and utilities as key elements for the evaluation of competitive condition at geographic level for markets 4 and 5. In fact, “competition is, above all else, a form of behaviour, especially likely to persist when the rivals have already incurred the sunk costs of offering rival services using their own facilities”. [6]

Number of operators

Telecom Italia shares ERG’s view that this variable is important for assessing the competitive conditions at geographic level. However, Telecom Italia would like to stress the importance of considering, for instance for market 5, not only the unbundling operators but also those that offers retail services using their own infrastructure. Furthermore, Telecom Italia suggests that, in order to fully and dynamically exploit the descriptive behaviour of the number of operators variable as significant proxy for competition at geographic level, it is important to combine it with additional variables such as the size of the central office in which the operators are present.

Distribution of market shares

Telecom Italia agrees with ERG that the analysis of market shares across different geographic areas, although should be more important in the SMP assessment phase, does play an important role in identifying local geographic markets. For instance for Market 5, as suggested also by the EC in the comment to the OFCOM Wholesale Broadband Review[7], relevant evidence would include information on the distribution of market shares and the evolution of shares over time.

In Telecom Italia’s view, an effective way to offer a forward looking analysis of market share for market 5 is the choice of “ad hoc” threshold for the size (number of lines) of the Local Exchange to be combined with the number of operators in grouping the local exchanges. According to Telecom Italia’s experience, the right threshold can be chosen considering the number of years the CO has been opened to LLU and the number of operators present in it. The choice of the threshold can be made for values of these two variables definitely higher than the average.

Pricing and price differences

Telecom Italia welcomes very much the ERG’s view that national uniform price from the incumbent is not per se a signal of the lack of geographic variations in competitive conditions. In fact, ERG properly states that from one hand, “from a consumer perspective, significant differences exist between “competitive” and “non-competitive” areas despite a national uniform price of the incumbent operator”. Consequently, Telecom Italia believes that this element should not be considered in the preliminary

[6] See Kahn (2005)
[7] EC: (2008) UK/2007/0733: Wholesale Broadband Access in the UK .Comments pursuant to Article 7(3) of Directive 2002/21/EC

analysis. On the other hand," national uniform price is (ceteris paribus) not a useful indicator for a national market if it is imposed as the result of an SMP finding".

Instead, ERG' common position clearly states that if "the incumbent does not set a uniform price, this could be a strong indicator for differences in competitive conditions."

On this matter, to inform NRA of geographic differences in competitive conditions, Telecom Italia strongly encourages a broader approach that takes into account not only the price per se, but additional variables such as the geographic variations of quality of services, price per megabyte, differences in functionalities and type of products. Furthermore, an important role should also be given to the existence of variations of retail pricing among competitors.

4.2 Which areas should be aggregated? – Changes in geographic market boundaries

We agree with ERG that the aggregation process should be based on a combination of variables. For instance, for market 5, number of operators and size of the central office seems to be the right ones to be considered. Furthermore, we share the ERG's view that particular attention should be paid to the choice of the threshold, according to which a particular area is classified.

Actually, in the context of the evaluation of the role played by the market share variable in assessing the variation in competitive condition, we have already mentioned the importance of finding the right threshold. Now, we would like to underline the importance of using sensitivity analysis to test the robustness of the choice made, especially to guarantee a forward looking approach.

These processes of aggregation could definitely be quite complex and require a balanced approach by NRAs. However, we definitely consider very wise the approach suggested by ERG of preferring an "imperfect" geographic segmentation of the markets to a geographic uniform treatment.

5 Comments to "Local geographic markets or differentiated remedies?" chapter

Telecom Italia shares ERG's and CE's view that the geographic segmentation of markets and the geographic segmentation of remedies should not be viewed as two completely alternative, equally applicable, options.

Nevertheless Telecom Italia does not agree with the criterion proposed by ERG to decide which option to apply in a given market analysis.

According to ERG, if the evidence suggests that there is insufficient homogeneity of competitive conditions in a national market, a geographic market analysis should be carried out but if geographic variations in the conditions of competition differ but are, nonetheless, sufficiently homogeneous a national market should be defined.

It is not very clear what “insufficient” or “sufficiently” homogenous competitive conditions really means and the document under consultation does not provide any adequate explanation on it.

In addition, the example used by ERG to explain where there could be a case of national market with differentiated geographic remedies, does not help very much in understanding which option to apply in which case. The example takes into consideration a market defined as national, because the incumbent fixes a national price, but exhibiting local characteristics because the alternative infrastructure operators compete with the incumbent only in some areas. According to ERG’s statements about the criteria which should be used to assess the homogeneity of competitive conditions (chapter 4 of the document under consultation), the situation described in this example could bring as well to the definition of separated geographic markets. In fact the application of a national price is not sufficient to state that there is a national market. ERG itself states that a national price could be imposed as a result of an obligation of SMP finding or could be a marketing decision taken to not discriminate the customers.

Since it is not clear in which case an approach (geographic segmentation of market) or the other (national market with geographic segmentation of remedies) should be applied, the solution proposed by ERG appears to be not fully transparent and too discretional. In absence of clear guidelines, neither the national regulatory authorities nor the operators would have certainties on the future regulation. There is also the risk that different NRAs will apply different approaches in similar situations undermining the homogeneity of the regulation across the European Union.

Indeed, the two options are not equivalent with respect to the imposition of regulatory remedies: only a genuine geographic segmentation of the market can bring to a complete deregulation of the areas where effective competition is found. This possibility is excluded in the case of the geographic segmentation of remedies, due to the fact that the SMP finding on the whole market requires the imposition of at least one remedy on each possible separated area. This fundamental difference is clear if we compare the results of the recent analyses of the broadband wholesale access market carried out in Austria and UK. The Austrian and British NRAs used similar segmentation criteria (number of lines per MDF, number of operators and market share) to asses the existence of areas with different competitive conditions. However only OFCOM, who used a thorough market segmentation approach, could fully deregulate the geographic portion of the product market where BT was not found in dominant position. Differently, defining a unique national market, where the incumbent remains in a dominant position, due to the national averaging of its competitive positions in different areas, would have obliged Ofcom to impose at least one remedy on BT in the most competitive (better, less dominated) area. One could think that TKK would have drawn the same conclusions as Ofcom (the deregulation of a part of the market) if it had been used the market segmentation approach.

In conclusion, Telecom Italia believes that if a NRA finds different competitive conditions in different geographic areas, a geographic segmentation of the relevant product market must be carried out independently on the grade of “homogeneity” of these conditions. Otherwise, the NRA limits the set of option available in imposing different levels of obligations (including no obligation at all) in different areas.

The geographic segmentation of remedies can be applied, as a second best alternative to the geographic segmentation of the market, only if there is clear evidence that no effectively competitive area does exist and, therefore, a complete deregulation of any geographical submarkets is not achievable. In this case the national authority should impose geographically differentiated remedies on the basis of the different level of entry barriers in different geographic areas. This approach has been implemented, for example, by the Italian Authority, during the first round of market analysis both in the wholesale broadband access market and in the fixed access market. In fact, Telecom Italia was obliged to provide direct access to DSLAM (a market 12 remedy) and WLR services (a market 1 and 2 remedy) only in the MDF areas not open to unbundling (due to the lack of demand by alternative operators), where evidently barriers to enter, respectively, the wholesale broadband and the retail narrowband markets are higher than in areas open to unbundling (due to the fact that the only available option is building a new access infrastructure from the scratch).

6 Comments to “Possible implications” chapter

Regarding the possibility, outlined by ERG, of an increasing of the complexity of regulation due to the explicit consideration of the geographical dimension of product relevant markets, Telecom Italia believes that the smaller the geographic units are chosen the higher is the additional burden for both operators and NRAs, in the market definition and competition assessment process. Therefore, NRAs have to choose the right balance between complexity of the geographic disaggregation and reliability of the analysis results.

Italy is among the member States that have already experienced different competitive levels and different regulation in different geographic areas. This is essentially due to the early opening of unbundling of local loop with respect to other European Countries, which has proven to be very effective in promoting the presence of different infrastructure based Operators in many metropolitan areas.

With reference to the possible increase of data requirement due to geographic market analysis, as pointed out by ERG, Telecom Italia is of the opinion that, in addition to the set of data by local switches provided in the unbundling reference offer, in Italy, as well as in many other Countries, both the incumbent and the new entrants have been providing to the NRA all the detailed information needed to monitor the evolution of the LLU deployment. Thus, Telecom Italia believes that many NRAs have already been collecting in the past years data information that would be useful for the market definition and analysis: the additional burden for geographic segmentation will then be mostly due to the methodological analysis itself – and to the appropriate definition of remedies – and not to data collection.

Furthermore, in case NRAs assess a geographical segmentation of a relevant market, before deciding to intervene or not, Telecom Italia feels as necessary a cross analysis on possible impacts on the related market.

The ERG document also underlines that, when an NRA evaluates the effects of deregulation in a geographic area, it should take into account the effects on retail competition for business services and carefully assess whether this competition is driven by Infrastructure of not infrastructure based Operators. Telecom Italia believes that, if competition is driven by infrastructure based operators, then predatory or price squeeze control on retail offers have to take into account that “new” infrastructure based operators compete with the incumbent on the basis of the same “bottleneck” service – namely the services of market 4. Therefore, no wholesale reference offer has to be published in the concerned competitive geographic area and no regulatory price tests have to be met by the incumbents: the strong infrastructure-based competition guarantees a self-pricing regulation and assures benefits to end customers’ charges. In such a competitive environment, price control should be left only to possible – ex post - antitrust interventions. .

Another relevant implication that should be carefully assessed is the possibility of requiring additional price squeeze test and/or control of cross subsidization between different geographic markets.

While in competitive geographic areas, as mentioned above, no wholesale reference offer have to be published and price control has to be left to – ex post - antitrust interventions, in geographic areas where an operator has a significant market power it should be subject to margin squeeze tests in order to assure that competitors are able to “replicate” its retail offers on the base of its wholesale reference offer available for those areas.

Therefore, Telecom Italia maintains that, no additional price squeeze test and/or control of cross subsidization between different geographic markets is required. NRAs should define and concentrate remedies in the not yet competitive geographic areas , in order to guarantee the “replicability” of dominant operator’s retail offers, and should avoid any margin squeeze between retail and wholesale pricing in the geographic areas where an operator has still a significant market power .