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## **Public Consultation on the draft BEREC Broadband Promotion Report (BoR (11) 70)**

Dear Sir/Madam,

Thank you for giving us the opportunity to comment as part of the consultation process mentioned above.

We should like to comment on selected questions.

**Question 1 (section 5):** What elements do you consider essential for the successful definition and implementation of governments' strategies to promote broadband?

What role, if any, could NRAs play to enhance the effectiveness of those strategies?

- a) overall at the national level;
- b) specifically at rural and peripheral areas.

### **Re. Question 1 a):**

With reference to national markets, the national regulatory authorities (NRAs) (in Germany, the Bundesnetzagentur) can considerably influence implementation of the broadband strategies pursued by governments of individual Member States by continuing to ensure the conditions for fair competition exist and by consistently developing these conditions further in the future as NGA networks are rolled out.

The charges imposed on competitors for their use of preliminary services provided by the dominant company nationally, which in Germany is Telekom Deutschland, is a decisive factor for ensuring fair

competition, with access to Telekom Deutschland subscriber lines (Market 4 of the EU Commission's Market Recommendation of 2007) continuing to play a particularly prominent role.

BREKO is of the opinion that in line with European Court of Justice case-law, when determining the relevant investment volume for calculating subscriber line charges, a mixed approach based on actual costs must be adopted, consisting of historic costs and current replacement values.

The German Bundesnetzagentur is still basing its calculation of charges for access to subscriber lines exclusively on replacement values, which leads to the dominant company being over-compensated and thus competition being distorted. However, it is precisely the charges for access to the (copper) subscriber lines that are decisive for further roll-out of NGA networks. This was also stressed by Neelie Kroes, Vice-President of the European Commission responsible for the Digital Agenda for Europe, in her speech on 14 October 2011 at the inauguration of the Body of European Regulators for Electronic Communications (BEREC), when she said that balanced subscriber line charges could act as an incentive for further NGA roll-out. If, however, subscriber line charges are too high, there is the risk that the dominant company will 'rest on the laurels' of the investments it has already made and will not make any new investments in further roll-out of the network. BREKO expressly concurs with these considerations, seeing still plenty of scope for substantially reducing subscriber line charges and thus increasing competition, particularly in Germany, where such charges are high compared with the rest of Europe. Lower charges for subscriber lines – particularly for those using cross-connection cabinets – would facilitate a quicker return on investments for alternative carriers and thus significantly increase their willingness to drive expansion of the fibre-optic networks forward faster.

For further details, may we refer you to BREKO's comments attached herewith, made in response to the EU Commission's public consultation on 'Costing methodologies for key wholesale access prices in electronic communications'.

Effective controls to prevent abuse are also indispensable for driving forward broadband expansion. Competitors are dependent on access to subscriber lines when deploying FTTC in particular. For years now, the subscriber lines made available by Telekom Deutschland GmbH have been of insufficient quality, in particular with exchange and fault-elimination processes not functioning to an acceptable degree. BREKO is therefore of the opinion that it would be desirable to support the national regulators in gaining better insight into the incumbent's processes in order to prevent abuse, possibly by targeting requirements specifically.

**Re. Question 1 b):**

In rural areas provision can be significantly improved – insofar as FTTC is not economically feasible – by setting up switching distributors, which would mean that not every cross-connection cabinet within a specific area would have to be individually improved using fibre-optic cables but that the clients supplied by the cross-connection cabinet could be provided with higher bandwidths using a switching distributor set up 'upstream' (to the user) of the cross-connection cabinet. This offers an

effective and economic option for improving access in rural areas. Some BREKO companies deploy switching distributors very successfully. Although they cannot replace further expansion of the fibre-optic network, they do represent one more step towards extending the territory covered by fibre-optic cables. It is currently permitted to set up a switching distributor where provision with a bandwidth of at least 1 Mbps is not possible. In view, however, of the rapid rate of technological development, the German Federal Government's ambitious aims with regard to broadband strategy, and the paper published by the EU Commission in November 2010, BREKO considers the threshold for exclusion from entitlement to set up a switching distributor to be clearly too low at 1 Mbps download. It should be raised to a supply of at least 2 Mbps. Otherwise, there is a risk that the gap in broadband provision between the towns and the countryside will become ever wider. Whilst in many conurbations fibre-optic or cable connections with bandwidths of 100 Mbps are already available, or will be shortly, the switching distributor option, which benefits primarily rural areas and the regions in which Telekom Deutschland is not investing in high-performance DSL connections, is restricted to 1 Mbps. Appropriately, the development guidelines for all the German *Länder* also rate the implementation of connections with at least 2 Mbps as worth promoting.

In addition to these aspects, however, further obstacles are imposed by the charges hitherto approved for deploying switching distributors. In this respect, the same arguments apply as presented under Question 1a) above.

**Question 2 (sections 6 and 9):** Among the main supply-side obstacles to broadband promotion, NRAs have perceived the low expected return on investment, the lack of access to financial resources and the access to spectrum.

In addition, NRAs have considered, among the main demand-side obstacles to broadband promotion, aspects such as the citizens' lack of perceived need to adopt broadband, the high price of broadband, the fact that NGA is still in an initial stage of the product life cycle and, mostly in rural areas, the lack of choice between operators.

**2.1.** What of the above-mentioned factors, if any, would you not consider as obstacles? And what other factors, if any, would you add to the list of main obstacles to broadband promotion? Please reply with specific regard to:

- a) supply-side obstacles
- b) demand-side obstacles

**2.2.** Taking into account namely your assessment of the existing and potential obstacles to broadband adoption, what elements do you consider essential for the successful definition and implementation of NRAs' strategies, in particular from a demand-side viewpoint, to promote broadband? When replying to question 2.2 above, please mention also what core strategic differences, if any, should be weighted regarding the consideration of those elements in rural/peripheral areas and in urban areas.

**Re. Question 2.1 a):**

The BREKO companies too perceive all the obstacles listed. The lack of economic feasibility, particularly in rural areas, is a major obstacle to expanding NGA infrastructure further, with access to

funding and/or the setting up of funding programmes being of particular importance. At national level there is above all a need for appropriate programmes specifically for wider broadband deployment, of which there is none as yet.

In areas where wider deployment is not economically feasible, appropriate upgrading projects should be identified, with funding open to competition amongst the various technologies and suppliers, and actual local requirements already being taken into account by the tender specifications. In addition, the support frameworks should be harmonised at national and European levels. Sufficiently attractive financing options, such as guarantees and long-term, low-interest loans (e.g. through the Kreditanstalt für Wiederaufbau (KfW), a German government-owned development bank), would decisively speed up the roll-out of broadband. BREKO companies' experience has shown that reducing the interest rate on loans by even one percentage point would allow many upgrading projects that are not economically feasible at current market interest rates to go ahead. BREKO is currently negotiating with the relevant financial institutions.

At European level, the main problem from BREKO's point of view is that there is a lack of transparency for companies with regard to the individual funding programmes and in particular how to apply for them. Appropriate guides/brochures would provide greater transparency and clarification here. The approach introduced by the 'Connecting Europe' project is expressly welcomed by the BREKO companies although how this funding is to be distributed in each individual case remains largely unclear.

**Re. Question 2.1 b):**

The BREKO companies perceive similar obstacles here too. In this area, BREKO sees attractive bundled offers in particular – as raised in the report – as a promising strategy, firstly for retaining existing customers and secondly for gaining new ones. BREKO companies find particularly expedient the linking of telephony, Internet and TV products. The bundling of landline and mobile phone products is also being strongly developed by BREKO companies, and BREKO has to this end founded a purchasing co-operative that enables landline carriers to purchase white-label SIM cards and sell them on under their own brand name to their own customers. BREKO can only partially confirm the problem identified of end consumers in rural areas being reluctant to leave established suppliers and switch to a new alternative supplier (which can often offer a better deal than the dominant company). In many cases, it is precisely local or regional suppliers with their roots in the region concerned that can win over end consumers: it is often easier for precisely these companies to respond flexibly to local circumstances, and co-operation with the local authorities and municipalities is predominantly positive.

**Re. Question 2.2:**

BREKO is of the opinion that the national regulatory authorities should be tasked solely with ensuring fair competition. They can make an important contribution in this respect, particularly with regard to preliminary service products (see above). It is also conceivable for the regulatory authorities to increase transparency for end consumers with regard to options for switching supplier.

Beyond this, the BREKO companies see more challenges for the national legislators. BREKO believes that the rules planned at the moment for switching supplier, laid down in Section 46 of the current draft Telecommunications Act, leave much room for improvement. What is clear is that smooth running of supplier-changing processes is essential for effective competition. This purpose is, however, not served by the aforementioned rules in the form proposed. First, the obligation with regard to re-connection with the ceding company (see Section 46(1), third sentence, of the draft Telecommunications Act) gives the ceding company, usually Telekom Deutschland, the legal right to prevent the switch to an alternative carrier and even to be rewarded for doing so when the customer re-connects to them. Furthermore, the obligation under Section 46(1), third sentence, of said draft Act to take customers back does not do justice to cases in which more than two parties are involved. If the end consumer wishes to switch from one alternative supplier to another, Telekom Deutschland as the company providing preliminary services for the subscriber line is also involved, making it a three-party process.

BREKO is also of the opinion that a provision in the Income Tax Act allowing end consumers to set off any broadband connection costs against tax would also make sense. Corresponding provisions exist already in German income tax law in respect of craftsmen's services (see Section 35a of the German Income Tax Act); these should be extended *mutatis mutandis* to expenditure incurred by the end consumer in improving his own house with the addition of an NGA network.

**Question 6 (section 10):** A list of potential measures was identified, in the present document, that could be adopted or reinforced in order to promote broadband from a demand-side perspective.

- a) Are there any identified demand-side measures that you consider inappropriate?
- b) What other demand-side measures, if any, would you consider particularly important to promote broadband?

BREKO is of the opinion that the points mentioned are appropriate for promoting demand for broadband. In particular, the introduction of tax relief would help increase demand for broadband connections. In Germany, as part of the Federal Government's broadband strategy, a provision has been incorporated into the Income Tax Act allowing homeowners to set off the service costs for a broadband connection against tax. This provision has, however, not yet boosted demand for broadband. BREKO is of the opinion that it is not designed in a way to drive demand. Unfortunately, the German Federal Ministry of Finance has thus far refused to discuss the matter. It would therefore be desirable if there were concrete proposals at European level as to how demand for broadband connections should be stimulated by tax incentives for end consumers.

Yours faithfully,



Marc Schramm

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