



Bringing it all together

Draft BEREC report on relevant market definition for business services

Comments by British Telecommunications plc
on the Berc Report BoR(10)46

19 November 2010

1. BT thanks BEREC for the opportunity to comment on its draft report on the relevant market definition for business services. As a provider of electronic communications services to corporate customers across the EU, BT has long campaigned for regulation which clearly reflects business customer needs. Against this background, we are concerned that BEREC's discussion fails to take account of a gap in the underlying basis for the Commission's current Relevant Markets list – viz, the catalogue of retail-level electronic communications services set out in the accompanying Explanatory Memorandum (SEC(2007)1483).
2. With regard to data communications, the catalogue in question is incomplete. The discussion of "access to data services at fixed locations" (Section 4.2.2) considers only access to the best-efforts Internet, and the analysis of "services provided at non-fixed locations" (Section 4.3) is limited to voice traffic conveyance. No mention is made of a service which now supports a large part of the economic activity in the EU, but which remained in an early stage of development when the first iteration of the Commission document was produced. The service in question is enabled by a combination of location-independent virtual infrastructure and location-specific physical infrastructure, and consists in the provision of managed data connectivity between specified network termination points (both fixed and mobile). End-to-end management allows users to benefit from levels of reliability, security and quality which are higher than those available from the best-efforts Internet, thereby facilitating effective interworking of enterprise IT applications
3. This service - for convenience, it is termed Virtual Private Network (VPN) provision in the remainder of the present note - is characterised by a unique feature. Since the essence of the service consists in assurance of end-to-end management, it must by definition be delivered simultaneously at multiple sites. The service therefore differs fundamentally from provision of access to the best-efforts Internet. In the Internet scenario, the user obtains any-to-any data connectivity, but the service is provided to only one site. It is equally important to note that provision of access to the best-efforts Internet does not become a multisite service in the above-mentioned sense simply because a business customer contract requires supply of the same service at more than one location
4. BEREC's paper overlooks this unique feature of VPN provision, even though the paper's introduction mentions consideration of the consequences of multisite demand as a primary objective of the subsequent discussion (para 4c). The analysis of demand and supply side substitutability in retail and wholesale markets outlined in Section 6 and the final page table both seem implicitly to assume that broadband access links are used solely for the purpose of access to the best-efforts Internet.

5. The need for VPN services to be delivered simultaneously at multiple sites - often in different countries - nevertheless has major implications for the definition of product and geographic markets. Firstly, it is important to ensure that products covered by the current Market 5 definition are examined from a dual perspective. Their potential roles as inputs to best-efforts Internet access services and VPN provision must both be taken into account. Moreover NRA analysis must pay due attention to the differences between these two perspectives (since VPN providers must serve widely dispersed sites they will rarely be able to achieve the economies of scale needed to justify investment in their own local access infrastructure – not even where LLU is available). Secondly, if the products used as inputs to VPN provision and the products used exclusively as inputs to best-efforts Internet access are found to require different remedies, NRAs will be able to avoid the dilemma highlighted in the BEREC paper. In other words, it will not be necessary to draw a dividing line between wholesale access products using only an imprecise definition of “high-end” needs.
 6. Since VPN services must be delivered simultaneously at multiple sites, it follows that the implications above apply in all Member States. Thus BT is unable to agree with the overall conclusion of the draft BEREC paper. More precisely, we do not believe that regulation of this specific type of high-end service should be left for individual NRAs to decide while taking account of specific national circumstances. A future BEREC Common Position should instead concentrate on ensuring that treatment of relevant wholesale access inputs is harmonised to an extent which is sufficient to lift current trade barriers and to avoid situations where inadequate regulation in one Member State distorts competition across the EU. Inter alia, this will involve issue of clear guidelines regarding the consequences of true multisite demand at retail and wholesale level.
 7. As BT has already highlighted in its response to BEREC’s draft 2011 Work Programme, the organisation’s work in this area offers a unique opportunity to facilitate service provision which is genuinely cross-border in nature. In this way BEREC can make a major contribution to realisation of the EU’s Digital Agenda objectives and to consolidation of the Single Market in all economic sectors.
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