

Draft review of BEREC Common Position on geographical aspects of market analysis (definition and remedies)

Belgacom response

7 February 2014

Belgacom welcomes BEREC's initiative to review and complement its 2008 Common Position on geographic aspects of market analysis.

Belgacom shares the assessment that the importance of geographical segmentation has increased since 2008, among others as a result of the increase of competitor footprint. This is particularly true in Belgium where infrastructure based competition from cable operators is very strong. Belgacom considers the geographic market definition as an important and indispensable step in the market analysis process.

The present contribution does not aim at commenting all aspects of the Common Position, but rather to highlight some specific elements related to the presence of NGA capable infrastructure, quality criteria and the choice of the unit for evaluation.

First of all, Belgacom agrees that factors such as the number of infrastructure operators and their respective coverage represent indeed important appropriate criteria to assess the necessity to undertake a geographical analysis. However we believe that network performance and the related product quality should be included in the list as a specific criterion which correlates with the main competitive development of (alternative) NGA roll-out, rightly highlighted by BEREC. The absence or presence of specifically NGA networks and infrastructure capable of delivering ultra-fast and high bandwidths can form an additional demarcation of geographic differences and geographic heterogeneity.

Indeed, the roll-out of NGA determines the ability of an operator to offer services reaching the Digital Agenda for Europe broadband targets of 30 and 100 Mbps. NGA deployment will also determine the operator capability of offering triple play services including simultaneous HD streams (watch and record, multiple TVs...), online gaming, etc., and in doing so shape market conditions which are different from non-NGA covered areas.

To illustrate this point we observe in Belgium today a quasi-ubiquitous coverage of both the Belgacom (99,85%) and the CATV (over 95%) networks; whereas the NGA coverage on HFC cable infrastructure (DOCSIS 3.0) is estimated at ca. 95% and the Belgacom FTTC infrastructure coverage is ca. 85% (end 2012). In other words, though nearly all of the population is enjoying the access to two networks, already on the face value, today at least 15% has no access to two competing NGA-infrastructures. Such developments illustrate

clearly BEREC's opinion that NGA deployment will lead to important changes in the economics of broadband services and in the competitive situation. Indeed the competitive context will be significantly different between the regions with two NGA infrastructures and regions with only one NGA infrastructure and so should lead to the conclusion of the existence of two subnational markets.

Second, BEREC refers very briefly to quality/functionality characteristics as being one of the other criteria to be taken into account to assess the homogeneity of competitive conditions. As we explained here above, we think that this criterion would merit more attention and so should be much more highlighted in the BEREC Common Position than it is currently. On the other hand, we are less convinced that pricing conditions should be taken into account, at least not in the preliminary stage of the analysis and not as a decisive factor. Indeed price differences should be assessed and interpreted carefully as a national pricing – as BEREC rightly explains – does not necessary lead to the conclusion of the existence of a national geographic market. Indeed despite the presence of national pricing, the geographic relevant market will in many circumstances not be national. That is why pricing requires a careful and in-depth analysis.

Further we agree with BEREC (§43) that the impact of the above-mentioned also depends on the product market definition. For Belgacom this does highlight the importance of a truly technological neutral product market definition in which all functionally substitutable products and services are included both at retail market level and at wholesale product market level as soon as a wholesale offer is provided or could technically and commercially be provided over the relevant networks. This further correlates with the approach that highlights the importance of the retail conditions as stated in the draft Common Position.

Third, concerning the choice of the relevant geographical unit in subnational markets, BEREC refers to the following criteria:

- They are mutually exclusive and less than national
- The network structure of all relevant operators and the services sold on the market can be mapped onto the geographical units
- They have clear and stable boundaries
- They are small enough for competitive conditions to be unlikely to vary significantly within the unit but at the same time large enough that the burden on operators and NRAs with regard to data delivery and analysis is reasonable.

With regard to the last criterion; the burden to deliver the required data from a practical point of view does not provide a valid argument per se. Though data delivery needs to be feasible and proportionate, we believe the analysis should start from an as small as possible unit, which should then be clustered and aggregated into bigger groups according to the relevant parameters retained. Such approach would enable the NRA to obtain a correct and

consistent set of data on which the analysis can be performed. Belgacom understands the §130 of the draft Common Position in that sense.

We hope BEREC will take these points into account in the final elaboration of its common position.