



Creating a brighter future

Response to the consultation on the draft 'BEREC Strategy 2018-2020'

5 July 2017

The FTTH Council welcomes this new Draft Medium-Term Strategy document and the opportunity to give further comments.

The FTTH Council is pleased to see the importance of Very High Capacity (VHC) networks in the new draft, in particular as expressed on page 5 of the document. The FTTH Council also fully endorses the view that competition will drive VHC investments. The FTTH Council believes that the competitive process should drive private investments in telecom networks. Nevertheless, the Council notes one aspect which it feels is missing and that is a distinction between whether that competition is infrastructure-based or service-based using virtual access remedies. BEREC's view on this should be made clear.

The FTTH Council does not see a trade-off between competition and investment but notes that there is extensive evidence of how different forms of competition, service-based or infrastructure-based, impact on each other. Experience has shown that the benefits of end-to-end infrastructure-based competition far outweigh the benefits of service based competition in the medium to long run¹. The promotion of service based competition through virtual remedies normally undermines network investment. A completely equal access regime based on virtual remedies with a guaranteed margin, effectively proposes that no-one competes on the basis of network differentiation or seeks a first mover advantage. The best route to stimulate and facilitate infrastructure based competition is for the alternative operator community to invest and to become a credible competitive threat – this is the best means to stimulate FTTH investments.

At the FTTH Council we have seen the greatest investments and the strongest competitive dynamics where NRAs have actively pursued FTTH deployments. We see Sweden, Lithuania, Portugal, Spain, Latvia and France all achieving a level of infrastructure competition which is far ahead of other European countries. Our analysis suggests that there needs to be a deliberate policy to pursue Fibre to the Home. In those countries where roll-out was greatest, service based competition based on virtual access remedies on FTTH was either not available or was greatly curtailed. Giving an investment 'opt-out' to alternative operators by facilitating entry without any access network investments will always result in that option being taken up when billions of euros are at risk. In addition, each country that has had effective FTTH roll-outs took care to ensure that the cost of deployment was minimised through sharing of expensive passive infrastructure and avoiding duplication of those passive network elements.

The preamble to setting out the priorities listed on page 5 of the Medium-Term Strategy document also raises a number of concerns. While the degree of heterogeneity observable in Europe is a function in some instances of different market characteristics, very often those differences are mostly a function of the regulatory environment. BEREC as an umbrella organisation of National Regulators has a significant added value when it comes to the promotion of best practice and a consistent approach within the regulatory community.

¹ See for example, Grajek, Michał, and Lars-Hendrik Röller. "Regulation and investment in network industries: Evidence from European telecoms.", Bourreau, Marc, and Pinar Doğan. "Service-based vs. facility-based competition in local access networks." *Information Economics and Policy* 16.2 (2004): 287-306. Röller, Lars-Hendrik, and Leonard Waverman. "Telecommunications infrastructure and economic development: A simultaneous approach." *American economic review* (2001): 909-923.

NRAs have a very important role in lowering barriers to entry in the potentially competitive urban areas – ensuring appropriate access to passive infrastructures, especially in-building wiring could lead to a significant lowering of deployment costs and a higher level of market entry. A consistent EU wide approach that relies on best practices could deliver enormous benefits to the market. This activity would deserve to be reinforced in the BEREC MTS document.

One immediate example could be a market where two network operators (end-to-end) could potentially be joined by a third one. In this particular case, the third one is more likely to invest -and would probably only invest- if it gets a co-investment deal. The NRA could potentially signal its intent to regulate access into the future using standard access products (even if the SMP designation will be less standard). However, if the NRA's action was focusing on lowering deployment costs significantly (in-building wiring regime, streamlined permitting, targeting infrastructure sharing) the same result as a co-investment agreement could be achieved by a unilateral investor at least in urban areas. Network markets with three widely deployed network operators have performed well in the past (e.g. mobile markets).

This leads to a second concern for the FTTH Council in the Medium-Term Strategy paper which is a tendency to presume a need to act even in oligopolistic markets. It is true that in urban areas the most likely outcome in broadband markets is an oligopoly with a limited number of network operators. However, the benefits of end-to-end competition are very significant and outweigh the benefits of service-based competition – therefore the first instinct ought to be to withdraw regulatory remedies rather than create completely new regulatory tools which would result in increasing the level of uncertainty for investors. This uncertainty associated with regulation linked to joint dominance on a new 'Unilateral Market Power' would have a significant chilling effect on investments. Looking at oligopolistic markets where NRAs sought to intervene and failed (mobile access in Ireland in 2005) or sought to intervene and succeeded (mobile access in Spain in 2007), with the benefit of 10 or more years' experiences, it is hard to identify any consumer benefit created or lost in either case. The FTTH Council would encourage BEREC to rely on the market mechanism more, as there is no ready evidence that regulated interventions have resulted in better market outcomes.

The FTTH Council welcomes very much Strategic Priority 5 on empowering consumers and the subsequent explanation. From the FTTH Council Europe's perspective, the most important aspects mentioned is consumer protection which includes network performance.

Users are not properly informed about the services they receive, or are likely to receive when signing up for a broadband connection. The European Commission has, through a series of studies and surveys noted the poor relationship between actual and advertised speeds with 75% of the advertised speed being delivered on average with xDSL being a particularly poor performer at 62% of the advertised speed delivered. This corroborates work by certain national regulators such as Ofcom in the UK who found² that "DSL based connections continued to deliver average download speeds that were much lower than the headline 'up to' speeds which are frequently used to advertise broadband services. 'Up to' 8Mbit/s and 'up to' 20/24Mbit/s ADSL connections delivered just 41% and 31% of headline speeds during the period, in line with results from previous research while cable and FTTC-based services on average delivered

² https://www.ofcom.org.uk/__data/assets/pdf_file/0026/59273/bb-speeds-may2011.pdf

between 90% and 103% of headline speeds. " CMT made similar findings in the Spanish market where xDSL continues to underperform its advertised speeds especially as compared to FTTH products.

Such results appear to be almost universal and a very longstanding trend. The US Federal Communications Commission ("FCC") found that in the United States actual speeds for both downloads and uploads were much lower than the advertised speeds. Already in 2009, the average actual download speed was found to be only 40–50% of the advertised "up to" speed for which households signed up with the exception of FTTH based products which tended to perform at or beyond the advertised speed. While the gap has narrowed in the latest report it is still overwhelmingly the case that FTTH understates its performance whilst other network operators continuously overstate their performance.

That gap between promise and reality is greater for higher-speed DSL services, whilst both FTTH and cable and services with fibre to the cabinet tend to deliver what they promise.

As noted by Dotecon in a report for the FTTH Council³ 'Such large differences between what is being promised and what is being delivered could actively suppress the demand for fibre as copper-based access may be wrongly perceived to provide similar services. Combined with the fact that many customers may not be able to establish the speeds they are actually obtaining, and even if they might not be in a position to identify their connection as the main source of poor service quality (which may for example also be the result of congestion at the server end when downloading popular content), such advertising could artificially depress the fibre premium.'

Improving the information provided to customers as proposed by BEREC is an obvious way of removing distortions in consumers' valuation of different propositions. This would entail, for example, provisions that stipulate what information has to be provided to customers, and in what form. Information about maximum available speed, for example, might be misleading, and operators could be required, for example, to inform customers about the speed they should be expecting to get most of the time, taking account of the quality of the line, distance from the exchange, contention ratio used by the operator etc. Alternatively (or in addition), there might be information about minimum guaranteed speed, and a clearer identification of available upload speeds.

³ Available at http://www.ftthcouncil.eu-www.ftthcouncil.eu/documents/Reports/2012/Dotecon_Regulatory_Report.pdf