

Public consultation

BEREC guidelines on the criteria for a consistent application of article 61(3) EECC

Response to the public consultation of the 16th of June 2020

Bouygues Telecom is a French fixed and mobile operator, offering services both to residential and businesses. Bouygues Telecom is an active commercial operator on FttH, for which Arcep has more than 10 years ago build a symmetric framework, which, from an infrastructure point of view, is proportionate and relevant.

As a preliminary remark, and in a matter of guaranteeing regulatory predictability for operators who are currently already subject to well-established and well-functioning regimes of symmetric regulation, Bouygues Telecom estimates that BEREC must avoid undue disruption of existing rolled-out network and business models when issuing its guidance.

BEREC Guideline should duly take this specificity into account.

At the end of the day, it is in the NRA's hands to decide, based on its national circumstances, and after stakeholder's consultation, which is the most optimized localization of the first concentration/distribution point, that will drive the most efficient investments while maintaining a fair and effective level of competition.

From an overall perspective, Bouygues Telecom notes that the French symmetric framework on FttH fits with the guidelines since they recognize that the first concentration point (point de mutualisation in the French framework) can be located outside private property and serve a different number of lines depending on economic accessibility criteria since that point should be unbundled by access seeker without unreasonable effort. This is the case in the "Zones Très Denses" in France. When facing high and non-transitory economic or physical barriers to replication, access can also be given at a point beyond the first concentration point. This is the case in the "Zones Moins Denses" in France. The NRA should be able to impose access to both the first concentration point and the point beyond that one.

Nevertheless, Bouygues Telecom wishes to emphasis the following elements.

On item (a), more specifically on accessibility

1. Bouygues Telecom estimates that BEREC must keep in mind that a too large duplication (or more) of any fixed local loop would lead to inefficient investments and in the end to higher prices for the end-users. The localization of the first concentration point should only be driven by economic criteria and no technical criteria.
2. In the end, any fixed local loop will be a bottleneck since deployed by one and only operator and thus access obligations should be imposed from the first day of the roll-out to make sure that all access seekers can have access to it.
3. As far as paragraph 34 is concerned, Bouygues Telecom wishes to alert BEREC on the consequences of having a concentration point located inside the buildings. In France, that first concentration point is located inside the buildings for a part of the "Zones Très Denses" (~ 50% of the "Zones Très Denses" and ~ 10% of the whole territory), and all operators (infrastructure and commercial) are facing problems accessing those buildings. Indeed, commercial operators have to roll-out, and maintaining, their backhauling network up to that concentration point located inside the buildings and thus facing some administrative or technical blocking. Such

situations are not met in Zone Moins Dense since the first concentration point is located outside the buildings. Thus, localization of the first concentration point inside buildings should be limited as much as possible, so in very very dense areas and for buildings of more than 50 dwellings.

4. Moreover, Bouygues Telecom would like to draw BEREC's attention on the fact that the localization of the first concentration point of the network might not be the same if the localization is defined before the beginning of the first roll-out, or if networks are already rolled-out.
5. Indeed, on the first case, all the network architecture and its roll-out will be built based in a predefined manner, defined after public consultations. Infrastructure operator will then manage their business plan knowing how to build the network and where they will have to give access to it. Thus, no network rolled-out should be considered to be new since all the rules were known in advance. Moreover, in such cases, the localization of the first concentration point should only be linked to economic criteria, such as the density of the population, the existence and the type of civil engineering, to make sure that access will be effective by third parties under both technical and economical reasonable conditions without any discrimination (same technical, economic and timing conditions for the infrastructure operator and third parties).
6. A concentration point is accessible when economic and technical conditions lead to an effective access by third parties, without any discrimination. To meet those principals, the first concentration should meet the minimal following technical and economic criteria:
 - a. Access through civil engineering has to be possible, under the same conditions as the one met by the infrastructure operator. In that sense, paragraph 36 of the guidelines is crucial, and it should also be a criterion resumed in paragraph 39 of the guidelines;
 - b. Access must be given to a minimum number of lines aggregated at the concentration point, to make sure that network duplication will be minimum to ensure reasonable economic conditions. When located outside the buildings, the minimum number of lines must be defined by the density of the population, which will drive the cost of the network roll-out. In any cases, it should not be less than 1000 lines.
 - c. Only passive access should be granted at the first concentration point. Possibility given by paragraph 37 of the guidelines should be deleted since not in line with the Code and not in line with the need to give access seeker their commercial and technical autonomy by having access to passive infrastructure. Active or virtual access should only be granted at the point beyond
7. As an example, the French framework for FttH is built so that the first concentration point, where commercial operator accesses the network, is located inside the buildings for a specific part of the "Zones Très Denses", and outside the building with at least 300 lines (a very little specific part with only 100 lines) for the rest of the territory, which is a very relevant and proportionate approach that BEREC Guidelines should take into account, especially in its paragraph 38.

On item (b) and on item (e)

8. Having defined that the localization of the first concentration point could be different if the network is already rolled-out or not but should in any cases lead to an effective access, Bouygues Telecom will in this section develop the conditions where access beyond that first concentration point is needed since high and non-transitory economic or physical barriers to replication exist.
9. Figure 2 of the guidelines seems quite complex to be assessed by NRA, it should be made less complex, has proposed by Bouygues Telecom in paragraphs 13 to 15.
10. Bouygues Telecom shares paragraphs 40 to 54 of the guidelines and once again recalls that from an economic point of view, it not efficient to roll-out several parallel local loop. This should be more emphasis in BEREC guidelines.
11. Bouygues Telecom confirms that high and non-transitory barriers to replication are more likely to exist in “Zones Moins Denses”, and this should be more emphasis in paragraph 67, conclusion of the section regarding item (e).
12. As for the localization of the point beyond (item (b)), when looking at copper access, Bouygues Telecom recalls BEREC that access was given at the MDF, aggregating several thousand lines when unbundled by alternative operators. In very rare cases, alternative operators would unbundle smaller MDF, and in those cases have access via bitstream.
13. Bouygues Telecom considers that to ensure an efficient level of competition on the retail market, enabling alternative operators to have their economic and innovation autonomy for their retail offers, and ensure efficient investment by all operators, an effective passive access is needed.
14. To make sure that an effective passive access is granted all over the territory, the key criteria to define where to locate that point is the cost to access the end-users from the point of presence of an efficient operator up to the premises of the end-users. The key cost driver being the length of cable, it is directly linked to the density of population. The same length of cable in “Zones Très Denses” will be able to address thousands of end-users, while the same length of cable in “Zones Moins Denses” will only be able to address tens of them.
15. From an economic point of view, it will then be necessary to locate the access point of the network at a point located beyond the first concentration point in “Zones Moins Denses”, so that the economy of the roll-out meets the one of the “Zones Très Denses”. Only this specification will enable operators to provide their offers at the same price all over the territory in the objective to meet a digital development of the territory for the end-user’s benefices. To equalize this equation, the point beyond the first concentration point should enable operators to connect at least 3000 end-users from it. As a matter of facts, Bouygues Telecom estimates that the relevant point beyond the first concentration point, where third parties should have access to the network, in a passive manner, is the ODF. This should be considered in paragraph 79 of the guidelines.

16. As for the accessibility criteria and the existence of civil engineering to determine the localization of the first concentration point, this criterion should also exist for the localization of the point beyond since access seeker will have to connect to this network element. This should be more emphasis in paragraph 76 of the guidelines.
17. The rules defined by the NRA should be the same in most part of the territory to make sure that the roll-out will be made homogeneously of all over the territory to make sure that access seeker will be able to deal with their roll-out to connect those networks and the use of those network in an industrial manner. Paragraph 82 of the guidelines gives too much latitude to the NRA to define a lot of different cases all over the territory, which should be avoid.
18. All those elements are the factors that an NRA should take into account when determining the commercial viability of an access point beyond the first concentration point and should be clearly recall in paragraph 84 of the guidelines as the summary of that section.

On item (c)

19. As a general observation, and as stated in point 2 of our response, since the objective of granting access under article 61.3 of the Code is to avoid undue duplication of the network, no project should be considered to be new since at a local level it will be the only available network for alternative operators
20. As indicated in point 5 of our response, Bouygues Telecom estimates that in the case where the localization of the first concentration point, and eventually the point beyond, is defined before the roll-out of the network, no network deployment should even more be considered to be new.
21. Therefore, each network rolled-out based on that framework should meet the obligations imposed by the NRA.
22. The only impact that will happen of granting exemption to new networks will be on the competition intensity, which will be reduce since access seeker will to be able to access network under the most optimal conditions at the point beyond since the NRA has defined that there is high and non-transitory economic or physical barriers to replication.
23. Thus, the exemption for new networks should be limited to the strict necessary, and for sure not for network recently deployed as defined in paragraph 93 of the guidelines and should not occur if only one network is locally rolled-out. This paragraph should be reviewed in consequence.

On item (d)

24. As for the exemption regarding small networks, Bouygues Telecom estimates that it should be reduced to the strict necessary since the impact of the competition intensity will be the same if access seeker cannot access to those networks, even though they are considered as small.

25. Bouygues Telecom estimates that as long as an operator, is head-quarter and/or subsidiary, is active on the broadband market, retail and/or wholesale, he should not be considered has a new entrant, even if their size on that market is limited.
26. Thus, only in cases of very small project, which have less than 500 potential end-users all over the territory, the exemption might apply. It should be dully controlled by the NRA to make sure that the operator does not split its network to fit in this criterion.
27. Paragraph 103 of the guidelines should be reviewed in consequence.