



Public consultation on the draft BEREC Guidelines on the minimum criteria for a Reference Offer

ETNO Contribution

The European Telecommunications Networks Operators' Association (hereinafter ETNO) appreciates the opportunity to contribute to the Public consultation on the draft BEREC Guidelines on the minimum criteria for a Reference Offer.

First of all, we consider that the set of the minimum criteria should be general so that it can be used by all operators. The guidelines should not describe technical or procedural issues that are different between SMP operators in each EU country. Furthermore, the operators have different IT systems, processes and technical solutions so the rules that touch on these areas should be as general as possible to ensure broad relevance.

ETNO believes that the Reference Offer should have the similar level of generality as presented in the draft Guidelines. The Reference Offer formulated in this way will be clear and transparent for interested parties. Detailed terms of cooperation can only be set at contractual level, because they depend on many factors that could not be covered by the Reference Offer due to heterogeneity between the networks, technologies, products and so forth.

Any modification of a Reference Offer by a Regulator should be made assuring zero or minimum costs of implementation. This is because costly imposed solutions can potentially lead to difficulty in the recovery of implementation costs.

SMP operators should be free to modify processes and IT systems, which are usually a result of advancement in IT systems and improvements in processes due to an increase of the operators' efficiency. Such freedom cannot be limited by the acceptance of Reference Offer.

The National regulatory authorities (hereinafter NRAs) should also evaluate the SMP operators' proposals with regard to the aims of applicable regulation.

NRAs should ensure that when a new Reference Offer enters into force, all access seeking operators must comply with the new conditions. Such vigilance is necessary to ensure equal conditions of access whilst allowing for cost effective provisions of wholesale services for all operators.

After fixing and imposing a Reference Offer, NRAs should closely monitor whether the elements of the Reference Offer demanded by stakeholders are utilised in the course of the following period. If details imposed remain unused or are sparsely used, NRAs should subsequently remove those elements on request of the SMP undertaking.

Similarly, regarding the discontinuation of Reference Offers, we propose that a recommendation is included for the NRA to define a 'demand threshold' that justifies the maintenance of a regulated offer (or services to be included in that offer). Utilisation of such services / features that is below this demand threshold should terminate the obligation to maintain those services / features for example at the end of a year.



In principle, Reference Offers are usually addressed to all potential interested parties. For practical reasons Reference Offers are often (required to be) published on the websites of SMP operators. However, – especially if the requirements for Reference Offers are detailed in relation to roll out of future networks and services – an obligation to publish the Offer in such a way requires reconsideration. Particularly in light of increased competition by different market players that offer their networks and services independent from the wholesale offers of SMP operators (based on other networks or the internet) this publication obligation requires further analysis.

Sharing information on future market behavior can constitute a breach of general competition law and it should be avoided that sector specific obligations conflict with competition law. If the issues to be included in Reference Offers would include future market behavior (including mandatory announcement of roll out of future networks and service and future tariffs) and this information would also be available to competitors independent of the networks and services included in the Reference Offer; and market distortion could be the result. This could be remedied by either restricting the obligations to include such information, or by restricting access to the information. BEREC Guidelines should include instructions to NRA's to analyse proposed obligations for Reference Offers to avoid such concerns and amend – where necessary – existing obligations in this respect.

Modification proposals.

BEREC described a set of minimum criteria which in its opinion should be included in the Reference Offer. In our view, some elements of the guidelines should be changed:

- Point 3.1. Terms and conditions for the provisioning of network access

We see the need to change the point: "*terms and conditions for access to ancillary, supplementary and advanced services (including operational support systems, for information systems and for billing) and procedures to access those services*". As noted above, detailed description of IT systems in wholesale offers may be problematic due to the differences that exists in the IT systems run by operators across the EU. Operators in the EU have different solutions in IT systems. Our recommendation is that these issues should be removed from the guidelines, and operators should be able to determine the necessary solutions individually.

- Point 3.2. Details of operational processes

The title of this point should clarify that the characteristic of this part also is general. Therefore, we suggest changing the title to "General terms of operational processes".

- "changes to IT systems to the extent that it impacts alternative operators".

As discussed above, the guidelines should not apply to IT systems. We strongly recommend addressing this detailed condition in order to avoid unreasonable investments in IT systems. Changes to IT systems that impact alternative operators may be communicated by the SMP operator only to the affected operators.

- Point 3.3. Service supply and quality conditions



BEREC should clarify that the procedures in the event of amendments being proposed to the service offerings shall be included in the Reference Offers only in case they are not yet published/provided by the NRA.

- Point 3.4" General terms and conditions of the agreement" ..

General terms and conditions of the agreement This point should be supplemented with conditions of migrating to new or modified Reference Offer or expiry of regulated access due to refusal of migration to a new or amended offer. This is necessary to avoid multiplication of different wholesale regulated models of access which could lead to excessive operational costs.

Finally, as the general terms and conditions of the agreements are already included in the agreements themselves, there is not the need to require their inclusion in the Reference Offer as well.