



BEREC GUIDELINES

On the minimum criteria for a reference offer

BT's Response to BEREC's consultation published on 19 June 2019

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1. Executive summary

- 1.1. BT welcomes the opportunity to comment on BEREC's consultation "BEREC guidelines on the minimum criteria for a reference offer"
- 1.2. BT understands and supports BEREC's goal to contribute to a consistent application of transparency obligations across EU to guarantee competitive and efficient access conditions for operators seeking regulated access to networks of SMP operators and to replace Annex II to Directive 2002/19/EC concerning local loop unbundling.
- 1.3. BT agrees with BEREC and in line with the EECC that the guidelines should take into account the technological and market developments and should adapt them accordingly.
- 1.4. BT agrees with BEREC that the obligation of transparency is of particular relevance in order to ensure and promote non-discriminatory behaviour from market players designated with significant market power. As a pan-European operator, we still witness cases of competitive distortion by SMP operators who have important market shares on the business market both on bitstream and leased lines markets. One of the remedies is indeed the obligation to impose transparency through the availability of appropriate and reasonable regulated reference offers.
- 1.5. When answering to EU/Global deals' requests from our multisite & multinational business customers, BT as pan-European operator also observed that there are inconsistencies across Europe (notably on the operational processes such as the repair time, provisioning time, Service Level Guarantees, pricing etc). Therefore, clear transparency of the minimum criteria is key for facilitating efficient provisioning of pan-European network solutions for multisite & multinational business customers.
- 1.6. BT agrees with BEREC that the reference offer shall also be sufficiently unbundled in order to ensure that undertakings are not required to pay for products, services or facilities which are not necessary for the services requested.
- 1.7. BT is also of the opinion that regulation has a critical role to play even where unregulated (so called "commercial reference offer") offers exist. Under current circumstances, any commercial offers made by SMP operators are developed with reference to a regulated standard offer. SMP operators may have the incentive to "improve" on the regulated standard offer by providing modified services at more flexible and/or attractive commercial conditions, so as to send the signal to the market and the regulator that regulation is no longer needed. However, it must be kept in mind that the existence of regulation serves as an anchor and a bottom line that facilitates such offers. And importantly, an operator that takes up such offers must be able to compete effectively against the incumbent operator. Absent regulation (where there is still lack of effective competition), there would be no constraint to prevent SMP operators from playing out their full market power, either by restricting the availability of different products and/or service levels, and/or by imposing unfavourable terms and conditions.
- 1.8. Therefore, BT broadly agrees with the proposed set of core "minimum" criteria to be included in the reference offer by all NRAs to guarantee competitive and efficient access conditions for operators like BT seeking regulated access to networks of SMP operators across Europe. BT would like take this opportunity to warn BEREC that the proposed set of a "minimum" content for reference offers should not create incentives for SMP operators to reduce the scope of any additional national features already imposed (and to be imposed) by NRAs as a

result of their market analysis nor to remove any of these additional features when already granted.

2. Introduction

The provision of pan-European business services should be encouraged by ensuring more effective and consistent regulation across a range of wholesale access products targeted at the mass consumer market (such as broadband/bitstream access), as well as the higher specification business markets (e.g. broadband/bitstream Ethernet leased lines) so that providers can more easily offer their services across the EU countries.

BT welcomes the opportunity to comment on BEREC's consultation "BEREC guidelines on the minimum criteria for a reference offer" for active network infrastructure access.

BT is the SMP operator in the UK, but is also a pan-European supplier on the business segment of the electronic communications market. BT has its own trans-border European network but relies mainly on third party networks (SMP operators and some other alternative operators) to provide its business customers with products and services where they like to be served (i.e. across different countries). Therefore, BT needs a range of high quality access services that meet our business customers' needs and requirements. At the moment, because of the varying implementation of the EU Framework at a national level, providers such as BT can face obstacles to acquiring the necessary wholesale access inputs (mainly Bitstream over Ethernet and Ethernet Leased Lines) with the result that:

- Relevant business grade access and wholesale products are not available in certain countries on satisfactory regulated (or commercial) terms.
- SMP operators, especially when acting as integrated operators, are offering wholesale input resources to BT with product specifications, prices and terms of service that are less advantageous than those offered to their own retail arms. If retail offers by the SMP operators are upgraded, there is often a significant delay before corresponding wholesale offers are available to BT.
- If products and services are available, they are lacking satisfactory Quality of Service levels for business purposes or are not offered with specific technical characteristics that would suit us and/or our customers.
- There is limited opportunity for BT to "innovate on service quality, because SMP operators are often reluctant to make available to their wholesale customers particular service features (e.g. faster repair time or provisioning) that are not used by their own retail arms. Thus service levels are bounded by the SMP operators rather than subject to competitive pressure.

A consistent approach to wholesale remedies, such as transparency obligation for business communications, should allow the availability of those wholesale access inputs with appropriate SLAs and SLGs. Only by getting appropriate remedies and supply of essential wholesale inputs on a better level playing field, BT will be able to provide the services for its customers on a pan-European basis.

Therefore, BT is in favour with the approach on the guidelines on the minimum criteria for a reference offer, with sufficient flexibility for NRAs to adjust the reference offer to the specific national circumstances where appropriate. However, those guidelines cannot be used by SMP operators to reduce the scope of any additional national features already imposed (or to be imposed) by NRAs as a result of their market analysis nor to remove any of these additional features when already granted in commercial offers.

3. BT's answer to BEREC questions

- a. **Do you agree with the proposed BEREC approach to establish a set of core minimum criteria to be included in the Reference Offer by all NRAs, and additional criteria that could be used if considered necessary by NRAs? Please elaborate.**

BT broadly agrees with the proposed set of core “minimum” criteria but would propose a slightly different order (highlighted below in turquoise) and additional criteria (highlighted below in yellow colour) that could be used in a reference offer. We note that the criteria will differ across products that are targeted at the mass consumer market and the higher specification business market. It is important that the minimum criteria is set such that alternative operators, such as BT, would be able to compete effectively against incumbent SMP operators across Europe. It also leaves scope for both market players to innovate on the price/quality mix in response to market demand. The following set of core minimum criteria apply primarily to the business market and some may be equally applicable to the consumer market.

This will be mainly for logical order and to get more precise information for the day-to-day work between the SMP operators and the pan-European operators relying on the SMP's network in each country.

1. **General Terms and Conditions of the agreement** – *We will start with the general T&C as it will give a general overview of the content of the reference offer:*
 - a. **General information;**
 - b. **Services covered by the General Terms and Conditions;**
 - c. **Obligations of the parties;**
 - d. **Details of duration, renegotiation and causes of termination of agreements as well as other associated contractual terms;** - moved from point 3.4
 - e. **Financial conditions** (terms of payment and billing procedures, a definition and limitation of liability and indemnity); - moved respectively from point 3.1 and point 3.4
 - f. **Point of contact and a dispute resolution procedure to be used between the parties;** - moved from point 3.4
 - g. **Details of any relevant intellectual property rights;**
 - h. **Glossary of terms relevant to the wholesale inputs and other items concerned.** – moved from point 3.4
2. **Technical Specifications** - *instead of “Terms and conditions for the provision of network access”- it is more specific as the terms and conditions will be covered under the previous point*
 - a. A description of the **overall** network **architecture of the** access products, services and facilities to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
 - b. Any relevant technical standards for network access (including any usage restrictions and other security issues);
 - c. The locations at which network access will be provided;
 - d. A procedure and conditions to request relevant information for the provision of the relevant regulated access product or services;
 - e. Terms and conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-

ordering, ordering, provisioning, maintenance and repair requests) including their usage restrictions and procedures to access those services;

- f. Specifications of equipment to be used on the network; - moved from point 3.2
- g. Co-location services (with similar content as in the Directive 2002/19/EC concerning local loop unbundling and when applicable for certain category of product/services)
- h. Uncontended and symmetrical dedicated access; *This is of importance for the provision of broadband/bitstream services to our business customers*
- i. Service-agnostic connectivity, enabling control of traffic speed and symmetry; *This is of importance for the provision of broadband/bitstream services to our business customers*
- j. Minimum technical specifications for different product types e.g. delay, jitter, packet loss, contention ration etc to ensure that there is scope for competition to develop at different segments of the market. *For example, when we respond to specific requirements/needs from our customers for the provision of their business services further downstream, we cannot use technical specifications aimed at the mass consumer market.*

3. Details of operational processes

- a. Specific time scales for pre-ordering, ordering, provisioning, maintenance and repair requests – move from 4th bullet point 3.2
- b. Procedure for technician intervention (certified technician or SMP technician), incident reporting and liabilities; *in some countries certified technician are authorised to perform some work on the network of the SMP operator. Procedures should therefore be needed for the type of intervention, the reporting of incident and the liabilities of each parties.*
- c. processes of migration from legacy products and infrastructure, incl. moves and ceases;
- d. rules of allocation of space between the parties when supply facilities or co-location space is limited;
- e. changes to IT systems to the extent that it impacts alternative operators;
- f. details of the necessary interoperability tests;

4. Service supply and quality conditions

- a. Service level agreements (SLAs) that may differ for different products aimed at the mass consumer market versus the higher specification business market (e.g. standard SLAs versus enhanced SLAs). These would cover areas such as repairs for ordering, delivery (provisioning), service (availability) and maintenance (repair), including specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair). *In order to answer specific requirements and needs of our business customers, standard SLAs generally used for the consumers market are not enough. Therefore, there is a need to get enhanced SLAs to enable BT to provide appropriate business services to our customers.*
- b. The quality standards that each party must meet when performing its contractual obligations including the specification of key performance indicators (KPIs) with respect to SLAs, where relevant;

- c. Service level guarantees (SLGs) for ordering, delivery (provisioning), service (availability) and maintenance (repair), including the amount of compensation payable by one party to another for failure to perform contractual commitments as well as the conditions for eligibility for compensation;
- d. Procedures in the event of amendments being proposed to the service offerings, which may include a requirement for notification to the NRA for such amendments, for example, launch of new services, changes to existing services or change to prices.

5. Pricing, Compensations & Billing – *This part will enable the parties to have all information related to prices, compensations and billing/invoice information in one sub-document.*

a. Relevant charges/prices, compensations and billing processes

b. Please provide any other general comment(s) you might have with respect to the minimum core set of elements covered by the guidelines.

BT would suggest BEREC to incorporate the BEREC's Common Positions as well as BEREC's best practices of the WBA (Wholesale Broadband Access) and WLL (wholesale Leased Lines) into the core elements of the proposed reference offer bearing in mind the technology and market evolutions.

BT would encourage BEREC to work on a benchmark report on the set of core minimum criteria across the EU (e.g. comparison of SLA, SLG, prices, terms and conditions, and technical specifications across the EU countries). It could be based on the requirements set out in the coming BEREC guidelines on the minimum criteria, Common Positions and Best Practices. Indeed, BEREC has access to best Pan European data on access and interconnect matters through its members (NRAs). This benchmark report will be of good support to the NRAs when performing their market analysis exercise as well as for discussion between NRAs and the industry.

BT suggests to take the following services/products into account for the obligation of transparency (Reference offer):

- (i) Broadband/bitstream provided over Ethernet (and/or any future-proof technology)
- (ii) Leased lines provided over Ethernet (and/or any evolved/future technology)
- (iii) VoIP – IP interconnection (and/or any evolved/future technology)
- (iv) Relevant new wholesale services to be developed in the future and based on new technologies.

and to add them in the "Definition" as per the Directive 2002/19/EC concerning local loop unbundling.

As mentioned in the Executive summary and in the introduction, SMP operators cannot use the BEREC guidelines as an argument to reduce the scope of the (existing and future) reference offers which contain any additional national features. Those national features have been imposed (or could be imposed) by NRAs as a result of their market analysis to guarantee competitiveness of the national market. It could also not be used by the SMP operators to remove any additional features when already granted in (existing and future) commercial offers.
