Vodafone Group response on the draft BEREC Guidelines on common approaches to the identification of the network termination point in different network topologies

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We appreciate the opportunity to comment on this consultation and trust that our comments are helpful to BEREC and National Regulatory Authorities (NRAs) as well as to other stakeholders. We remain at your disposal to discuss our submission to the consultation, or any other aspect relevant in the context of the latter.

At Vodafone, we strive to connect Europe to a better future, providing best in class infrastructure, digitising industry and empowering citizens in a trusted environment. Vodafone is Europe's largest mobile network with over 116 million mobile customers and fixed networks reaching over 145 million European households and businesses, spanning 13 countries from Skibbereen, Ireland to Heraklion, Greece. Vodafone is a market leader in IoT services with 94 million global connections. Vodafone has invested €59.5bn in Europe in the last 5 years, improving infrastructure quality and has launched 5G in 7 EU markets.

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General comments

We welcome the consultation on the draft BEREC Guidelines on common approaches to the identification of the network termination point in different network topologies. As set out in the European Electronic Communications Code, the network termination point represents a boundary for regulatory purposes between the regulatory framework for electronic communications networks and services and the regulation of telecommunications terminal equipment. Defining the location of this boundary is essential for regulatory certainty and should be harmonised across Europe.

According to article 61(7) of the European Electronic Communications Code (EECC), BEREC is tasked with the adoption of guidelines on common approaches to the identification of the network termination point (NTP) in different network topologies. Our main concern is that this has not been done. The network termination point may be different for different network topologies and guidance should be provided for different types of networks such as cable, fibre, copper, mobile broadband, IoT and mobile phone connectivity. Vodafone supports a harmonised approach and would welcome more detail in these Guidelines about the different approaches taken to date by NRAs and what can be learnt from this analysis.

Responses to specific questions

1. Do you agree with the 6 criteria identified by BEREC to establish where NTP in fixed networks?

The Guidelines sets out 3 options, all of which are valid in different commercial scenarios (vertically integrated vs wholesale) and depending on the lifecycle/interoperability maturity of the access technology involved. The Guidelines require NRAs to use the six criteria to analyse whether the network termination point falls in relation to the 3 options.

The 6 criteria include factors which are actually regulatory or commercial outcomes, rather than factual evidence of a network termination point.

For example, the BEREC Guidelines provide that:

106. Data protection is important in order to prevent unauthorised access to private data. The definition of the fixed NTP location may have an impact on data protection as considered in the sub-sections below.

The application of data protection requirements are an outcome of where the NTP location is, not a part of its definition.

Similarly, the criteria on "simplicity of the operation of the network" seems to be there mainly to enable NRAs to include consideration of the impact of the network termination point on competition and we would highlight the following excerpt from the draft Guidelines which illustrate this concern:

This assessment shall take into account in particular the following:

a. The situation that many different types of modems, routers, media boxes etc. not owned by the network operator are used when end-users have the possibility to use their own equipment is inevitable.
b. The degree to which the use of end-user owned equipment impairs the simplicity of network operations has to be substantial and the negative results have to outweigh evidently the potential benefits for end-users and competition on the TTE market to constitute an objective technological necessity

This seems to go beyond BEREC's remit, which is to provide guidance to help identify what "the physical point" which "is identified by means of a specific network address" in different network topologies. Use of regulatory and commercial factors will mean that the use of these criteria is likely to be used to achieve different competition and regulatory outcomes and consequently, will result in increased fragmentation, rather than harmonisation.

Instead, what BEREC must do according to Article 61(7), is to provide guidance on the individual elements of the NTP as defined by Article 2(9) in a harmonized way.

We would agree that the NTP may be at Point A, B or C, which is dependent on different criteria. Therefore, the key point is to ensure the right criteria are used when establishing this in practice. The criteria should include the following factors:

- Differences between different network topologies and the investments made in the networks.

- Network security and safety issues, such as laser power levels of FTTP/PON using point A.
- Degree of maturity of proven modem (to network) interoperability. For example, for cable (and DOCSIS 3.1 in particular), interoperability of the technology is at an early stage, which will mean that it is not technically ready for the network termination point to land at Point A without incurring risks to performance, end user issues and security risks. However, as the technology itself becomes more mature, the network termination point may move to point B or C.

2. Whether you agree with BEREC's statement that NRAs, when establishing the NTP location in mobile networks, "shall determine" that it is "at a location (e.g. the air interface between mobile equipment and base station) which permits end users to (continue to) use their own mobile equipment."

We would not agree with this statement. Network topologies in mobile networks vary because of the physical points on which they terminate is present in different devices. We refer to the detailed GSMA response on this point.