GSMA response to the public consultation on BEREC Guidelines on Common Approaches to the Identification of the Network Termination Point in different Network Topologies

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The GSMA, which represents the interests of mobile operators worldwide, welcomes the opportunity to comment on BEREC's Guidelines on Common Approaches to the Identification of the Network Termination Point in different Network Topologies. We hope the following comments can serve as a constructive contribution to BEREC's deliberations on its draft.

Introductory remarks

The GSMA is concerned by the general approach taken by BEREC. In the draft Guidelines, BEREC proposes to take into consideration aspects that go far beyond the scope of the relevant legislation, and therefore the draft Guidelines thread beyond the legal basis.

Based on 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. This should be done based on the definition of Art. 2(9), meaning (in short) "*the physical point at which an end-user is provided with access to a public electronic communications network […] identified by means of a specific network address*". Hence, BEREC is legally bound and limited to make an assessment of the technical reality which is present in different network topologies. Instead, the draft Guidelines promote NRAs making a choice what the NTP should be, contrary to the legal definition in Art. 2(9) EECC.

In addition, the draft Guidelines have introduced arbitrary aspects that should be taken into consideration that have nothing to do with the technical aspects of networks, but instead with the promotion of self-imposed objectives such as promoting competition on the CPE/TTE market and the free choice of terminal equipment.

The draft Guidelines lend the promotion of competition on the CPE/TTE market from Directive 2008/63/EC. BEREC misrepresents the aim of this Directive, which solely exists to address and remove the existence of exclusive rights granted by the Member States for the supply of user terminal equipment for connection to the network. Unlike the draft Guidelines assume, this is not a justification for arbitrarily deciding where the NTP should be, in order to promote free choice of terminal equipment. Furthermore it is not our understanding that BEREC mission is to foster the competition in the TTE market.

Furthermore, the draft Guidelines rely on the Open Internet Regulation (Regulation (EU) 2015/2120) and the corresponding BEREC Guidelines, to justify taking into account the effects of free choice of terminal equipment when choosing the NTP. While the Open Internet Regulation does enable end-users to make use of terminal equipment of their choice, it provides no mandate to broaden the domain of the end-user to make more equipment fall under the 'free choice' requirements for terminal equipment, by choosing to set the NTP at a specific location based on parameters that suit the purpose of the right to free choice.

Hence, it is GSMA's point of view that the legislation described above only exists to promote freedom of terminal equipment within the existing end-user domain beyond the NTP, and does not (as the draft Guidelines indicate) enable NRAs to choose the NTP based on parameters that potentially increase the domain and extend the working of free choice of terminal equipment. The later would risk BEREC taking seat in the legislators position and impose obligations that do not exist based on existing law in order to promote its own policy objectives.

To avoid being at odds with the legal mandate provided for in the EECC, the draft Guidelines should in the views of GSMA:

- Refrain from enabling NRAs to make a choice regarding the location of the NTP, if the market reality does not make it necessary, and in any case without stakeholders co-construction;
- Instead provide guidance in discovering the technological reality of the NTP location in various network topologies;
- Abandon arbitrary justifications for the choice of NTP through objectives which are not sanctioned by legislation.

The GSMA would like to emphasize that these draft Guidelines should ensure the necessary flexibility to suit circumstances at the national Member State level and that if NTP should be defined, to be efficient, it should be done in close consultation between NRAs and the stakeholders.

According to the BEREC report of December 2018, currently many EU Member States have no rules or decisions in relation to the location of an NTP. Markets in the EU have developed their own de facto solutions and it is insufficiently investigated what the consequences of mandating certain definitions and practices would be. The guidelines should therefore be sufficiently flexible to the national circumstances and in any case should mandate an NRA to make fact-based evaluation of consequences of solutions it intends to impose, both in relation to costs and timing of implementation. There is no added value for EU a strict harmonisation where national practices function well and did not create discussion between market parties. Unnecessary strict harmonisation would lead to negative technical, financial and commercial consequences.

We understand that the draft Guidelines concern the retail market only, hence we would recommend addressing the related business part with a particular care due to the specific needs of companies.

The NTP approach should mainly concentrate on the networks of the future in order to avoid disruption on existing practices or networks at the end of their lifecycle.

In any case, the NTP definition should not introduce any bias in the competitive landscape.

Since the GSMA represents the mobile industry, the response provided below focuses only on aspects related mobile network termination point.

Location of the mobile NTP (Chapter 4, page 24)

GSMA comments:

The draft Guidelines have misjudged that network topologies in mobile networks differ depending on their application. Mobile broadband, fixed-wireless broadband access, IoT or M2M, and mobile phone connectivity are all different topologies because of the physical points on which they terminate is present in different devices, even though they rely for the majority on the same network elements.

In particular, the following examples show that there is no unique answer regarding the localization of the NTP in mobile networks:

Example 1: For usage in mobile phones connected to a cellular network, the physical point at which an end-user is provided with access to a public electronic communications network, identified by means of a specific network address, is not the SIM-card, but the radio modem in the System on a Chip, as it performs the central functionality to connect to the radio network. The SIM card does not perform functionality that constitutes providing access to a public electronic communications network, nor is it identified by means of a specific network address.

Taking into account developments as eSIM, the SIM functionality will be embedded and move closer to the SoC and thus the modem functionality. Ultimately with iSIM, modems and SIMs will be part of the same physical SoC, and the distinction between the two for the purpose of identifying the NTP will ultimately be irrelevant.

Example 2: For fixed-wireless broadband access and mobile broadband access services, the NTP would also be at the radio modem, but the physical location depends on whether the radio modem is separated from (e.g. a dongle or a stand-alone modem) or embedded in an end-user device (e.g. laptops with embedded SIM or eSIM capability and a radio modem).

Example 3: For IoT connectivity, there is an even broader range of devices that connect to a public electronic communications network. Especially for 5G technology such as slicing, which logically separates networks on the same physical network infrastructure, analysis should be undertaken, for possible network topologies in different configurations, at which point access to a public electronic communications network is provided. As with the devices above, this is not likely to be the SIM card.

In conclusion, Point 141 asks the NRAs to determine that the mobile NTP is in the “air interface” between mobile equipment and base station: we consider, following the previous examples that the NTP cannot always be in the air. However, we estimate that there is no need to provide further guidance on the NTP, and that operators should be free to deal with different configuration based on technical and economic constraints and currents practices.

Other remarks

We agree with BEREC’s assessment that there is no need to provide further guidance on the NTP.