

**To:** [PC\\_Physical\\_Infrastructure](#)  
**Subject:** Open Fiber contribution to the public consultation on draft BEREC Report on Access to physical infrastructure in the context of market analysis  
**Date:** Monday, 21 January 2019 18:44:51  
**Attachments:** [image001.png](#)

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Dear All,

please find below **Open Fiber contribution** to your **Public consultation on draft BEREC Report on Access to physical infrastructure in the context of market analysis**.

Kind regards,

Open Fiber S.p.A

**Open Fiber contribution to the Public consultation on “Draft BEREC Report on Access to physical infrastructure in the context of market analyses” dated 6 December 2018**

We welcome BEREC consultation and all initiatives that shed lights and rise the attention on the access to physical infrastructures. In our opinion, the access to physical infrastructures and related remedies are the cornerstone of fibre deployment, therefore policy makers have to strengthen its application in the market.

Although BCRD and SMP remedies in several Member States were conceived to reduce economical and technical barriers for the deployment of alternative fibre networks, unfortunately their results are far to be considered successful. A significant share of SMP operators imposes costly, burdensome and inefficient procedures and levy significant limitations for an effective use of existing infrastructures by access seekers.

In order to ease the deployment of alternative fibre networks, we believe that NRAs have to update strongly the regulation of physical infrastructures access as for services, pricing, procedures and processes. So far, most NRAs have conceived physical infrastructures access regulation in a context of rare or occasional use by alternative operators. With the emerging of alternative FTTH networks, the demand of access is increasing exponentially in volume and is transforming, due to new services and further issues to be faced. These new and emerging market needs should bring NRAs to a SMP services rethinking.

Here below Open Fiber view. In the first three sections, we comment how to perform a physical infrastructure market assessment and how to set remedies, based on our experience as a FTTH alternative infrastructure operator. We tackle the issues from three different levels: services, pricing, process and procedures. In the section 4, we comment general BEREC statements in the report.

**1. Assessment of physical infrastructure services offered by SMP operators**

Even though during the last years regulation in different Member States has been focused on the access to in-building infrastructures, its effective re-use remain highly critical. As said before, the access to existing in-building infrastructures is crucial for the deployment of alternative fibre networks. BCRD has helped alternative operators to gain access for the deployment of the “horizontal network” from different

physical infrastructure owners, but in-building infrastructures for the deployment of “vertical network” (the so called “drop”) are still largely under the almost exclusive control of SMP’s operators. They have been for a very long time the only users of these infrastructures. Consequently, in-building physical infrastructure remains *de-facto* a significant bottleneck.

We suggest that BEREC should spur NRAs to enlarge SMP remedies for in-building infrastructures. In Italy, for example, SMP operators in some cases denied the access to its own in-building equipment such as junction boxes, connectors etc., which are crucial for an effective re-use of the existing infrastructures to build the drop or just to enter within a building. Moreover, ducts placed from the last manhole to the building entry (also called “lead-in duct” when a duct is available) are available only in case of fibre deployment by the SMP operator, meanwhile alternative operators strongly need this infrastructure even if it is not already equipped by the incumbent with ducts or fibre.

As an alternative measure to ease the access to in-building infrastructures, we believe that BEREC should endorse the *superficies solo cedit* (any object permanently connected to the immovable property becomes integral part of this property) as the property principle to apply. This principle makes the access to the infrastructure easier, since the incentives of property owners (who are also beneficiary of the network connection) are much different from the incentives of existing telecom operators, who are keen to arise economic and technical barriers.

## **2. Assessment of pricing remedies for the access to physical infrastructures**

Pricing for the access to physical infrastructures is strongly affected by the fixed cost of realization of civil infrastructures and by the demand flotation of the access services. Regardless the cost model used to assess the civil infrastructure costs, we believe that NRAs should carefully assess the demand of access to physical infrastructure owned by SMP operators. This task is not that easy where alternative operators, such as Open Fiber, are investing at a fast pace.

Because nowadays in Italy the overall demand of physical infrastructures is significantly higher compared to the market scenario taken into consideration by AGcom in the last market analysis, Open Fiber and other investors are over-remunerating TIM’s physical infrastructures.

To conclude, we believe that NRAs should carefully assess market demand. In order to avoid SMP operators windfall-profits, increasing in market demand should be accompanied by price decrease. Price decrease can be imposed in different forms: volume discounts for all the units purchased, discounts for the second, third elements and onwards purchased within the same landline route (such as ducts) etc..

## **3. Assessment of procedures and processes for the access to physical infrastructures**

Because of the rare or occasional access to SMP operator physical infrastructures in several Member States experimented in the past, procedures and processes for access purchase was designed accordingly. It means that SMP operators allow the purchase of few end-to-end physical infrastructure services or few network elements, e.g. the access to a spine duct from a specific cabinet to a specific Main Office or the access to termination segment of 10 buildings within a delimited area. These services were asked to provide services to specific costumers, usually business premises. Because of the low volume of purchased physical infrastructure access services, SMP operators are imposing significant constraints and caps on the amount of services delivered. It implies that alternative operators can buy within a specific area and/or a limited period, a capped amount of access services. In case of FTTH deployment within a large area (e.g. a City), such demand caps significantly restrict the use of existing infrastructure. By a way

of example, the demand by Open Fiber for lead-in ducts in a medium size City within a month is capped by TIM irrespective to Open Fiber needs that is at least 100 time higher. Constraints can be imposed in different ways. E.g. caps can be imposed on the number of feasibility studies that the incumbent performs within a specific geographical area.

## **Other comments to BEREC report**

### Convergence in wireless and fixed services and its implications

We believe that, although the unquestionable convergence of fixed and wireless connections, wholesale fixed access will be a separate market from the mobile one. Technical features of offered fixed services and the different demand needs by the final customers will keep separated fixed and mobile markets.

### The relevance of the Modified Greenfield Approach

We believe that the Modified Greenfield Approach is a cornerstone criterion for ex-ante remedies setting, only in case of competition among vertical integrated companies, while it is not applicable when it comes to market structure with Wholesale-only operator(s) competing with the incumbent. In case of Wholesale-only operator market presence, ex-ante remedies on SMP operators should be put in place regardless the direct impact on retail market. Wholesale-only operators by nature do not compete at retail level thus in order to set a regulatory framework that defend market players by incumbent market powers, remedies should be set looking at wholesale market dynamics itself, instead of assessing the impact of remedies on the retail market.



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