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Comments on draft BEREC Report on Access to physical infrastructure in the context of market analysis

Danish Energy (Dansk Energi) appreciate the opportunity to comment on the draft BEREC Report on Access to physical infrastructure in the context of market analysis.

Background information - important points

Danish Energy is a commercial organisation representing all the Danish energy companies, including the regional electricity companies, and works to secure them the best possible conditions for competition and development. Danish Energy works to influence European energy and climate policy in order to support investments in the transition to a low carbon energy system.

The regional electricity companies in Denmark, commonly owned in trust by consumers in each respectively region (consumer cooperatives), started to roll out fibre networks (FTTH) around 2005. The utilities' entry into the broadband market was initiated by the liberalization of the electricity market in Denmark in 2005, and transfer of airborne power network underground in order to avoid future disturbance (e.g. resulting from storms) based on a simultaneously and nationwide deployment of utility fiber ducts, including trench sharing agreements with traditional telcos. A big lack of broadband coverage, especially in rural and less densely populated areas, and poor competition was also an important starting point for the utility's entry into the broadband market.

However, the incumbent operator, TDC, still dominates the fixed broadband market with a market share of more than 50%, ranking among the most dominating incumbents in the EU28.

Today, the regional electricity companies with fiber networks (the so-called regional fiber-utilities) are the main challenger to the incumbent operator on the fixed broadband market by deploying FTTH networks next to the incumbent's legacy networks (copper, coax) promoting a high degree of infrastructure-based competition and consumer choice in many parts of Denmark. More than 50% of rural homes in Denmark have access to FTTH from a regional fiber-utility, which is the second highest fiber coverage in the EU28 – only surpassed by Latvia. Several fiber-utilities are aiming for full fiber coverage within the next five years pushing Denmark towards a true gigabit society.

In 2017, the regional fiber-utilities has jointly announced that they are moving towards a commercial opening of their respective networks for access seekers on fair, non-discriminatory and reasonable terms and conditions. Several fiber-utilities have already effectuated on the joint announcement by entering agreements with different content providers.

Comments

According to the draft BEREC Report, Denmark is among eight countries in the EU where the NRA do not impose any remedies with regard to physical infrastructure on any of the markets, either because the relevant market is deregulated or because other remedies/legal instruments are deemed to be sufficient or more appropriate.

The Danish NRA has in continuation of the adoption of the EU Broadband Cost Reduction Directive (BCRD) withdrawn the asymmetrical SMP duct access obligations in the Danish Telecommunications Law considering the new symmetric regulation in the BCRD on access to existing physical infrastructure (Article 3) being sufficient.

Danish Energy agrees with the Danish NRA that the access regulation in the BCRD to existing physical infrastructure, including fiber ducts, is a sufficient tool in addition to the existing regulatory framework (market 3a and market 3b) taking the stipulated safeguardings in BCRD into account, including the economic viability of investments based on risk profiles and return on investments, impact of downstream competition, any depreciation of the network assets at the time of the access request and preventing access seekers from free-riding investments.

On that basis, Danish Energy do not support a standalone market for physical infrastructure under the regulatory framework set for markets susceptible of ex ante regulation.

We believe, that the current list of relevant markets in the regulatory framework, including market 3a and market 3b, combined with the access obligations in BCRD is a sufficient “toolbox” for the NRA to pursue the main objectives in the new EU Electronic Communications Code Directive, including promoting investments and connectivity to very high capacity networks (VHCN) and promoting competition in the provision of electronic communications networks, including efficient infrastructure-based competition.

Yours sincerely,

Dansk Energi