



Warsaw, 27 January 2020

PIKE'S FEEDBACK ON THE DRAFT BEREC REPORT ON MEMBER STATES' BEST PRACTICES TO SUPPORT THE DEFINING OF ADEQUATE BROADBAND INTERNET ACCESS SERVICE

Dear Sir or Madame,

PIKE (Polska Izba Komunikacji Elektronicznej – the Polish Chamber of Electronic Communications) is an organisation that brings together Polish undertakings providing electronic communications services, especially cable operators. We welcome this opportunity to provide feedback on the draft BEREC Report on Member States' best practices to support the defining of adequate broadband Internet access service. Please find answers to the consultation questions below.

Question 1

In the opinion of PIKE, a criterion that is indispensable to determine the speed and bandwidth of the Internet access service under universal service is the assessment of the scale of costs incurred by the operators in providing this service. Setting an adequate broadband Internet speed at a high level will generate disproportionately high costs for operators to provide this service (see Belgium, pages 56 and 57 of the report). Therefore, PIKE finds it reasonable to reduce the speed that will be considered adequate since, on the one hand, a higher speed will not lead to any additional tangible benefits for end-users but, on the other hand, it will result in market distortions and unjustified costs for operators. The high costs of universal service may reduce the investment capacity of the providers, which would be contrary to other objectives of the EECC, in particular supporting the expansion of VHCN.

By contrast, the criterion that PIKE considers to be clearly irrelevant is to indicate speeds available to 50% of the users in a given state and to 80% of the users with a broadband connection. These circumstances are in no way related to an objective estimation of the demand for, or quality of, this service to be provided under universal service. In this respect, it should be noted that preferential and low-cost social tariffs should relate to the bandwidth absolutely necessary for supporting the minimum set of Internet services set out in Annex V to the EECC. The imposition of an obligation to offer social tariffs for higher bandwidths will distort the market by interfering with the conditions for providing too many services. The wide availability of a high-speed broadband service in a given state does not mean that every user must use such a service. If an Internet access speed that is lower than the widely available one in a given state ensures effective access to the services set out in Annex V to the EECC,

the imposition of an obligation in this respect will result in meeting the objectives of universal service, including preventing digital exclusion.

As a conclusion, PIKE assesses these criteria as follows (with some brief comments):

1. *Where the data rate in question is used at national level...* - **not relevant at all**,
2. *Expected availability of broadband without public intervention* - **not relevant at all**,
The Chamber believes that this criterion may be relevant for determining the appropriateness of imposing obligations under universal service, but it should not be relevant for setting a speed to be offered under universal service.
3. *Geographic survey* - **not relevant at all**,
4. *Market distortion* - **important**,
As indicated above, setting an adequate Internet access speed at too high a level will lead to significant market distortion for these services.
5. *Estimation of the potential demand for a broadband USO* - **not relevant at all**,
As with criterion No 2, it may be relevant for assessing the appropriateness of imposing the obligations, but not for setting universal service parameters (this should be determined by the necessity to use the services set out in Annex V to the EECC).
6. *Comparison with other EU countries* - **not relevant at all**,
In PIKE's view, Member States have so different problems with the availability or affordability of an adequate broadband Internet service that this criterion cannot be relevant.
7. *Benefits of public intervention and effects on competition* - **not relevant at all**,
8. *Timeframe to make available broadband under USO* - **not relevant at all**,
9. *Social and economic disadvantages incurred by those without access to a broadband connection, including disabled end-use* – **important**,
As indicated above, the Chamber considers that digital exclusion should be prevented by guaranteeing access to an indispensable minimum set of Internet services. However, it is not relevant to distort the market by forcing too wide a range of services under non-commercial terms.
10. *Estimation of the costs of intervention through USO versus other approaches* – **indispensable**.
As mentioned above, the costs of providers must be taken into account when setting the Internet speed offered under universal service. The excessive costs of universal service may deplete the investment capacity, which would be contrary to the achievement of other objectives of the EECC (in particular the expansion of VHCN).

Question 4


According to PIKE, access to social packages should not be available to all end-users. The possibility of concluding a contract on such preferential terms and conditions should be restricted to those people who are in hardship, e.g. low-income or disabled users. The universal service should be addressed to those people who cannot afford to use it under normal terms and should not be a way for users to find savings.

Question 5

The experience of recovering net costs by an undertaking designated in Poland shows that it is very difficult, if not impossible, to designate several or all telecommunications undertakings to provide the universal service by using the method of sharing the net cost of universal service obligations between providers of electronic communications networks and services. The cost-sharing mechanism that was in force in Poland in the years 2006-2011 (currently, no undertaking is designated to provide USO) appeared to be difficult to implement despite the imposition of USO obligations on only one designated undertaking. In the model applied, the NRA must first conduct a procedure to determine the amount of net cost (the assessment of the application by experts takes many months). Further, it is necessary to conduct a further procedure to indicate an entity obliged to participate in the net cost and set a rate of participation in net cost (due to the number of undertakings obliged to participate (over one hundred), such procedures last a very long time, even few years). Subsequently, it is necessary to issue individual decisions determining the amount of the liability of an individual undertaking (over one hundred decisions). Currently, the procedures concerning the net cost of universal service provided in the years 2006-2011 have not been fully completed in Poland. If the NRA had to conduct such complex procedures to recover the net cost for several designated undertakings, this would probably prove impossible and the right to recover the net cost would be fictitious. PIKE believes, therefore, that the report should indicate that in case of designation of several or all undertakings operating in a given Member State for the provision of universal service, it is recommended to introduce a mechanism to finance the universal service from public funds.

Therefore, PIKE recommends the following settlement methods for individual legal solutions:

- 1) designation of one nationwide provider of universal service - settlements could take place both in the model of financing from public funds and in the form of covering costs by other undertakings;
- 2) designation of several entities or all telecommunications undertakings - the only justified model of financing the service is to cover the cost from public funds.



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