



Creating a brighter future

Response to the consultation on 'BEREC Draft Work Programme 2016'

30 October 2015

The FTTH Council Europe welcomes the opportunity to comment on the draft BEREC Work Programme 2016.

The FTTH Council Europe is an industry organisation with a mission to accelerate the availability of fibre-based, ultra-high-speed access networks to consumers and businesses. The Council promotes this technology because it will deliver a flow of new services that enhances the quality of life, contributes to a better environment and increased competitiveness. The FTTH Council Europe consists of more than 150 member companies. Its members include leading telecommunications companies and many world leaders in the telecommunications industry (additional information is available at www.ftthcouncil.eu). Telecoms operators are not members of the FTTH Council and we have our own perspectives regarding the appropriate regulatory policies to accelerate NGA deployments.

With regard to the content of the draft BEREC work programme the Council is concerned that there should not be too much emphasis on short term aspects which may adversely impact on medium term strategy. In particular, at the Fibre To The Home Council we promote FTTH because we think it will deliver enormous benefits to those that adopt the technology. Many of the potential uses of FTTH such as home working and home-based eHealth applications have significant impacts which can be classified as positive externalities. In the case of home-working this could be relief of traffic congestion allowing other commuters to save time as well as positive environmental impacts. In the case of home-based eHealth applications, decongestion of healthcare facilitates and financial savings to the State can be anticipated in addition to the direct benefits. In these circumstances, the benefits accruing to society often go far beyond the direct economic benefits identified by investors, therefore society has an interest in seeing these networks built.

Looking at the medium to long term challenges facing Europe these challenges include aging populations and the increased pressure on healthcare systems as well as environmental sustainability and lifting economic productivity. The FTTH Council believe that FTTH networks can help to deliver or enable a significant part of the solutions to these problems.

Section 1. Wholesale Access Model

With regard to the promotion of competition and investment the FTTH Council would make the following observations. There is no trade-off between competition and investment; BUT that cliché should not blind us to the evidence of how different forms of competition, service based or infrastructure based, impact on each other. A completely equal access regime based on virtual remedies with a guaranteed margin, effectively proposes that no-one will compete on network differentiation or seek a first mover advantage by deploying advanced networks.

While cable networks create a threat of competition, the telco operators tend to invest very strategically to meet current demand. At the FTTH Council we have seen the greatest investments and the strongest competitive dynamics where NRAs have actively pursued FTTH deployments. The FTTH Council see Sweden, Lithuania, Portugal, Spain and France all achieving a level of infrastructure based competition which is ahead of other European countries.

The FTTH Council believes that the NRAs in BEREC can and should look and learn from each other. Our analysis suggests that there needs to be a deliberate policy to pursue Fibre to the Home. Virtual access remedies on FTTH were either not available or were greatly curtailed in markets where FTTH has been most successful. Giving access seekers an opt-out will always result in that option being taken up when billions of euros are at stake. In addition, each country took care to ensure that the cost of

deployment was minimised through sharing of expensive passive infrastructure and avoiding duplication of those passive network elements.

Competitive network deployment won't happen everywhere and a way to ensure roll out in more expensive rural areas will have to sit beside this market driven approach. Good access, in all its forms will be required in those areas as consumers must have access to the deepest form of competition available. However, in lower cost urban areas we believe that form of competition can be infrastructure based and that the benefits for consumers can be very high.

Under the heading of Competition and Investment therefore, the FTTH Council ask BEREC to recognise the trade-offs between the different forms of regulated access granted and stress the importance of a thorough and effective implementation of the Cost Reduction Directive and other, further cost reduction measures.

Section 2. Input to the Framework Review: Treatment of Technological neutrality

A problem that the FTTH Council perceives is something that might be called 'false' technological neutrality. In essence, the concept of a 'false' technological neutrality refers to the selection of speeds and other quality that are selected (or often not selected) so as to ensure that as many technologies are included as possible (such measures often exclude upload speeds entirely). A 'true' technologically neutral approach would simply select the most likely future requirements across all parameters and let the technologies fall as they may. The FTTH Council firmly believes that realistic targets should be set both for download speeds but also, very importantly, for upload speeds and other quality parameters such as latency, jitter and so on.

By reference to the kinds of services that are envisioned on these networks, the FTTH Council believes that significant consideration needs to be given to the robustness and metrics in terms of faults and errors which will be important to ensure that network quality and resilience which allow enhanced network usage for more important social services. Such generalised parameters with a concrete set of targets can set a 'true' target to which a technologically network neutral approach could be applied.

From an economic perspective, there is no access market in Europe that does not demonstrate market failure, market failure demonstrated by the presence of persistent dominance or SMP. The presence of this market failure means that specialist regulators exist that require access to be granted. Specialised regulators also set the price for such access. This is done so that dominant entities cannot foreclose or limit the market. Yet, although dominant firms do not have the choice about whom to grant access to or on what terms, when it comes to technology choice it is presumed that an optimum choice will be chosen? This approach does not make sense

The FTTH Council believes that an appropriate threshold should be set at levels which ensure that not only are the Digital Agenda targets met but that also ensure that these networks are sufficiently future proof with particular emphasis on upload speeds. Any requirement must set a realistic target in terms of what NGA should deliver now and in the near future not only in terms of speed but also across other QoS metrics such as latency, jitter, packet loss and so on.

Section 3.1 Oligopoly inputs

The FTTH Council Europe believes that market forces can and will deliver the best outcomes for European consumers in the absence of market failures. Market failures can be a failure to internalise

all the benefits coming from a migration to FTTH for instance (a failure to price positive benefits to society) which justify public finance; or market failure can take the form of excessive market power such that output is restricted or pricing raised to the detriment of consumers. It is appropriate that BEREC review the question of when and where the limit of ex ante regulatory intervention should be.

The FTTH Council takes a view that the regulation of jointly dominant entities is something which, if controlled, is best controlled by ex-post authorities. As the FTTH Council sees these proposals, what has been proposed by BEREC, in particular the regulation of tight oligopolies, could amount to a fundamental change in the threshold for regulation and the FTTH Council Europe does not believe that this is appropriate.

The FTTH Council believes ex-post regulators are better placed to consider issues of tacit collusion and that ex-ante regulators do not have the appropriate tools to make a full analysis of such behaviour. This is for a variety of reasons but principally because a market outcome could be misinterpreted and relatively good market outcomes could be undone. Competition Authorities have more checks and balances (e.g. a requirement to show consumer harm) than ex-ante regulators and also have greater powers (eg. the ability to conduct dawn raids and to question witnesses under oath). When dealing with borderline cases, such differences may be crucial.

From a practical perspective as well, the FTTH Council does not believe that telecom markets exhibit the kind of characteristics that would facilitate tacitly collusive co-ordination. Telecommunications markets, both from a supply and from a demand perspective are continuously evolving and morphing. Stability, even if heavily orchestrated and institutionalised as within company groups, is difficult to maintain. Taking that requirement outside a company and seeking to create and maintain a collusive agreement through a 'nod and a wink' looks fanciful.

From a fixed market perspective, the FTTH Council believes that Fibre/Copper/Coax networks do not have common functionality or cost structures and views these asymmetries as extremely prejudicial to the emergence of joint dominance in fixed networks.

The FTTH Council Europe therefore believes that in terms of the incentives to collude, transparency and in terms of the market structure and development, telecom markets are not typically suited to the emergence of joint dominance. The FTTH Council would rather see BEREC's resources directed to other areas of greater benefit.

Section 5. Implementation of Cost Reduction Directive

The FTTH Council have seen that the mainstream discussion on broadband needs has gone beyond simple speeds to cover other quality of service parameters such as latency, jitter, packet loss and so on. It can be seen that, for say driverless cars and other virtual services, low latency will be important. There is no point having 1 millisecond wireless connectivity if it is then going onto an upgraded copper path which cannot support such latency parameters. It's also true that using the cloud is moving to the mass market with many users storing and backing up work in the cloud as a matter of course so upload speeds are becoming more and more important – the Council start to see it being advertised to the mass market. The trend therefore is very much towards FTTH –the Digital Single Market communication recognises that the digital agenda targets of 30Mbps and 100Mbps set in 2010 are increasingly out of date and we can expect those targets to move towards FTTH capacity sooner rather than later.

Each of the countries mentioned earlier as being more successful in rolling out FTTH networks took actions to lower deployment costs both in-building and for outside plant.

By lowering deployment costs through an in-building and passive access regime several virtuous effects appear to have resulted. First, costs were lower and speed of deployment increased, effectively lowering barriers to entry. Second, strong access competitors using LLU, realising that their future could not be guaranteed with virtual access, started to build out their own networks. Third, incumbent operators perceived the threat and reacted.

While no one can precisely anticipate the future direction of demand, facilitative measures which accommodate operators seeking to meet this demand if it manifests itself, should be put in place. An effective implementation of the Cost Reduction Directive will be critical in this regard.

Other.

The FTTH Council agrees with the emphasis being placed on facilitation of competitive market and competitive forces will deliver benefits to end users. The FTTH Council also notes the other work that is being proposed regarding consumer empowerment and notes that many consumer aspects e.g. regarding contract terms, tend to be more national in scope and effect. The FTTH Council would stress certain pan-European issues such as transparency measures in terms of the network performance which remains an issue today. While some have tested network delivery speeds against advertised speeds and these have highlighted the persistent underperformance of DSL networks, a more systematic and Europe-wide assessment would be a good complement to the current proposals on consumer empowerment. Well informed consumers with a choice of suppliers will enable a more dynamic and responsive market to the benefit of consumers and industry.

Finally, the FTTH Council would like to make clear that we as an organisation wish to support and work constructively with BEREC and that the Council is available to provide input and assistance on technical or policy parameters should a need arise.