



Electronic communications markets susceptible to *ex ante* regulation in the EU

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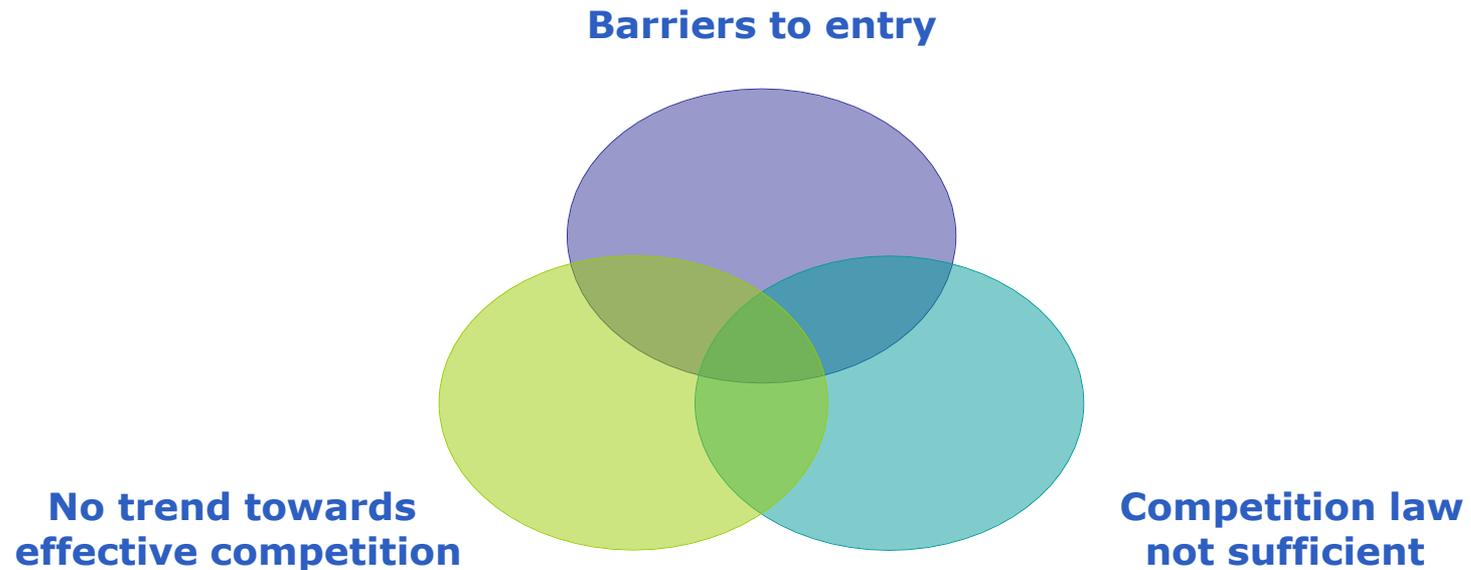
Review of the Recommendation

- The European Commission has a legal obligation to carry out regular reviews of the Recommendation on relevant markets
- The last review took place over 7 years ago; time for a close look at new trends and market developments
- The aim is to identify – on a forward-looking basis – those markets which will continue to require the imposition of *ex ante* regulatory obligations

Review process

- *Public consultation (Oct. 2012 – Jan. 2013)*
- *Study conducted by an external consultant (Ecorys), BEREC Expert Working Group participation*
- *Publication of the draft Recommendation and Explanatory Note in January and March 2014*
- *Stakeholders' submissions and BEREC Stakeholder workshop (February 2014)*
- *Taking utmost account of BEREC's opinion (May 2014)*
- *Advisory procedure – Consultation with EU Member States (Communications Committee; June – September 2014)*
- *Adoption foreseen for Q4 2014*

Methodology – Three criteria test



Relevant Markets

1. *Fixed telephony markets no longer warrant ex ante regulation across EU (current markets 1 and 2)*
2. *Termination markets remain*
 - **Market 1:** Wholesale call termination on individual public telephone networks provided at a fixed location (*current Market 3*)
 - **Market 2:** Wholesale voice call termination on individual mobile networks (*current Market 7*)
3. *New delineation envisaged for broadband markets*
 - **Market 3a:** Wholesale local access provided at a fixed location (*current Market 4*)
 - **Market 3b:** Wholesale central access provided at a fixed location for mass-market products (*mainly current Market 5*)
 - **Market 4:** Wholesale high-quality access provided at a fixed location (*mainly current Market 6*)

BEREC's Opinion

- BEREC generally supportive of the Commission's proposal
- However the draft should:
 - i. emphasize the difference between the short- and long-term competitive conditions on the retail market for fixed access and wholesale market for fixed call origination (current markets 1 and 2);*
 - ii. allow NRAs flexibility in defining broadband markets;*
 - iii. provide further clarity on horizontal, methodological, and transitional issues*

(Retail) fixed voice telephony

- ❖ Current market 1 does not pass the three criteria test across EU:
 - Structural developments, alternative entry through wholesale broadband markets and forward-looking expectation of entry from operators rolling out NGA
 - Expected tendency towards effective competition driven by developments on retail broadband access market
 - Fixed-mobile substitution (for residential customers) and VoIP/VoB solutions for more complex access services

(Wholesale) call origination

- ❖ Current market 2 also does not pass three criteria test across EU:
 - Ecorys report → share of captive users in the representative Member States well below critical threshold (70% of the current PSTN users) for a price rise to be profitable. This means a price rise of narrowband access is unlikely. Furthermore, these users will be protected by competitive pressure from other platforms.
 - Downward trend on CS/C(P)S usage in EU, corresponding to increase in demand for wholesale access products (LLU and Bitstream)
 - Self-supply of call origination by operators with direct connection to end-customers (through own infrastructure or regulated products)
 - Competitive constraints stemming from mobile services (even if not considered to fall within the same market)

Deregulation of markets 1 and 2

Implications

- Forward-looking approach: NRAs which prove three criteria test still passed may continue to regulate the markets (i.e. MS where there is a low take-up of LLU/WBA or low F2M substitution)
- Captive users:
 - **In the medium-term, not profitable for an operator to keep PSTN in parallel with all-IP network – however, captive users should be taken into consideration by NRAs in their analysis**
 - **Ex ante regulatory test is NOT about whether there are captive users, but whether could be subject to a price increase profitable for a dominant operator**

(Wholesale) termination markets

- Due to the calling party pays principle termination markets remain bottlenecks
- Explanatory note addresses developments such as unmanaged VoIP and Home zone
- Explanatory note sets out potential deregulation scenarios, in case of Bill & Keep agreements
- Article 5 of the Access Directive not appropriate to address excessive pricing concerns

Broadband markets

Overview

- ❖ Future-proof and predictable new delineation of market boundaries resulting in three separate product markets:
 - i. Local access* – comparable to current Market 4 (incl. certain virtual unbundling solutions)
 - ii. Central access* (for mass market services) – comparable to current Market 5 but without certain high-end/high quality access products
 - iii. High-quality access* – comparable to current Market 6 – focus on product characteristics typically needed for business connectivity

Broadband markets

Geographic differentiation

Opportunity to assess market boundaries on a geographic basis

- Starting presumption remains that markets are national in scope
- BUT: draft Explanatory Note sets out that NRAs should assess in areas with a higher degree of inter-platform competition whether there is a case for defining sub-national markets (for WCA market also intra-platform competition from LLU relevant)
- Choice of appropriate geographic units - codification of current case practice → boundaries need to be stable over time



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BACK-UP

Broadband markets

Wholesale local access provided at a fixed location

- WLA includes physical access products + certain VULA-type products
- Absolutely no preference for virtual unbundling
- VULA only included in market where sufficient degree of substitutability can be demonstrated based on functionalities which are equivalent or comparable to those of physical products
 - i. "Localness" – typically when access is granted at or close to the central office/MDF (including newly built ODF) or the street cabinet
 - ii. Generic and uncontended in practice
 - iii. Control to allow for product differentiation and innovation
- NRAs asked to assess constraints stemming from other platforms (e.g. CATV, LTE), although – in medium term at least – LTE constraints unlikely to be sufficient to warrant inclusion in market

Broadband markets

Wholesale central access (to provide mass-market services)

- Typically provided at a higher and more central layer
- Key characteristics:
 - Best-effort QoS (higher contention ratio, no guarantees, low upload speeds)
 - Access seekers have limited control / possibility to differentiate
- Alternative platforms
 - when cable offers exist or could technically and commercially be provided - NRAs should carry out a substitutability analysis
 - no cable offers – NRAs should assess indirect constraints
 - *"may become increasingly appropriate to include CATV in the market, especially in case of sub-national markets"* (Explanatory Note)
 - Mobile - will depend on expected timeframe of deployment and envisaged coverage and capacity of LTE

Broadband markets

Wholesale high-quality access market at a fixed location

- Focus on service/product characteristics (rather than specific technologies)
 - ❖ Low/zero contention
 - ❖ Appropriately high upload speeds (or even symmetrical up- and download speeds)
 - ❖ Guaranteed availability
 - ❖ high QoS (SLAs, 24/7 support, repair)
 - ❖ Handover points defined according to density and distribution of business users
- Result: product market likely to include (new) products beyond traditional terminating segments of Leased Lines
- However, presumption that trunk/core elements are replicable remains valid