Representing the Communication Services Industry

FCS
Federation of Communication Services

BEREC's Review of the Common Positions on wholesale unbundled access, wholesale broadband access and wholesale leased lines

Stage 1 High Level Principles on issues of non-discrimination

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Introduction

The Federation of Communication Services represents over 320 businesses delivering products and services in the UK via wireless, copper and fibre technology. This response has been prepared on behalf of the Fixed Service Providers Group within the Federation. More than 180 FCS members consume WLR and related wholesale products to deliver services to end user customers. A list of FCS members can be found on the FCS website.

Response

We welcome the opportunity of providing a brief response to this consultation on proposed high level principles in the area of non-discrimination which will be included in the updated BEREC Common Positions covering the three wholesale access products mentioned. We believe that these principles should apply equally to Wholesale Line Rental (WLR) type wholesale access products. We have restricted our response to general comments setting out the relevant concerns of our members under each theme of the consultation paper.

FCS members welcome the BEREC's work on non-discrimination and on specifying best regulatory practice in relation to Significant Market Power (SMP) remedies on this topic. Our members provide communications services in competition with the major SMP player in the UK – British Telecommunications plc (BT) and other communication providers (CPs). Discrimination is at the heart of some of the concerns our members have about the development of the UK communications markets – particularly those who provide services on a reseller basis.

The reseller business model in the UK relies heavily on the provision of WLR by the incumbent, BT, on an 'Equivalence of Inputs' (EoI) basis, enforced through Undertakings that BT provided to Ofcom in 2005. These Undertakings did require the establishment of a functionally separate Access Division within BT, now branded "Openreach". However, there is concern that this EoI protection is not being extended into the plans for fibre roll-out into the access networks, where no follow-on wholesale product to WLR is planned. We also have concerns about discrimination in the way in which market developments are planned in the UK.

The importance of non-discrimination

FCS members fully support BEREC in the belief that a general obligation with respect to non-discrimination on SMP operators is a very important regulatory principle and tool and also that, where discriminatory behaviour is detected or anticipated by NRAs, specific regulatory guidelines on the application of non-discrimination provisions to the particular area in question are warranted. A level playing field supporting the ability of all types of market player to offer services and win customers is essential for a vibrant and fair competitive market.

We particularly support the BEREC objectives mentioned at paragraph 3.4 of the consultation to "prohibit the SMP player from … discriminating between third party providers" and to "ensure that the policies adopted by the SMP player … allows all market players have the same opportunity to compete for new business" – particularly in the context of the development of new infrastructure supporting new services.

As mentioned above, FCS members do have concerns in exactly this area: the development of new 'next generation access' infrastructure. In the UK markets, there is no one inclusive forum in which all industry participants can be informed about and debate market and technology developments. Resellers are typically smaller companies that cannot attend the whole variety of ad-hoc meetings that characterise the commercial landscape in the UK communications market. Against this background, it appears to us that product development plans and trials are not adequately shared with all players who have an interest in such market developments and that larger, vertically integrated companies may have an advantage in being able to participate in trials and discussions about the characteristics and prices of future wholesale products. There is currently no follow-on wholesale product planned in the UK for users of WLR while a great deal of effort is being made to accommodate the needs of the vertically integrated competitors to resellers with the development of wholesale products such as unbundled local access and Passive Infrastructure Access. This appears to us to be discriminatory.

Avoidance of first-mover advantage

Following on from the above, our members clearly wish to see 'fit for purpose wholesale products' made available to support their reseller business model but, in the UK, there is little movement in this area as next generation access is developed, as far as we can see.

We do believe it is important that the SMP operator shares all necessary information pertaining to relevant infrastructure characteristics to facilitate access ordering, provisioning and also to support switching between service providers. It should be possible for a potential new service provider to 'look up' the relevant characteristics of a customer's premises to establish what products he can supply to that premises. This will be increasingly important in a "mixed economy" of both copper and fibre access networks to enable smooth transitions between them, while maintaining a good experience for the end customer.

The application of performance monitoring

FCS members agree that measures such as service level agreements, service level guarantees and publicly available key performance indicators form an appropriate framework for the SMP operator to be incentivised to provide a good quality and non-discriminatory service to its competitors.

Efficient wholesale switching processes

This is another area of significant interest for FCS members. However, we also believe that it is important for NRAs to focus on the availability of retail switching arrangements as well as wholesale switching arrangements as these actually allow individual customers to switch, which is an important preserver of a competitive market discipline. As retail switching arrangements are likely to be based on the underlying wholesale switching framework, we advocate that SMP providers should also have the obligation, on a wholesale basis, to ensure that speedy and efficient retail switching processes are made available for end customers and other market participants to use.

We support the intention for the price of switching not to become a barrier, as mentioned at paragraph 3.101 but believe that NRAs should be able to spread the costs of individual switches over the general wholesale access charges rather than targeted at the particular switching transaction – particularly at retail level. This is a pro-competitive approach and we believe this is justified in the basis that all customers – even those who do not take advantage of the opportunity to switch – benefit from markets where switching costs are low. This can be seen by considering how much harder retail providers must work to provide good service to their customers if they know that there is a low cost and hassle-free option for them to move to a rival retailer.