

## Response from FCS to consultation on BEREC's Draft Work Programme for 2013

### Introduction

1. The Federation of Communication Services represents 358 companies across the United Kingdom. Of these, 57% are engaged in supplying fixed telephony and data services via copper and fibre. A further 24% specialise in the provision of professional radio services. Almost all of these member businesses are engaged in providing communications services to business and public sector users. Resilient communications, choice of providers and transparent pricing are especially important to this sector as market segments converge, and as new technology offers opportunities to improve operating efficiencies and control costs. The need for open and fair relationships with incumbent SMP providers is therefore particularly important to our members.

### General observations

2. The nature of regulation across the EU is governed by the historical background from which today's deregulated markets emerged. Historical national monopolies in voice over copper needed a very different approach to regulation than more recent alternative carriers over fibre or mobile telephony. Regulators continue to look at these different segments of today's market in the same way: viewing data over copper, say, as distinct from voice over mobile. And thus requiring a different set of regulatory assumptions for competition and pricing transparency to be established.
3. This 'market-by-market' approach is embedded in regulators' workstreams across the EU, and reinforced with terms like 'Market 1' and 'Market 5' which are reviewed separately and distinctly by national regulators at different times. BEREC's recent work on developing and updating the Common Positions on Wholesale Line Access, Wholesale Broadband Access and Wholesale Leased Lines represents a welcome and important recognition that these previously distinct technologies are now rapidly converging. We believe this understanding now needs to be extended to encompass mobile telephony too.
4. There is growing evidence the technology-by-technology approach has been overtaken by events. The new generation of market-makers are highly commercially astute international operators who have achieved high levels of customer penetration by pioneering mobile telephony solutions. Rather than risk being found in SMP positions by further consolidation within this vertical sector, they are now moving strongly into a broader horizontal portfolio of bundled products right across the market place. Both in Business-to-Consumer and Business-to-Business segments.
5. Compared with fixed-line products, where principles of equivalence are well established, wholesale access to mobile calls is generally far harder for small communications providers to obtain. Typically it requires a significant up-front commitment to purchase extremely large volumes of minutes, backed by a substantial cash bond as a guarantee against payment default.

For this reason, most business-to-business communications providers are forced to purchase wholesale mobile access via a third-party aggregator. This means margins are low, there is no direct control over product development, and the provision of mobile calls is often regarded as a 'service' element of the package the provider offers his customer.

6. On the other hand, mobile phone companies are free to offer attractive mobile tariffs to potential business customers, and to bundle them with wholesale fixed line products whose prices are already freely available in the market.
7. BEREC is already well aware of the dynamics of fixed/mobile substitution within the business market (Paper BoR (11) 54). But we believe the market has already moved on significantly since this important survey, which mostly looked at the market from the business end-user's point of view.
8. The entry of the mobile phone operators into the fixed telephony market has the potential to seriously threaten free competition. The mobile operators already have a long history of engaging in litigation with NRAs, at a level of cost and complexity which would be completely unworkable by their SME competitors. The imminent availability of 4G functionality is already strengthening the mobile operators' market position still further, in areas which are simply not available to the fixed line market operators.
9. Without urgent action to ensure a transparent, equivalent and price-efficient wholesale market in the mobile segment, we fear BEREC's current work on the fixed line market may be overtaken by events.
10. The issue, by its nature, runs across several work-streams, most notably those concerned with boosting the internal market; particularly 4.1, 4.2 and 4.3(b), although they also have direct implications for section 4.5. Here, the issue is the battle for spectrum: the growing demands of mobile telephony need to be balanced against the pressure from both governments and citizens for increased performance from ports, utilities and public transport operators. Whether these efficiency improvements manifest as cameras in cabs or as machine-to-machine reporting of live running data to central control rooms, the implication is the same: access to radio spectrum is going to become increasingly vital for the critical national infrastructure of MSs.

## **Recommendations**

11. FCS therefore recommends BEREC extends the scope of its activities around the roll-out of next generation networks to include an urgent and far-reaching intervention into the wholesale market for mobile calls, along the lines of its recent work on WLA, WBA and WLL.
12. FCS recommends BEREC re-examines current definitions of SMP from first principles, in the light of current market dynamics.

13. We specifically welcome BEREC's understanding of the growing development of 'local monopolies' (Section 4.3(b) refers). We are already seeing cases where competition is distorted on a very localised basis. Commercial 'sole supplier' arrangements between a local landlord and a network provider prior to the completion of a new business or urban development are creating strategic concerns for future tenants. We note no formal deliverables are planned at this stage. But we suggest BEREC commissions some specific case studies to identify the issues faced by tenants and by excluded CPs.
14. We urge a specific and urgent piece of work be undertaken on how NRAs should approach the regulation of oligopolies. Given the litigious nature of the relationships between some network operators and NRAs within certain MSs, we believe this work can only effectively be carried out by BEREC.
15. By way of expansion: a simple definition of SMP as 50%-plus of a market does not sufficiently anticipate the opportunities for anti-competitive behaviour among three or more operators, none of whom has a vested interest in altering a status quo position which has the effect of protecting margins for all participants. One example is the manner in which incumbent UK mobile phone operators all moved in 2001 from gaining-provider led number porting to a losing-provider led regime, just at a time when a new operator was attempting to enter the market. This losing-provider led approach persists to this day, in spite of the demonstrable evidence across Europe and within the UK of consumer preference for the gaining-provider led approach. (<http://www.three.co.uk/ThreePortal/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobnocache=false&blobtable=MungoBlobs&blobwhere=1223575723273&ssbinary=true>)
16. We recommend BEREC develops its input into discussions on facilitating access to radio spectrum with a view to creating CPs which recognise the desirability of reserving a set amount of spectrum in each MS to safeguard the current and future operating needs of MS's critical national infrastructure and emergency services.
17. Communications services are not just delivered by major national or international players. The practical effect of BEREC's decisions is to create transparent wholesale markets which enable thousands of SME resellers to deliver innovation, expert advice and cost-efficiency to Europe's businesses and citizens. We believe current and future BEREC workstreams should include a greater recognition of the vital role played by reseller-based competition in delivering benefits to consumer and business customers. And a more thorough consideration of the possible detrimental effects of new regulation upon the reseller community. (See, for example, research carried out for FCS by YouGov on the value of reseller-based competition)