

Consultation on ERG Report on the regulation of access products necessary to deliver business connectivity services

Response from the International Telecommunications Users Group (INTUG)

The International Telecommunications Users Group (INTUG) represents business users of telecommunications globally, including throughout the EU. These users include some of the world's largest financial institutions, car manufacturers, pharmaceutical companies, fast moving consumer goods enterprises, and retail and distribution companies. The INTUG community includes user associations in many of the larger Member States, and the multinational user group EVUA. Each user group represents large public and private customers of telecoms operators, both directly and indirectly through service providers.

Introduction

INTUG is pleased to provide this preliminary response to the ERG Report on Business Services, following the survey of business users and national regulatory authorities, and the public hearing held in Brussels on Friday 29 January. Comments in this response relating to proposals for BEREC follow up work have not been subject to INTUG's normal process of consultation with members prior to submission, since these proposals were only disclosed at the public hearing. Further comments may therefore be forthcoming.

Segmentation of the Business Market

INTUG welcomed the initiative by ERG to address a long standing market failure of competition for business services. It is hoped that the devotion of specific resources to understanding this distinct market will be reflected by NRAs, who have almost all ignored the need for separate market analysis. INTUG believes there is now a strong case for BEREC to recommend consistent business market definitions and, where appropriate, associated remedies, where analysis of these markets reveals an absence of competition.

INTUG notes that BEREC will address options for such a segmentation, including the possibility of using product specification (e.g. of so called "high end" or "premium quality" products and services) as a means of achieving an effective segmentation. INTUG cannot say at this stage whether it believes this method will enable effective analysis of markets to determine if business users are served by a truly competitive market.

The limited number of complaints received by NRAs does not reflect an absence of market failure, but is more probably due to the absence of a viable complaints process for needs which are cross border, and thus not the responsibility of a single NRA. Businesses continue to find difficulty in obtaining seamless networks across international operations from a single supplier, whether that is their incumbent or another Member State incumbent or alternative network provider, and whether it is a fixed and/or mobile need.

International Mobile Markets

The survey and the work programme currently envisaged focused mainly on fixed network services, but a business market failure exists equally for international mobile services. The problem manifests itself in different ways - e.g. in international and national roaming, with lack of MVNOs, inconsistent licensing and spectrum, and blocking of GSM gateways.

INTUG has produced a new Position Paper highlighting the issues for International Mobile Services for the multinational customer, which concludes that it is a dysfunctional market. The paper lists recommended actions for service providers, regulators and corporates.

Observation on Survey Results - NRAs

The results of the survey of NRAs in Annex 3 established an excellent benchmark of what is best practice. INTUG is pleased to note that all but one of the NRAs responded to the questionnaire, but believes that in most cases the “No” answers given by NRAs over time should become “Yes” answers, unless there are demonstrable and justifiable reasons for alternative approaches. Proposed BEREC follow-up work, to address why open access obligations do not exist, is welcomed and should at least eliminate some discrimination. INTUG believes absence of access obligations on an incumbent is a barrier to competition.

Qualification or even absence of obligations to provide service also represent a barrier to cross border trade and may obstruct efficiency of on-line transactions in a Member State. If the service is offered, but only at a discriminatory or prohibitive price level, it represents protectionism and a tax on trade. INTUG strongly rejects the notion that a wholesale market’s scope should be defined solely by the products and services the incumbent chooses to provide to its own downstream/retail operation. This would foreclose the NGA market completely, and suppress innovation and efficient ICT investment by customers.

Businesses are particularly concerned that the situation may get worse rather than better, if incumbents are allowed to deny NGA wholesale access to businesses or their suppliers or systems integrators. The existence of “co-operative arrangements”, as suggested in an early draft of the NGA recommendation, does not give adequate assurance of competition, but simply encourages a duopoly at best. The answers in the survey regarding wholesale are amongst the weakest already, and are a priority concern in addressing the market failure. Open access to bitstream and Ethernet remain essential to effective networking.

Observation on Survey Results - Business Users

INTUG and EVUA were pleased to assist with the process of obtaining responses from business users, which covered corporate enterprise users of varying sizes across the EU. The scale and scope of the corporate response might have been greater, but nevertheless we believe that although not statistically conclusive, the results in Annex 4 reinforce the case which INTUG and EVUA has been making regarding lack of competition.

The survey shows a significant proportion of businesses seeking a single supplier solution, and strong presence for incumbents as the chosen supplier. However, even where the business wishes to use its home incumbent for all services, this is not always possible due to discriminatory practice by an incumbent in another Member State. Alternate network providers may be forced to commit to SLAs with penalties, without back up guarantees from an incumbent supplying some elements of the access within the contract.

It remains a concern of business users that sub-national or geographic segmentation can produce a mixture of regulated and non-regulated sites, which makes competitive bidding by alternative network service providers open to partial discrimination, and adds difficulty in ensuring availability of access at all sites required by a customer within a Member State.

Balancing the Virtuous Triangle of Competition, Investment and Innovation

The role of ex ante sector specific regulation is not simply to achieve these three highly desirable dimensions within the supply side of the telecommunications sector alone, but to act as an important enabler. The temptation by some incumbents to delay introduction of new services to avoid cannibalising high margin revenue from legacy services remains a risk, which must be monitored. The bigger prize from investment, however, which is ten times as great as that within the telecommunications sector, comes from enabling the use of the communications environment to facilitate efficient and effective competition, and ICT investment and business innovation in the economy as a whole.

The overall aim of efficient and effective telecommunications investment should not be confined to physical infrastructure. It is even more important that business users are able to invest efficiently and effectively in ICT equipment, software, applications, content and services for consumers, which generates overall social welfare and economic growth.

Market Definition

The report of the survey raises some very important questions, which need addressing in BEREC's follow-up activities, as part of its work programme for 2010. As indicated in the public hearing, an approach of product market segmentation between high-end service and standard service might offer at least a partial solution.

Care must be taken to avoid this resulting in false definition of a product as substitutable by another product within a single market, for example by grouping broadband to include fixed and wireless as one product, when wireless broadband is not a substitute for fixed.

There are many practical considerations to be taken into account when defining market boundaries, for example interaction between product and geographic market definition. BEREC must help NRAs define the international business market consistently, as each conducts its own transposition of the revised framework. NRAs must co-ordinate their definition of multi site national business markets consistently. BEREC must undertake monitoring of the definition of products, if this is the segmentation used for identifying the distinct business users' needs, and not permit some NRAs to limit wholesale markets to services self-supplied by incumbents.

Business needs must also be considered when SMP operators in a market withdraw products, for example leased lines and ISDN. A consistent position is necessary also.

More technical questions will also arise with regard to product specification and service level agreements (SLAs) and KPIs, which may prove to be another optional differentiator. For example, what level qualifies a product or SLA or customer for being classified as in the separate market? Could this vary between Member States depending on the current status of their market offerings? How will the multiple dimensions of latency, reliability, international multi site, time to repair, and upstream/downstream bandwidth balance be segmented? How will legacy services on which many businesses still depend be handled, given the immaturity of IP VPNs and SIP trunking of corporate networks?

Remedies

Whilst BEREC can usefully monitor conformity with ERG common positions, and pay increased attention to these in the context of business connectivity, remedies are too late for the business user. Application of remedies operates to an extremely long timescale, even without delaying factors through appeals, and the damage has already been done.

There are opportunities to use the new framework remedies to good effect, for example functional separation. This could be applied not just to fixed services, but also to mobile, to ensure open access to NGA and 4G for service providers to international businesses.

Enforcing support of GSM gateways/MVNOs might generate some international mobile services and could reduce roaming abuses. Remedies will also be needed to prohibit damaging vertically integrated bundling, although this should not be executed in a way which stifles innovative packages, involving content or device developments.

Conclusion

There is clearly important and urgent follow up work to be done by BEREC on the topic of business service provision. INTUG and EVUA stand ready to help. The Digital Agenda work plan and the NGA recommendation must produce regulation that frees up European business enterprises to make the most of communications networks in the EU in order to generate economic recovery, sustainable growth, improved productivity and new jobs.

The ERG report on Business Services has demonstrated the need for NRAs to recognise the distinct and special needs of business users of communications services, and to ensure that their market definitions and applications of remedies addresses these needs.

Queries concerning this response should be addressed to:

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