



## **Review of Relevant Markets: For the attention of BEREC and NRAs 28 April 2014**

In advance of BEREC meeting, and with regard to the review of Relevant Markets, INTUG wishes to comment further, following its initial submission which has been sent to BEREC (at the bottom of this position).

These further comments are prompted by the report prepared by Plum Consulting entitled “The evolving business services market”, on behalf of ETNO. This report suggests that the proposals for a Market 4, designed to improve the situation with regard to high quality services for business customers are unnecessary, and that they should be narrowed to be more consistent with the existing Market 6.

INTUG refutes these claims completely, and believes that the Plum report is seriously flawed, and overlooks many of the considerations vital to businesses seeking to invest in new online processes, to help them compete in global markets.

The speculative conclusions of the Plum report should be dismissed, as they are neither supported by evidence, nor supported by business customers, nor by operators genuinely serving these business customers. INTUG wishes to note the following points:

The report stresses consumerisation of IT, and suggests that European businesses are predominantly small with needs, which can be met by combining mass-market services. This is clearly wrong, as research by WIK Consult shows that 43% (60 million) of employees, and 53% of EU revenues, come from multi-sited and multinational employers.

Given the importance of communications services for this customer base, at numerous locations, often in a range of EU countries, a simple reliance on ‘mass-market broadband’ is both technologically unsubstantiated and commercially uninformed. Even for SMEs, mass market broadband services are very seldom satisfactory, given the business critical importance of communications for voice, data, conferencing, supply management, order processing and many other core business processes. Business customers, large and small, need high bandwidth services provided according to business-focused SLAs.

Cloud storage, cloud computing and distributed processing are trends that place higher demands on the performance of connectivity: the quality demands are increasing as a result of these trends, in particular in relation to network integrity and security.

The Plum report suggests that wireless and free space optical links provide a viable substitute for fixed dedicated wholesale business access. This is not a practical option. Suppliers are experiencing little demand from business customers for these



technologies, due to the inherent reliability of dedicated fibre and the extremely high capex requirements of wireless and free space optical links. If it were an attractive commercially alternative, operators, including ETNOs own members, would have invested in them instead of fibre.

European businesses have a wide range of communications needs. The larger sites are increasingly requiring 1-10 Gbps of dedicated connectivity, in order to allow collaboration between multiple business sites across the EU for data sharing, HD videoconferencing and telepresence (unified communications), supply management and M2M, and need business grade QoS and SLA/SLG in support of their operations. Network outage is simply not acceptable as it means that their business grinds to a halt.

Business customers are just as likely to have sites in city centres as in industrial or rural locations. For these customers, traditional broadband services are simply not a substitute for dedicated fibre access. Whilst some smaller sites with no high usage applications, and retail outlets using only telephony, inventory systems and credit card processing, may be able to rely on legacy broadband services, these are insufficient to cover all locations.

The Plum report suggests that competition is increasing in the business segment, but WIK Consult research shows that only 46% of multi-sited or multinational customers have more than 2 providers (one of which is the incumbent) bidding for their contracts. A similar percentage is served by local incumbents despite 69% of clients wishing to use a single supplier.

This lack of competition arises from inadequate regulation of business access.

Business customers cannot fill the gap left by incomplete and inadequate business grade broadband roll-out by combining 4G mobile services with mass market broadband, given the specialized service needs of businesses, including symmetric broadband. There is a wide range of businesses in terms of scale and scope, with the critical SME market playing a key role in growing the economy. This makes it even more important that extended supply chains, involving multiple business partners of all sizes, can operate seamlessly across national borders, using international suppliers who can obtain the necessary wholesale broadband products, protected by regulation to prevent discrimination.

Subnational deregulation by geographic segmentation in some countries has already placed even national business customers at risk, since alternative suppliers have to rely on access links at a mixture of regulated and unregulated locations. Lack of consistency in competition law assessment across Member States adds to uncertainty and risk.

We urge BEREC to continue work on the business services market, as identified in their Work Programme, and to support definition of market 4 proposed by the European Commission to aid this activity.



The invalid claims presented in the Plum report should be discounted, since they seek to trap business customers in the old leased Line/LLU legacy environment, whilst customers of dominant suppliers enjoy next generation access facilities immune from competition.

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## **Review of Relevant Markets: INTUG Comment – 16 April 2014**

INTUG welcomed the opportunity to be one of 6 invited panellists at BEREC's inaugural stakeholder workshop in Stockholm on 26 February 2014, and is pleased to submit this short note summarising the requirements of business users, as represented by INTUG.

This submission is consistent with the views expressed during the Stockholm forum.

INTUG notes the EU's desire to demonstrate progress in the establishment of sustainable competition by reducing the overall number of Relevant Markets subject to market analysis and potential ex-ante regulation, but remains uneasy that premature removal of markets will damage or obstruct competition. BEREC and NRAs also need to consider how they might regulate pan-EU markets, which are completely overlooked and absent currently.

In the previous review, when the number of markets was reduced from 16 to 7 (partly by combining two markets), INTUG was particularly concerned about the removal of any markets which might have improved competition in mobile services, and these concerns have proved justified, given the continuing absence of effective international competition in mobile, and the absence of fully pan-European operators, even via MVNOs.

NRAs must use the Relevant Market list as a minimum, not a maximum, and market analysis should only cease when reasons for withdrawal apply to their own Member State.

Given the economic inefficiency of infrastructure duplication (especially for fixed networks), it is likely that some form of ex-ante regulation will always be required. In some cases, it may still be necessary to consider some form of separation remedy for wholesale access, to ensure sustainable service-based competition. Whilst infrastructure-based competition seeks to drive down communications costs, service-based competition generates growth and productivity for the economy as a whole, and is therefore of much greater value.

Sub-national deregulation of wholesale access by geographic segmentation is a serious concern to business users, since it is another example of deregulation, which is focused on the single site consumer market whilst ignoring multi-site business users.



Innovation always tends to go beyond first mover advantage, establishing barriers to entry which competition law alone will not remove (for example network access limitations on new devices like the Apple iPhone). The long-term objective must not be to eliminate the Relevant Market list completely, but to ensure barriers to entry are continually eliminated.

INTUG welcomes the proposed new Market 4 as the first real evidence of the recognition of the special needs of business services, and urges NRAs to focus effort and energy on thorough and appropriate market analysis here. In particular, NRAs should consider the economic impact of lack of competition and services on the economy as a whole, including the indirect impact on business users in B2B/B2C processes, which represent 8-10 times the economic GDP of the telecommunications sector itself.

The proposed withdrawal of Markets 1 and 2, which concerns PSTN, reflects a narrow consumer-oriented view of the PSTN market, where many users have switched to VoIP and/or mobile, overlooking the fact that 80-90% of businesses still rely on PABX-based PSTN services due to sunk equipment investment and a desire for power resilience.

The migration costs of moving to VoIP generally far outweigh cost savings, except where new premises are being equipped. INTUG encourages NRAs to monitor this situation.

Finally INTUG urges NRAs to ensure that application of the cost methodologies and non-discriminatory accounting principles which have been established are closely adhered to in the information which is gathered for market analyses.