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Geographical identification

Geographical aspects of market analysis in the context of regulatory obligations

Body of European Regulators
for Electronic Communications

BEREC

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□ BEREC

- **Body of European Regulators for Electronic Communications**
- **NRA established in each EU Member State, and other NRAs from third countries having entered into agreements with the EU with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services**
- **Committed to ensure independent, consistent, high-quality application of the European regulatory framework for electronic communications markets for the benefit of Europe and its citizens.**
- **NRAs and the European Commission have to take utmost account of any opinion, recommendation, guidelines, advice or regulatory best practice adopted by BEREC.**

□ MEA-EWG

- **Market & Economic Analysis BEREC Experts Working Group**
- **Experts from all BEREC NRAs**
- **Focus on market analysis regulatory issues: market definition, SMP, etc.**
- **Recent work done by MEA-EWG (2018):**

“BEREC report on the impact of premium content on ECS markets and the effect of devices on the open use of the Internet” BoR (18) 35 March, 2018

“BEREC Opinion on draft SMP Guidelines” BoR (18) 50 March, 2018

“BEREC Report on Post-Merger Market Developments -Price Effects of Mobile Mergers in Austria, Ireland and Germany” BoR (18) 119 June, 2018

“BEREC Report on the application of the Common Position on geographic aspects of market analysis” BoR (18) 213 December, 2018

“Draft BEREC Report on Access to physical infrastructure in the context of market analysis” BoR (18) 228 December, 2018

“BEREC Public Consultation on the data economy” October, 2018

□ MEA-EWG reports on geographic segmentation

- **“ERG Common Position on Geographic Aspects of Market Analysis (definition and remedies)”** ERG (08) 20 October, 2008
 - **“BEREC Common Position on geographic aspects of market analysis (definition and remedies)”** BoR (14) 73 June, 2014
 - **“BEREC Report on the application of the Common Position on geographic aspects of market analysis”** BoR (18) 213 December, 2018
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- **ERG Common Position (2008) and BEREC Common Position (2014): set the criteria to be applied by NRAs when applying geographical segmentation**
 - **BEREC Report 2018: Situation at 2018 on how NRAs apply the 2014 CP. No need to update the Common Position.**

❑ What is geographical segmentation?

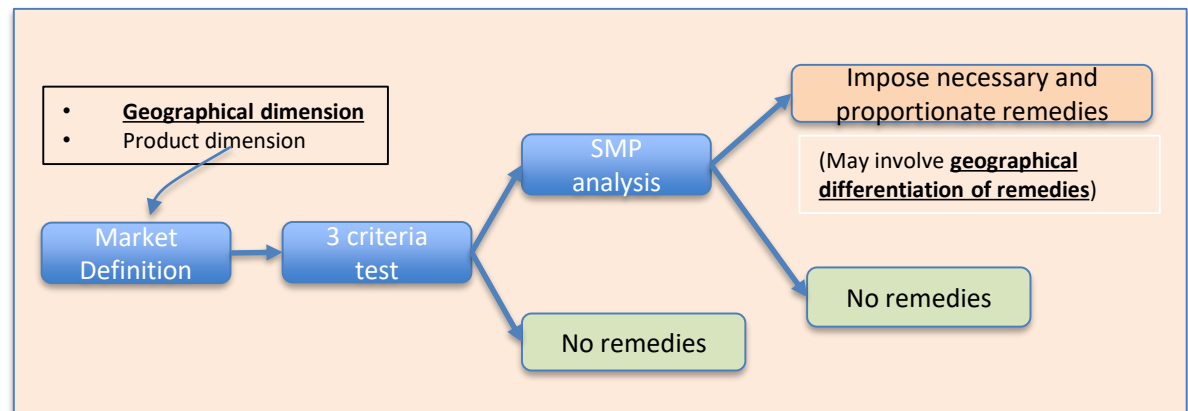
Geographical segmentation aims to differentiate market definition or imposition of remedies in different geographical areas depending on different competitive conditions.

❑ Geographical segmentation in market definition:

- Markets in different areas are subject to different market analysis.

❑ Geographical segmentation in remedies:

- Applied when the evidence found points to varying competitive conditions, but the differences between geographic areas are not yet sufficiently stable



☐ Main reasons for competitive variations across the territory (multiple answers are possible)

Geographic differences in ...	M 3a	M 3b	M 4
Coverage of alternative networks (e.g. cable or fibre).	4	9	5
The take-up of regulated access services in an upstream market.	1	5	1
Retail market shares of the incumbent.	1	6	1
Wholesale market shares of the incumbent.	2	6	4
Geographical differences resulting from commercial wholesale offers of alternative operators.	1	2	2
Retail prices of the incumbent operator and/or alternative operators.	0	2	1
Retail commercial offers (other than price) or marketing strategies of the incumbent operator and/or alternative operators.	0	1	0
Wholesale prices of the incumbent operator and/or alternative operators.	0	1	2
Population density (economies of scale)	0	3	2
Other	3	1	3
number of cases	7	12	7

Source: BEREC

(Based on questionnaire sent to NRAs, 33 responses)

❑ Markets where geographical segmentation is applied (1/5)

MARKET	GEOGRAPHIC SEGMENTATION
Market 1/2014: Wholesale fixed call termination	0 cases
Market 2/2014: Wholesale mobile call termination	0 cases
Market 3a/2014: Wholesale local access at a fixed location – WLA	7 cases
Market 3b/2014: Wholesale central access for mass-market products – WCA	13 cases
Market 4/2014: Wholesale high-quality access at a fixed location	6 cases
Market - 14/2003 14. Wholesale trunk segments of leased lines.	2 cases (submarine routes)

Source: BEREC

(Based on questionnaire sent to NRAs, 33 responses)

GEOGRAPHICAL SEGMENTATION

☐ Markets where geographical segmentation is applied (2/5)

	M 3a	M 3b	M 4
Definition of sub-national geographical markets	3	8	3
Geographic differentiation of remedies in a national market	4	4	2
Geographic differentiation of remedies in a sub-national geographic market	0	1	1
Other	0	0	0
Number of cases	7	13⁴⁹	6

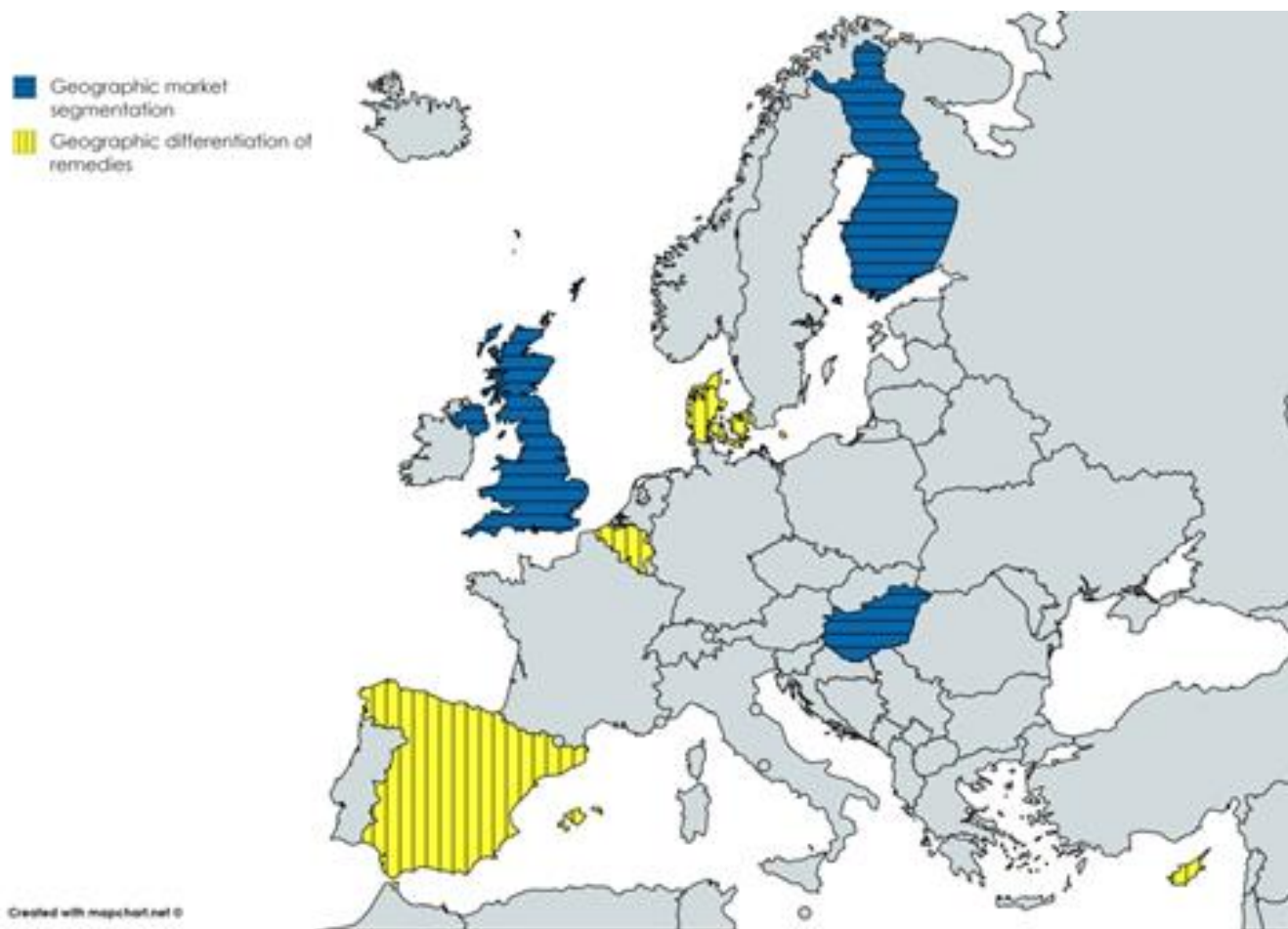
	market 3a	market 3b	market 4	other markets
geographic market segmentation		BE ⁴⁰ , DE, ES, IE, PL	AT	BE ⁴¹ , ES ⁴²
		HU		
		FI, UK		
			PT ^{43,44}	
geographic differentiation of remedies in a national market	CY, ES	SI	IE ⁴⁵	
		FR		
		BE, ³⁷ DK	PT ⁴⁰	
no geographic segmentation	BG, CH, CZ, EE, HR, GR, IT, LI, LT, LU, LV, ME, MT, NL, NO, RO, ⁴⁶ RS, SE, SK			

Source: BEREC

(Based on questionnaire sent to NRAs, 33 responses)

☐ Markets where geographical segmentation is applied (3/5)

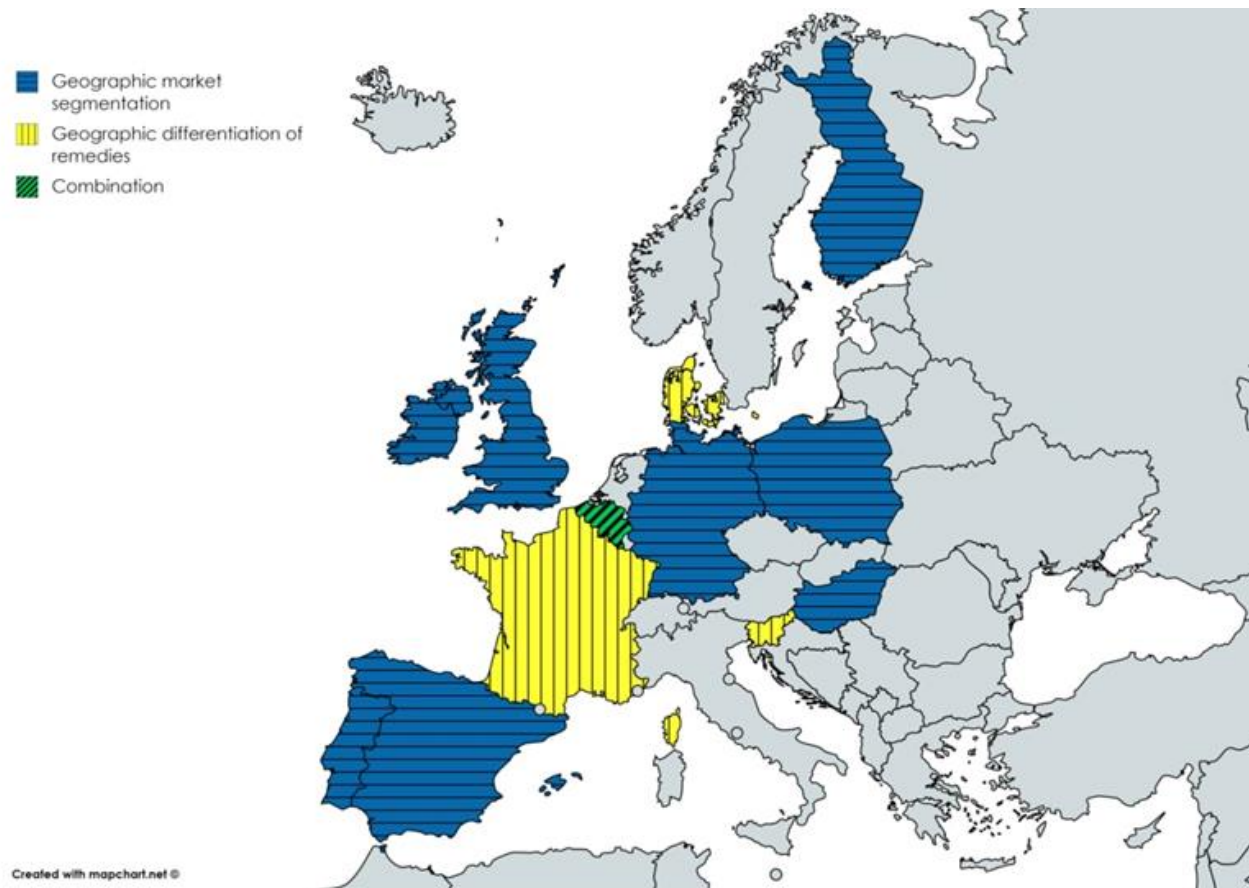
Market 3a



Source: BEREC (Based on questionnaire sent to NRAs, 33 responses)

☐ Markets where geographical segmentation is applied (4/5)

Market 3b

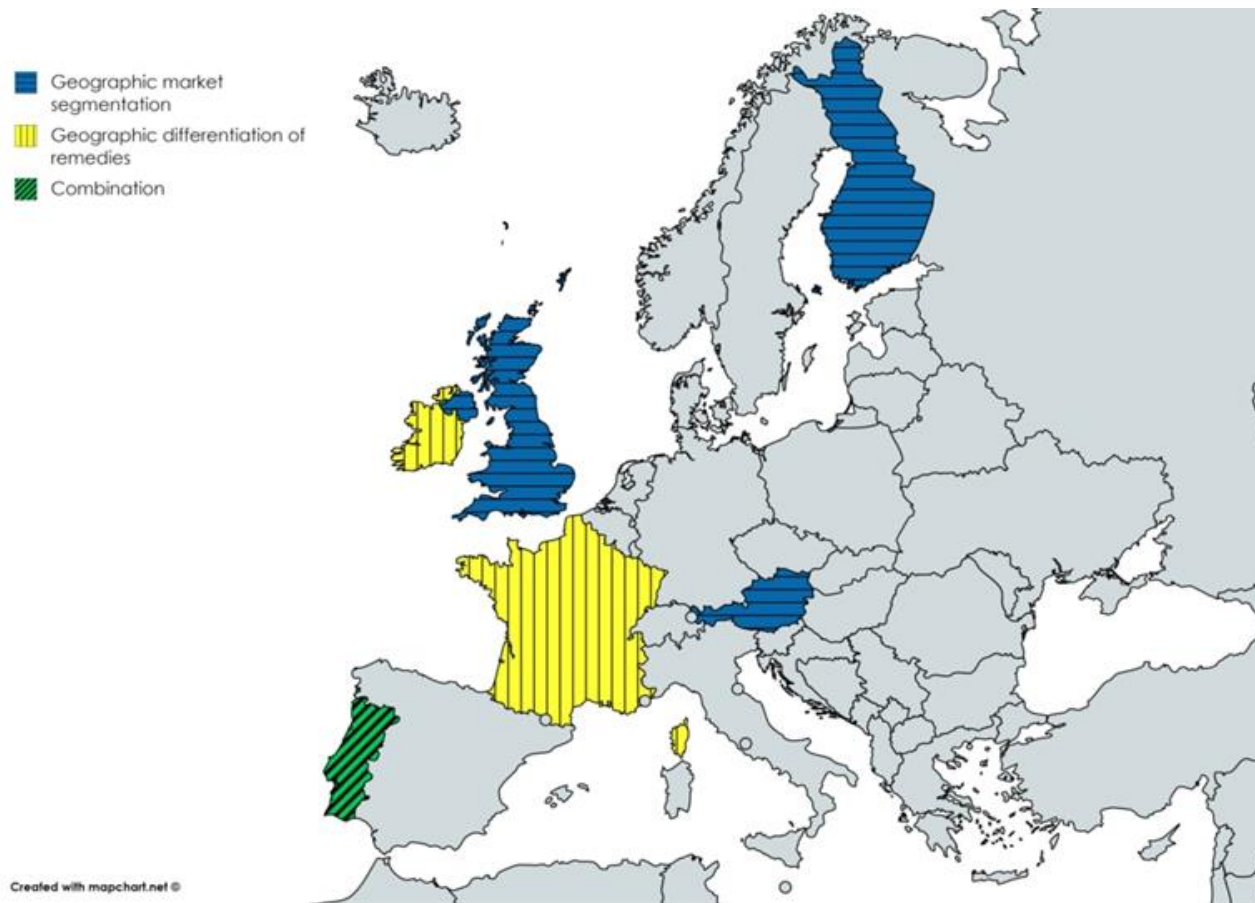


Source: BEREC (Based on questionnaire sent to NRAs, 33 responses)

GEOGRAPHICAL SEGMENTATION

☐ Markets where geographical segmentation is applied (5/5)

Market 4



Source: BEREC (Based on questionnaire sent to NRAs, 33 responses)

❑ Criteria for selecting geographical units

- They are mutually exclusive and less than national;
- The network structure of all relevant operators and the services sold on the market can be mapped onto the geographic units;
- They have clear and stable boundaries;
- They are small enough for competitive conditions to be unlikely to vary significantly within the unit, but at the same time large enough that the burden on operators and NRAs with regard to data delivery and analysis is reasonable.

Table 7: What geographic unit have you applied for the geographical segmentation? (multiple answers are possible)

	M 3a	M 3b	M 4
Network based on MDF-level ⁵³ of the incumbent(s)	1	5	2
Network based on ODF-level ⁵⁴ of the incumbent(s)	0	0	0
Network of alternative operators	0	0	0
Administrative units (municipality, district, commune) or postal code areas	5	7	5
Other	3	1	1
Number of cases	7	12	7

□ Indicators for competitive constraints

- **Barriers to enter the market;**
- **Number of operators that exert a relevant competitive constraint on the (supposed) SMP operator;**
- **Market shares of the SMP operator and the alternative operators;**
- **Price differences;**
- **Other aspects that may derive from relevant competitive differences between the geographic areas (e.g. marketing strategies, commercial offers and functionalities of the offers, nature of demand, etc.).**

Competitive conditions do not have to be perfectly homogeneous within the boundaries of one geographic market, but rather should be sufficiently similar.

□ Criteria and thresholds for aggregating geographical units

- NRAs will have to find suitable thresholds for competitive constraints.
- Some possible criteria: Barriers to enter the market, number of operators that exert a relevant competitive constraint on the (supposed) SMP operator, Market shares of the SMP operator and the alternative operators, price differences, marketing strategies, commercial offers and functionalities of the offers, nature of demand.
- Competitive conditions do not have to be perfectly homogeneous within the boundaries of one geographic market, but rather should be sufficiently similar.
- The criteria identified as relevant by the NRAs should be applied cumulatively.

	M 3a	M 3b	M 4
Number of ("significant") alternative operators	2 (ES, HU)	1 (FR), 2(PT, HU), 3 (DE)	1 (FR, AT), 2 (PT, UK)
Competitors' market share	10% (ES), 15% (HU)	10% (ES, IE), 15% (HU)	
Competitors' coverage	20% (ES), 60% (HU), 75% (DK) ⁵⁸	30% (IE), 50%(PT), 60% (HU), 65% (SI), 75% (DK) ⁵⁹	50% (PT)
Market share of the incumbent operator	40% (DK) 50% (ES, HU)	40% (DE, DK, SI) 50% (ES, HU, IE, PT)	40% (AT) 50% (PT, FR)

GEOGRAPHICAL SEGMENTATION

□ Case study: Spain

	M 3a	M 3b	M4
<u>National</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>
<u>Geographical segmentation</u>	<u>Remedies</u>	<u>Market definition</u>	<u>National</u>
<u>Geograp. Unit</u>	Municipalities	Local Exchanges (LEs)	N/A
<u>Criteria</u>	<p><u>Competitive municipalities:</u> At least 1 local switch fulfilling criteria for B_1 AND 2 alternative NGAs with a market share > 10% each (66 municipalities covering 35% of total population)</p> <p><u>Non-competitive municipalities:</u> conditions for B_1 are not fullfiled.</p>	<p><u>B 1:</u> 2 at least 2 network operators with market share above 10% and Telefónica's market share < 50% (758 LEs)</p> <p><u>B 2:</u> conditions for B_1 not fullfiled. (8109 LEs)</p>	N/A
<u>Remedies</u>	<p><u>All:</u> Access to the civil infrastructure and LLU to the traditional copper access network</p> <p><u>Non-competitive areas:</u> VULA over FTTH (flexibility for Telefonica to set prices, subject to a ERT on retail flagship products)</p>	<p><u>B 1:</u> Copper and fibre bitstream</p> <p><u>B 2:</u> no remedies</p>	<p><u>High quality bitstream</u> over Telefónica's copper and fibre <u>networks/cost orientation for copper</u> while fibre high quality bitstream is subject to a <u>business economic replicability test</u>/communication obligation for tailor-made business offers above 100.000 Euros/year</p>

☐ Conclusions BEREC report 2018

- Geographical segmentation increasingly relevant for markets 3a, 3b and 4.
- Both, in market definition (16 cases) and in remedies (10 cases)
- Main reasons: rollout of access infrastructure and take-up of wholesale remedies not uniform in the whole national territory.
- Important to apply an harmonized approach.
- NRAs adhering to the BEREC Common Position and SMP guidelines.
- Criteria for geographical segmentation typically based on structural market indicators (coverage, market share for the incumbent, number of significant competitors).
- In general, results not challenged by the EC nor Courts.
- No need for CP updating, that is still valid.

☐ Impact of geographical segmentation

- Regulation for the market is fine-tuned and adapted to different competitive conditions.
- Allow for lifting regulation in areas where the market is effectively competitive, while ensuring a certain level of competition based on access to SMP operator network in areas where infrastructure competition is not likely to take place in the time horizon for the market analysis.
- Not always geographical segmentation is the optimal solution, as it is burdensome for all actors and only justified when competitive conditions are clearly different in certain geographical areas

□ Implications for actors

▪ SMP operators

- In general, softer approaches in certain areas where infrastructure competition takes place. Still, remedies are imposed in those areas where competition is not enough.

▪ Alternative operators

- Can pace investments depending on the level of competition, and take different positions in the ladder of investment. In non-competitive areas they can use wholesale offers, while in competitive areas they are encouraged to invest in access networks or reach commercial agreements.

□ Implications for actors

▪ Municipalities (and consumers)

- **Competitive areas:** infrastructure competition may render the best results in terms of pricing and QoS
- **Non-competitive areas,** tailored remedies allow for competition without deploying access networks not economically viable.
- **Potential differentiation of retail prices between competitive and non-competitive areas**
- **Municipal operators:** SMP obligations are in general not imposed to them, but should take into consideration availability of regulated wholesale offers for SMP operators when planning their business models

❑ Other related regulations

- The new EECC does not add or change provisions on geographical segmentation
- Wholesale-only operators are subject to a special regime (to be taken into account by municipalities launching local networks)
- Specific provisions for co-investments may override SMP regime.

+ remedy applies - remedy does not apply + application depends on circumstances

Remedies	Vertically integrated operators	Wholesale-only operators Art. 80 EECC	Voluntarily separated operators Art. 78 EECC	VHCN co-investment Art. 76 EECC
Standard remedies on SMP operators following a market analysis				
Transparency Art. 69 EECC	+	-	+(1)	-
Non-discrimination Art. 70 EECC	+	+	+(1)	-
Accounting separation Art. 71 EECC	+	-	+(1)	-
Civil engineering access Art. 72 EECC	+	-	+(1)	-
Network access Art. 73 EECC	+	+	+(1)	-
Price control and cost accounting Art. 74 EECC	+	-	+(1)	-
Specific obligations based on SMP				
Fair and reasonable pricing based on a market analysis Art. 80.2 EECC	-	+(2)	-	-
Notification of migration from legacy infrastructure Art. 81 EECC	+	+	+	+
Retail regulation Art. 83 EECC	+	+(3)	+	+
Non-SMP remedies				
Symmetric access Art. 61.3 EECC	+	+(4)	+	+
Sharing of passive and active infrastructure Art. 61.4 EECC	+	+	+	+
Localised roaming Art. 61.4 EECC	+	+	+	+
Caps on wholesale termination rates Art. 75 EECC	+	+	+	+
Caps on intra-EU international voice and SMS Art. 5a TSM Regulation	+	+	+	+

(1) As appropriate, following any commitments made by the operator. (2) Specific obligation on wholesale-only operators. (3) Wholesale-only providers providing retail services solely to business users larger than small and medium-sized enterprises (i.e. with an annual turnover of more than €50m and a staff headcount over 250) should still be regarded as wholesale-only providers according to recital 208. (4) Not beyond the first distribution point. NRAs can decide to impose symmetric access obligations if the wholesale-only network is publicly funded. (5) Sharing of active infrastructure when sharing of passive infrastructure alone does not suffice.

Interested in more in-depth research on the EECC and BEREC Regulation 2018? Contact us at discover@cullen-international.com © Cullen International January 2019

□ Further reading

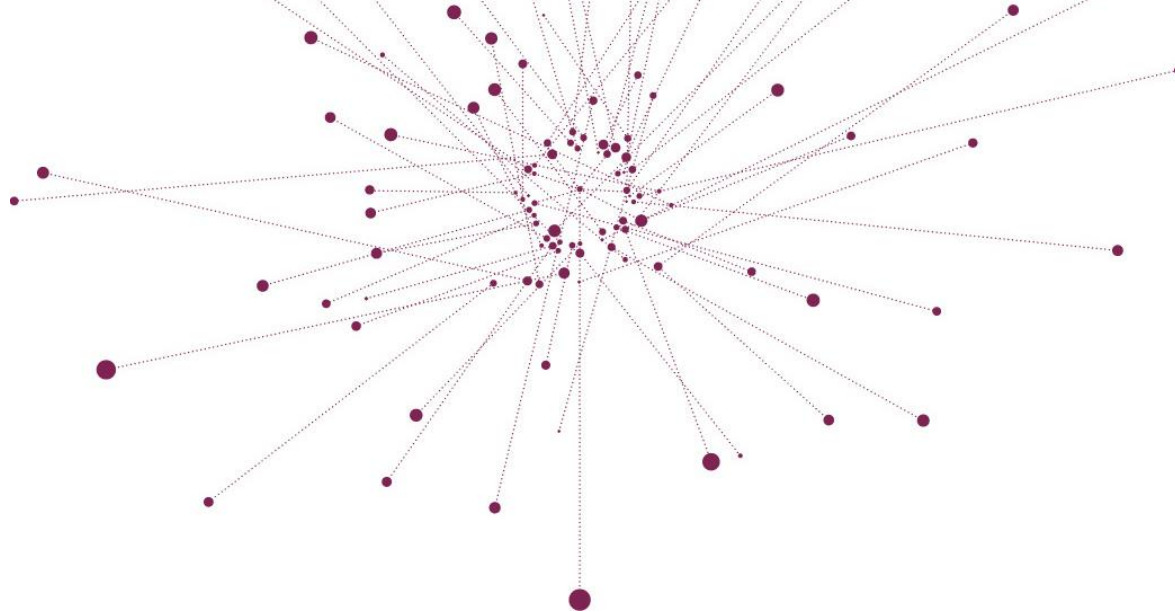
- SMP Guidelines

- In line with BEREC Common Position (pointed out in BEREC Opinion)
- Last update: April, 2018

- Recommendation on relevant product and service markets

- In line with BEREC Common Position (pointed out in BEREC Opinion)
- Last update: October, 2014
- On-going public consultation

- ECC: No relevant changes in the approach for geographical segmentation



Thank you!

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