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The new Rec. on non-discrimination & costing methodologies as an investment enabler for achieving the targets of DAE

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The central pillars of the draft Recommendation and the BEREC's opinion (1)

- **The equivalence model:** The draft Rec. states that effective non-discrimination is best achieved by the application of Equivalence of Input (EOI). NRAs should examine whether it would be proportionate to provide relevant wholesale inputs on an EOI basis and where EOI found to be disproportionate NRAs are recommended impose the Equivalence of Output (EOO) provision of the wholesale products.

- BEREC agrees with the Commission that effective non-discrimination rules are essential to creating a level playing field and recognizes the potential effectiveness of EOI as a non-discrimination remedy.

- BEREC has asked the Commission to clarify in the final Recommendation whether
    - The proportionality test must determine the most appropriate form of non-discrimination (e.g. EOI or EOO) and the outcome of the test should not be deemed or presumed
    - A voluntary offer to implement EOI is not in itself sufficient

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The central pillars of the draft Recommendation and the BEREC's opinion (2)

- **Non-imposition of cost orientation with preconditions:** The draft Recommendation states that NRAs shouldn't impose cost orientation on NGA services if these are provided on an EOI basis and subject to significant competitive constraints as well as technical and economic replicability.
- BEREC agrees with Commission that pricing flexibility is key in the context of risky investments but it is keen to avoid possible unintended consequences of the link.
- BEREC believes that the conditions listed in the draft Rec. under which the cost orientation could be lifted describe only one of several possible scenarios.
- BEREC has also asked the Commission to clarify in the final text
  - whether the NRAs have the discretion over the timing of the lifting of the cost orientation and
  - on the reintroducing cost-orientation (with no market analysis) if the SMP operator fails to meet a pre-specified EOI/EOO milestones.

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The central pillars of the draft Recommendation and the BEREC's opinion (3)

- **The costing model:** In the draft Recommendation the Commission proposes great consistency in the costing methodology applied by NRAs, in particularly BU LIRIC+, and stable wholesale prices for LLU in the range of €8-10/month.
- BEREC sees a consistent approach to costing methodologies as a long term goal and supports the Commission's aim of achieving stable copper prices in line with the principle of cost-orientation but believes that a single modeling approach may not necessarily deliver this goal.
- BEREC proposes instead, more flexibility and agreement on the key principles that any costing model developed by NRAs should fulfill.
- BEREC also proposes that the €8-10/month price range is not mandatory

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The central pillars of the draft Recommendation and the BEREC's opinion (4)

- **The economic replicability test:** The draft Recommendation states that NRA should impose an economic replicability obligation as one precondition to lift the cost orientation obligation.
- BEREC agrees with the Commission that competitive constraints may not always be sufficient and that an ex-ante economic replicability test is required for preventing abusive pricing behaviors.
- BEREC has asked the Commission to clarify in the final Recommendation
  - Whether the ex-ante economic replicability test is without prejudice to the margin squeeze tests that NRAs already implement for the LLU and/or NGA products
  - While the Equally Efficient Operator (EEO) model may be the starting point for assessment, there may also be circumstances in which an Reasonably Efficient Operator (REO) standard is appropriate to ensure dynamic efficiency and promote (retail) competition
  - Whether NRAs may employ a higher cost standard, such as LRIC or LRIC+

Questions?

How this is going to affect competition?

Is it really going to stimulate investments?

What is the future of the existing investments in LLU?

How this recommendation is going to be applied?

Who is going to pay for these new investments?

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