

Nuuday comments on draft DBA product market definition

Introduction

The Danish telecommunications market has recently undergone a significant transformation, evolving from a tightly regulated environment dominated by a single incumbent to one characterised by multiple Infrastructure Owners (IOs) operating under relatively loose regulation. This transition has driven widespread adoption of fibre in Denmark but has also introduced notable incentive-related challenges. At present, monopoly IOs control end-user services without directly engaging with end-users, while lacking the appropriate incentives and obligations necessary for fostering innovation and ensuring consistent quality. In essence, these IOs, which dominate the wholesale market, are not subjected to competitive pressures despite their control over substantial parts of the value chain. This situation stifles innovation among Service Providers (SPs), leading to diminished product development and potentially resulting in a broader societal welfare loss, weakening Denmark's position as one of the world's most digitalised societies.

Market 1 (Wholesale Local Access, WLA) caters to both consumers and businesses, particularly small and medium-sized enterprises (SMEs), who heavily depend on the widespread deployment of fibre. Failure to align with EU standards, particularly those outlined by the Body of European Regulators for Electronic Communications (BEREC), poses a significant risk to the competitiveness of Danish businesses and the overall digitalisation of the public sector in Denmark. This could lead to a loss of economic dynamism, reduced productivity, and a decline in Denmark's ability to compete in the EU market.

To mitigate these risks, it is imperative that the Danish wholesale access model undergoes reform. Specifically, a shift is needed from the current loosely regulated model with a highly customised reference offer to a framework that is more consistent with the European approach. The European wholesale access model, particularly through the adoption of an L2-only structure with standardised Virtual Unbundled Local Access (VULA), fosters competition, scalability, and innovation, thereby ensuring that



Denmark remains aligned with the best practices across Europe and secures its position as a leader in the digital economy.

We welcome the work conducted by the DBA and agree with many of the observations and conclusions presented. However, the draft on product market definition lacks sufficient analysis of the specific properties and characteristics of the Market 1 product. In line with the European Commission's definition, it is important to recognise that Market 1 serves both consumers and businesses typically SMEs, and this should be reflected in the analysis. To effectively assess market shares and significant market power (SMP), it is in other words necessary to establish clear, unambiguous definitions of Market 1's properties and characteristics to properly evaluate market performance and potential failures. Without a clear, technology-neutral definition of the Market 1 product, there is a risk of ambiguity in setting the right parameters for assessing market performance and identifying market failures.

Nuuday therefore strongly recommends that the DBA, at this stage of the process, clearly specifies which detailed (wholesale) product characteristics are necessary to deliver a broadband market with the long-term dynamics that is desired from a society perspective taking into account the needs of consumers and SME's. This should be based on the EU conform recommendations from BEREC.

Nuuday recommends that the process of including the right "product requirements" in the product market definition runs in parallel with the upcoming "geographical market definition".

In the following section Nuuday has listed a short summary of our key input to the DBA draft divided into three topics:

1. **Comment on 5G as part of low-speed capacity market**
2. **Answer to DBA's question (page 33) regarding a broad delimitation (WCA) and link to existing regulatory model**
3. **Other comments**

(Each topic as well as proposed solutions aligned to European standards can be elaborated independently as part of the process)

1) Comment on 5G MBB as part of low-speed capacity market

Nuuday agrees with DBA's analysis, the 5G MBB lack product qualities that enables it to compete in the high-speed broadband market.

Both maximum speed and guaranteed speed are challenged by the "shared nature" of a mobile network in addition to general customer perception as also reflected in DBA's market share analysis and 'customer shifting behaviour' analysis.

2) Answer to DBA's question (page 33) regarding a broad delimitation (WCA) and link to existing regulatory model

Nuuday is under the firm belief the current WCA only model has damaged the competitive landscape in Denmark and stifled innovation and differentiation. This is further augmented by a track record of rejected reasonable requests from Nuuday in attempts to drive innovation. And while the WCA only model, may have strengthened the operator incentive to roll-out fibre, the activation and utilization of fibre is lacking, and retail competition is left with price as the only parameter for competition.

The reason is that the current model has very loose obligations on product characteristics and quality and no obligation to implement reasonable requests.

Regardless of a narrow approach (WLA) versus broad (WCA), it is imperative that a layer 2 model obligates SMP operators to truly replicate the freedom and characteristics as if the alternative network operator (ANO) operated it themselves. However, the benchmark must always be physical WLA or virtual WLA (VULA).

Therefore Nuuday, would like to use this opportunity to ask the DBA to rethink their approach with the following key comments in mind and ensure that the DBA methodically uses BEREC's best practices.

First, to establish a functioning layer 2 model for the next regulatory phase, it is imperative that the wholesale offer (being local VULA or centralized BSA) truly replicates the level of control an ANO would get by operating the network themselves with strict adherence to BEREC's Layer 2.

Secondly, to ensure ANO's continuous ability to innovate and differentiate during the regulatory phase, the SMP designated operators, must be obligated to implement reasonable requests as also stated in BEREC guidelines. To ensure the right incentives to i) drive innovation by ANO's and ii) implement solutions by SMP operators, a commercial model and mechanism is needed. In the commercial model, the ANO would have to compensate the SMP operators at cost+ while also having a mechanism to ensure the developed feature is not available to ANO's competition without compensating the ANO commercially (i.e. first mover advantage)

Thirdly, any SMP designated operator must be obligated to provide customer focused service level guarantees, with sufficient compensation targeted the end-user, should they fail to deliver within defined quality levels (delivery time, fault remediation time, service assurance quality etc) as stated in EECC and BEREC guidelines.

Finally, due to the current regulatory framework, the ambiguity arising from a loosely regulated Market 1 and an unregulated Market 2 means that businesses cannot in practice be adequately served by a Market 1 reference offer. Moreover, SMP operators have consistently exploited this market ambiguity to shift any requirements that could potentially be argued as business-related into an unregulated domain.

Therefore, the Danish Business Authority (DBA) must define and characterise Market 2 to serve as a counterbalance to Market 1. This task is particularly urgent, as Market 2 faces significant challenges due to monopolistic practices and incentive issues in this unregulated wholesale market for specialised internet access at fixed locations. The challenges in Market 2 are exacerbated by the lack of non-discrimination measures and comprehensive price regulation.

Accordingly, Nuuday recommends that the DBA promptly undertake a market analysis of Market 2, laying the groundwork for subsequent regulations to address these specific market concerns.

Nuuday suggests that Market 2 in Denmark should be aligned to the European Commission's definition and documented by prior analysis leading to the market definition; a wholesale market for dedicated access.

In this market, we find large advanced and global enterprise end-users with demand for tailored solutions, but also other operators buying dark fibres, DWDM's, virtual capacity solutions etc. (i.e. dedicated wholesale solutions with commercial backed service level agreements ensuring the dedicated part and offering immediate fault handling). Market 2 remediations are therefore often associated with regulated access to uncontested dark-fibre at fair and reasonable and non-discriminatory or layer 2 product terms.

Having this clear boundary and delineation between market 1 and market 2, aligned with the European Commission's definition, is imperative to remove ambiguity in the Danish market.

3) Other comments

Organized customers – Nuuday agree with the DBA that organized customers are using the same products as individual customers, and therefore should be included in the product market definition. However, Nuuday finds it important to underline that organized customers differ from individual customers by the purchasing power they possess. It is therefore important that the market dynamics for organized customers are analysed separately in the upcoming market decision.

Nuuday would like to thank the DBA once again for the opportunity to provide our comments. We remain at your disposal for any further information or clarification and look forward to continued collaboration.