

## **Work Programme 2012 BEREC Board of Regulators**

**9 December 2011**

## 1. Introduction

The BEREC Work Programme 2012 as set out below aims to build on the achievements in the work performed in 2010/11 and in previous years by ERG, while at the same time preparing for the challenges of 2012 and future years.

The BEREC Work Programme 2012 was discussed and agreed at the BEREC Board of Regulators meeting in Barcelona on 30<sup>th</sup> September. In accordance with the practice of previous years and in accordance with Article 5 of the BEREC Regulation, the BEREC Work Programme is subject to consultation. The public consultation ran from 6<sup>th</sup> October to 4<sup>th</sup> November 2011 with an oral hearing held on 21<sup>st</sup> October 2011. The role of public consultation is to increase transparency and to provide us with valuable feedback from stakeholders.

Fifteen responses were received, from a variety of stakeholders. These stakeholders included network operators, service providers and industry and user representative bodies. Submissions received are available on the BEREC website.

Most stakeholders appreciate that the BEREC WP 2012 includes information on the deliverables BEREC intends to produce and on their deadlines. There was the wish for more direct interaction between BEREC and stakeholders, which may also take place through public consultations. Nevertheless some express concern that the division between “core topics” and “further topics”, as presented in the draft WP 2012, could imply that less importance would be attached to the latter due to resource constraints. Several stakeholders stress the importance of competition in electronic communications for international business users as efficient, effective and reliable networks are essential to give employees the necessary tools for mobile working, smooth access to information and applications, and the ability to conduct trade across national borders. This issue was also looked into in 2011 and the topic will continue in 2012.

The 2012 Work Programme was adopted at the meeting of the Board of Regulators on 8<sup>th</sup> and 9<sup>th</sup> December 2011 in Bucharest.

Chris Fonteijn, OPTA  
**Chair 2011**

Georg Serentschy, RTR-GmbH  
**Chair 2012**

## 2. Background

BEREC commenced activities in January 2010 and in the course of 2011 became fully functional with the recruitment of staff to the BEREC Office in Riga and the assumption of the full range of tasks after the framework transposition date of 26 May 2011. BEREC notes that the Digital Agenda complements the objectives of the revised 2009 regulatory framework and welcomes the goals and ambitions set out therein. BEREC aims to assist the Commission and NRAs in their efforts to achieve these goals and this Work Programme sets out the mechanisms by which this will happen.

BEREC will focus on those tasks set out in the BEREC Regulation, and will prioritise its efforts on actions that can significantly contribute to the interests of the citizens of Europe and to the promotion of competition and a harmonised approach to regulation. Strengthening the demand-side of the markets is one of the over-arching horizontal principles of the BEREC work programme, which is central to many of the proposed 2012 activities. BEREC also has responsibility to develop and disseminate among NRAs regulatory best practices on the implementation of the EU regulatory framework. BEREC will maintain close relations with the European Commission, the Council, the European Parliament, who, in accordance with the BEREC Regulation, may ask for its opinion. BEREC will assign high priority to such requests and therefore needs to ensure that sufficient resources can be made available at short notice. In order to meet such requests, reprioritisation of, and changes to the work programme might occur, especially with regard to the timing of individual elements of the work programme. Furthermore, BEREC will also seek to continue co-operation with other advisory bodies, such as RSPG and ENISA, where that cooperation contributes to the interests of citizens and the promotion of competition.

The 2012 work programme follows the multi-annual approach set out in the 2011 work programme and will be implemented by the establishment of Expert Working Groups to address the various issues. As some topics may not lead to an immediate public deliverable in the first instance, such issues may be the subject of workshops and discussions, both in public and bilaterally with stakeholders. Furthermore BEREC will elaborate on its strategic goals and present a document outlining its midterm strategy in the course of 2012.

A multi-annual approach allows the necessary flexibility to deal with the dynamic nature of the electronic communications sector. The items that qualify for a multi-annual approach include primarily the topics of international roaming, network neutrality, benchmarking and harmonisation of key remedies (e.g. non-discrimination and regulatory accounting). Network neutrality is a topic that has become more important, especially with an on-going shift in business models and the entrance of new market players. Several of these issues have significant elements of consumer empowerment, an area which also gains significance with the revised Framework directives. In recent years, BEREC has produced reports on improving

switching<sup>1</sup>, accessibility for disabled people<sup>2</sup>, and in 2012 BEREC will continue to consider the impact of consumer rights in regulation as the implementation of the revised directives take effect. BEREC considers this to be a general principal/horizontal topic, which was taken into account when planning this Work Programme, ensuring that the topic is treated in an appropriate manner.

Since 2010, BEREC has put a lot of effort into ensuring that the BEREC Office was properly established. By October 2011, the BEREC Office was appropriately staffed and operating as a fully autonomous Community body. Under the guidance of the Administrative Manager, the BEREC Office has gradually taken over more and more tasks and is now in a position to support both BEREC and the Expert Working Groups. In 2012 the set up will continue and further necessary personnel will be recruited to perform all of the tasks expected from BEREC and the BEREC Office. The work of BEREC Office is reflected in the Office work programme.

### **3. The core topics of the work programme 2012**

As set out in the BEREC Regulation, BEREC shall contribute to the development and better functioning of the internal market for electronic communications networks and services by aiming to ensure a consistent application of the EU regulatory framework for electronic communications. Improving harmonisation is without question one of the key challenges for BEREC and also one of the most difficult tasks. Both the regulatory framework and the BEREC Regulation recognise that BEREC has an important role in developing consistent regulatory practice. End-users and market players rely on a consistent and harmonised application of the regulatory framework, for protection (for the former) and fair competition (for the latter). BEREC will be reliable and predictable, producing robust and high quality common positions that resolutely address unjustified divergences in national approaches. Furthermore, BEREC believes that providing a consistent approach towards the relevant themes and topics will help safeguard reliability and stability for both market players and end-users.

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<sup>1</sup> [http://berec.europa.eu/doc/berec/bor\\_10\\_34\\_rev1.pdf](http://berec.europa.eu/doc/berec/bor_10_34_rev1.pdf)

<sup>2</sup> [http://berec.europa.eu/doc/berec/bor\\_10\\_47Rev1.pdf](http://berec.europa.eu/doc/berec/bor_10_47Rev1.pdf)

### 3.1 Art 7 FD-Procedures

Based on Article 7/7a of the Framework Directive the Commission can express its serious doubts about the intention of a NRA to impose an obligation on an operator with significant market power. If this situation occurs, BEREC will issue an opinion on such serious doubts and shall cooperate closely with the Commission and the NRA concerned. To ensure the development of consistent regulatory practice, BEREC must keep track of the actual market developments. BEREC has therefore begun to capture the remedies proposed by the NRAs in their notifications, the Commission's concerns as expressed in their comments letters (starting with comments letters from the last few years) in a systematic way and to this end has set up a database. Furthermore BEREC has set up a procedure for providing an opinion concerning any serious doubts expressed by the Commission. BEREC, together with the help of BEREC Office monitoring the full spectrum of uploaded decisions for consultation and coordination allows a consistent and close monitoring of the regulatory decisions on the one hand and a permanent observation and follow up of the European Commission's positions taken thereto on the other hand. Areas of potential distortions or where big differences between countries appear will be closely looked at.

*Deliverable:*

a) *Set up of database;*

b) *Providing an opinion concerning any serious doubts expressed by the Commission*

*Deadline: ongoing task*

*Public Consultation: No*

### 3.2 International Roaming

The Roaming Regulation has, with a further decrease in the level of the price caps in July 2011, resulted in more transparency and harmonised lower tariffs for end-users in the whole European Union. BEREC will continue to monitor the evolution of the market and the implementation of the Regulation and will report periodically on this in regular Benchmark Reports.

In July 2011, the European Commission published a review of the functioning of the current Regulation, including legislative proposals to extend the Regulation in duration and scope after the current Regulation expires in June 2012.

To support consideration of the issues raised by the Commission's proposals BEREC published an analysis of the draft Regulation in August 2011. Previously, BEREC had provided input to the Commission's review of the current Regulation (December 2010 Report, February 2011 response to the Commission's consultation). As such, BEREC has investigated the likely need for further regulation and analysed different forms which any such regulation could take, the advantages and disadvantages of each for consumers, the effects on the competitive landscape and any spill-over effects into national markets. This includes consideration of the target set in the European Digital Agenda for the difference in roaming prices and domestic prices to approach zero by 2015.

In 2012, BEREC will continue to analyse the proposals emerging from the negotiations, and be ready to provide further technical advice to support consideration of the issues raised.

BEREC will provide professional input to the European institutions on request or, where appropriate, on its own initiative (bearing in mind both the benefits for the consumers as well as new possible impacts for the market players). BEREC will also fulfil the obligations arising from the new roaming Regulation such as co-operation with the Commission to develop guidelines for the implementation of the envisaged roaming Regulation.

*Deliverable:*

- a) *BEREC Benchmark Data Reports;*
- b) *Advice to the European institutions to support the negotiations, on request or own initiative;*
- c) *BEREC Guidelines to support implementation of any new roaming Regulation.*

*Deadline:*

- a) *BEREC Reports – P1 and P4/2012;*
- b) *Advice to support the negotiations – ad hoc;*
- c) *Guidelines to support implementation of any new roaming Regulation – 2012.*

*Public Consultation:*

- a) *No*
- b) *tbd per case*
- c) *Yes P2/2012*

### **3.3 Universal Service Provisions**

The current legal framework contains provisions on universal service which acts as a safety net to ensure social inclusion where market forces alone may not deliver basic electronic communication services for all consumers. Under Article 15 of the Universal Services Directive the Commission is required to review the scope of universal service periodically, and if necessary to revise it. After the adoption of the new regulatory framework in 2009, the Commission organised a public consultation on the future of universal service and this consultation took place during 2010. The Commission's main objective was to examine whether there is a need to revise the overall approach and principles governing universal service in the EU in particular in the context of broadband development.

The Commission issued a communication on the review of the scope of universal service on November 23<sup>rd</sup>, 2011. Furthermore, the Commission might issue a recommendation or engage a review process of the directive. In this context BEREC should take a closer look into the relevant themes of the universal service such as the universal service provisions in the context of broadband, the designation mechanisms, the costing and finance as well as the calculation of net costs.

*Deliverable: BEREC opinion on the EC proposal on universal service*

*Deadline: depending on the timing of the EC*

*Public Consultation: No*

### **3.4 Consumer empowerment**

In recent years the electronic communications market has provided end users with an increasing range of offers, particularly with regard to bundling various products and moving away from the classical per-minute tariff-schemes towards flat rate packages. The rapid growth of smart phones has created also a need for data tariffs which are often not very transparent to the customer. In its Net Neutrality work, BEREC will have a closer look into the possibilities of specific measurement tools, creating a certainty both, for the consumers and service providers.

Another example of consumer empowerment work that will feature in BEREC's work programme relates to helping users to clearly distinguish and to compare the various offers and products available on the electronic communications markets particularly the upload and download speeds they can expect to receive. In some Member States NRAs already took the initiative to develop specific speed measuring tools achieving remarkable results in order to safeguard certainty for operators and users. BEREC will analyse these possibilities further (especially with regard to broadband – see 3.5) and further foster the transparency of measuring tools in order to give consumers a possibility to actually check the quality of the services delivered and at the same time give the service providers a chance to prove their different products in order to differentiate their offers from competitors and so enhance consumer choice.

In addition, the European Commission has asked BEREC to coordinate input from all NRAs in early 2012 to support a Commission (DG SANCO) Market Study into how the Internet services sector performs for consumers<sup>3</sup>.

### **3.5 Network Neutrality**

In a convergent world the topic of Network Neutrality is one of the key elements, particularly with the shift in business models, technological trends and the evolving role of new content and application providers in the market. Further complexity is brought into this debate through considerations on long-term innovation and fundamental freedom and their link with unrestricted access to "the internet". Leveraging on the fundamental role of competition, the revised framework puts forward the tools to make this competition effective, addressing market failures and empowering the customer (representing the demand side of this two sided market). It also explicitly emphasizes the need for NRAs to promote "the ability of end users to access and distribute information or run applications and services of their choice".

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<sup>3</sup> [http://ec.europa.eu/consumers/consumer\\_research/market\\_studies/upcoming\\_studies\\_en.htm](http://ec.europa.eu/consumers/consumer_research/market_studies/upcoming_studies_en.htm)

In 2010 BEREC made a start in exploring the regulatory aspects of this broad theme, in particular via its response to the Commission's consultation. In its response, BEREC noted that incidents so far remain few and for the most part have been solved without the need for regulatory intervention. At the same time, this did not mean that problems could not arise in the future. For this reason, BEREC considered important that the conditions of net neutrality and the openness of the internet are monitored consistently over time. This monitoring could be based on "appropriate technical tools" to evaluate the deployment of traffic management and the quality of the internet service. In this scope, BEREC identified certain key issues for analysis, in order to provide working solutions or guidance to achieve the objectives set out in the framework. BEREC used these key issues in order to structure its work in 2011 and will continue with them in 2012. The key-issues are:

- Transparency: Commissioner Kroes has indicated in several speeches that transparency issues are non-negotiable. Indeed, transparency is a necessary condition for end-users to exercise freedom of choice. It enables them to compare offers and hence strengthen the demand side of the market. In 2011, BEREC elaborated Guidelines on how transparency obligations would work in practice. This included findings on what kind of information is relevant, on the bodies involved and the ways to convey it, as well as on the requirements for a transparency policy to be effective. Perspectives are also introduced regarding a possible harmonised approach, which seems favourable to comparability and consumer empowerment. According to the outcome of the public consultation, it appears useful that BEREC, in 2012, participates in further developments of Guidelines' recommendations, in particular regarding common terms and frames of reference, tiered approach or monitoring processes, possibly through the option of a co-regulation process.
- Quality of Service requirements: The Regulatory Framework introduces the competence for NRAs to set minimum requirements. What is meant by it? When should NRAs set minimum requirements and what should those be? A harmonised approach towards minimum requirements could avoid creating inefficiencies for operators, costs that ultimately have to be compensated by consumers. In 2011, BEREC was focusing on a generic framework of evaluation and analysis. The work needs to be continued in 2012, elaborating further on guidelines for NRAs and the methods available for measuring and assessing network and application performance, including by the end users themselves. For example BEREC will evaluate how NRAs can promote or provide tools to end users to control or monitor the quality achieved (including the contractually agreed parameters if any).
- Discrimination: In responding the BEREC 2010 consultation, stakeholders referred to identification and economic assessment of traffic management rules as the major issue regarding net neutrality. Prioritisation implicitly has the consequence of discrimination, but a number of aspects should be taken into account to evaluate negative consequences for the level of competition, innovation and the interests of end users. In 2011, BEREC initiated an economic analysis of the potential and theoretical effects of discriminatory behaviour. In 2012, BEREC's work will examine further that the NRAs

have regulatory remedies available to address potential discrimination issues, with a link to the quality of service issue above. The analysis of competition and technological developments of the IP interconnection market (cf. hereunder) may also feed this project, with possible complements to be prepared in the course of the year.

- IP interconnection: BEREC had started to look into the current IP interconnection agreements (peering/transit) between market parties, which may affect net neutrality issues. The development of the market, including any commercial arrangements, should be followed closely so that regulatory or other interventions can be initiated if the future progress so requires. This work will continue in 2012. The analysis of competition and technological developments of the IP interconnection market may in particular contribute to the economic analysis described above.

In addition to these work streams, the Commission put forward in 2011 a demand to overview the situation of European markets. BEREC was entrusted with an investigation task regarding switching issues and traffic management practices implemented by operators. Following an initial snapshot prepared during the first semester, BEREC was entrusted with a more thorough investigation request (including a questionnaire to be sent to stakeholders). This should be undertaken by the dedicated task force, together with the Commission, with results to be consolidated and published by end of February 2012.

Deliverables:

- a) Practical development of recommendations in the guidelines on Transparency (see above);*
- b) Guidelines on Quality of Service Requirements;*
- c) Completion of BEREC Reports on discriminatory issues;*
- d) Report on IP interconnection;*
- e) Inquiry results on traffic management practices.*

Deadlines:

- a) Transparency assessing the progress in P2/2012, BEREC will decide whether more prescriptive initiatives are needed;*
- b) QoS guidelines – P2/2012, adoption P3/2012*
- c) Discrimination report – Experiences with non-discrimination, adoption P3/2012;*
- d) IP interconnection – final report P3/2012; Follow up BEREC/OECD expert workshop after P2/2012*
- e) Results of the inquiry on traffic management – P1/2012.*

Public Consultation:

- a) Yes*
- b) QoS guidelines – P2/2012, Yes*
- c) Discrimination report-P2/2012, Yes*
- d) IP Interconnection – P2/2012, Yes*
- e) Results of the inquiry on traffic management - No*

### 3.6 Next Generation Networks – Access

In its opinion on the draft NGA Recommendation BEREC stressed that regulatory certainty and consistency are crucial in order to foster a competitive environment for long-term investment in NGA. This follows the view that competition between independent infrastructures should be the primary target for sustainable competition. During 2011 the work has continued on following the various implementations in the Member States. BEREC will keep track of NGA roll out and has already committed to deepen its analysis so as to better understand the rationale for differences in national implementations. This analysis will be extended as further national decisions are taken. As additional result various access models will be looked at, and this, in the long-term will lead to recommendations of best practices or guidelines for the access procedures and models. This work is related to the forthcoming update of the Common Positions on Wholesale Broadband Access and Unbundled local loop.

BEREC is also committed to continue its analysis of proportionate remedies aiming at best practices in the light of the trends identified in this report including increased complexity and variety of local market conditions.

With regard to business communication services, these services are increasingly being migrated to NGN. Some service providers claim to experience difficulties in competing with incumbent operators in offering data communication services because of lack of availability of the necessary wholesale inputs. In 2009 and 2010 BEREC has outlined the ways in which NRAs regulate these wholesale building blocks. In particular, very high-speed access and resilient products are not generally included in the definitions markets 4 and 5 because xDSL and FTTH do not provide adequate architecture for business services. BEREC believes that the following issues should be dealt with in more detail:

- co-investment of operators and different models of investments rolling out NGA networks;
- when to remedy fibre networks and on what level should access be offered including for business services;
- best practices for both passive and active remedies;
- relevance of cable competition;

*Deliverable:*

- a) BEREC analytic report on NGA models
- b) BEREC report on NGA remedies
- c) BEREC report on NGA co-investment and SMP

*Deadline:*

- a) b) P3/2012
- c) P2/2012

*Public Consultation:*

- a) b) No
- c) Yes

In the event that the Commission publishes draft guidelines on State Aid for comment, BEREC will provide an opinion.

*Deliverable: BEREC Opinion on European Commission Draft Guidelines for State Aid*

*Deadline: Depends on publication of draft*

*Public Consultation: No*

### **3.7 Study on the Evaluation of BEREC and the BEREC Office**

Article 25 of the BEREC Regulation requires the European Commission to publish an evaluation report on the experience acquired as a result of the operation of BEREC and the Office within three years of the effective start of operations. In particular, the evaluation report shall cover the results achieved by BEREC and the Office and their respective working methods, in relation to their respective objectives, mandates and tasks defined in the BEREC Regulation and in their respective work programmes.

An evaluation study should assess the impact of BEREC and its Office on achieving its objectives and tasks, as well as its working practices. To this end, the study should in particular evaluate the governance of BEREC, the organisational structure and management, the achievements and value-added of BEREC. On the basis of the assessment the evaluation should give an assessment on BEREC and its Office strengths, weaknesses and make proposals for potential improvements.

The work should be accompanied by an ad hoc Working Group that shall be created to perform these tasks.

## **4. Further topics**

Since 2011 BEREC is operational and performs as a fully-fledged platform. BEREC Office was set up successfully and carries out all relevant tasks. Besides the core topics identified above for 2012 BEREC will deal with the following topics next year:

### **4.1 Consistency of remedies and further developments**

A harmonised regulatory approach is a fundamental theme for BEREC. The new Regulatory Framework has introduced changes in the procedure for imposing remedies in the national markets with new powers for the Commission and BEREC. With the new regulatory framework in place and with markets developing further, a constant review of notifications will ensure that BEREC can monitor developments and review and revise its approach.

BEREC's work in 2012 on this theme continues work in this area.

#### **4.1.1 Review and update of BEREC Common Positions**

BEREC has the responsibility to monitor conformity of NRA remedies with each relevant Common Position (CP) and publish a report. In 2011 BEREC published a monitoring report on NRA conformity with the three Common Positions (wholesale broadband access, wholesale local access and wholesale leased lines). This exercise will now be followed up by a review of the current BEREC CPs. The aim is to ensure that these CPs remain relevant, by undertaking an exercise to update, clarify and strengthen them in light of recent market developments and the findings of the monitoring report. Such “harmonisation cycle will continue to be at the core of BEREC harmonisation activities by ensuring that national divergences are identified and justified.

The BEREC CPs will be reviewed to take into account earlier work on business services and recent developments such as NGA. As a result of this continued work BEREC will also engage with the European Commission on its planned guidance on non discrimination with the aim to deliver a BEREC opinion in due course.

*Deliverable: Revised Common Position on wholesale broadband access, wholesale local access and wholesale leased lines*

*Deadline: P4 2012*

*Public Consultation: Yes*

#### **4.2 Implementation of key-remedies**

The Commission has announced in its European Digital Agenda to focus on key-remedies and is expecting to issue Recommendations in the first half of 2012. The identified key-remedies are non-discrimination and regulatory accounting.

##### **4.2.1 Non-discrimination**

BEREC will continue to co-operate with the Commission’s services with the aim of to deliver a BEREC opinion in due course. This work is integrated with the work under 4.1.1 above. There is also a link to the work BEREC has done so far in the field of functional separation.

*Deliverable: BEREC opinion on the forthcoming Commission Recommendation on non-discrimination.*

*Deadline: depend on Commission timetable*

*Public Consultation: No*

#### 4.2.2 Regulatory Accounting

The yearly produced report on regulatory accounting in practice to give an overview and to assess the level of harmonisation will be continued. During the consultation of the work programme stakeholders will be specifically asked on which fields harmonisation is important, according to their view.

The yearly report shows again that the level of harmonisation has increased furthermore. Despite this, differences among Member States may arise from different ways in which the same regulatory accounting approach has been implemented. Therefore, for the 2011 report BEREC also analysed the reasons why NRAs choose one implementation approach rather than another. Nevertheless the Commission restated the need to work on consistent regulatory accounting for key wholesale access products across Europe. BEREC will continue to pave the way on this subject and broaden the yearly report furthermore during 2012, building on European best practices and tackling the several issues identified in notified market analysis decisions and co-operate with the Commission's services on a document on cost methodologies for consistent access prices. It can also benefit from the output of the Expert Working Groups on both termination rates and the NGA-EWG. To broaden the scope, the question of NGA cost accounting shall also be examined.

Furthermore, the Commission has announced to issue a recommendation on costing methodologies for key wholesale access prices on which BEREC is going to provide an opinion.

*Deliverable:*

- a) *BEREC Report on regulatory accounting in practice (incl. NGA-costing methodologies);*
- b) *BEREC opinion on the forthcoming draft recommendation on costing methodologies for key wholesale access prices.*

*Deadline: P3/2012*

*Public Consultation: No*

#### 4.3 Implementation of Recommendations

In recent years Commission Recommendations have been issued, e.g. on NGA regulation and Termination Rates. To be prepared for any review of these Recommendations, BEREC is looking into national implementation practices, keeping in mind that recommendations are not binding and NRAs, while taking the utmost account of them, can diverge from them where justified. During 2011 a start was taken with the recommendations on termination rates and NGA. Based on the existing monitoring activities, it will contribute to the target that BEREC will be in a position to advice on any future actions that might be proposed by the Commission under Article 19, combined with output of the results of implementation in the Member States.

#### 4.3.1. Recommendation on termination rates

BEREC will continue its work already engaged on best practices in MTR and FTR and the issues related to transition towards cost orientation in line with the LRIC methodology recommended by the Commission, such as the move towards symmetry and the definition of proper glide paths. The recommendation on termination rates leaves quite some degree of freedom for NRAs to make their own choices. BEREC will look more into this and the grade of implementation within the Member States to give common guidance. This may include an assessment of the effect of pure BULRIC for FTR on the implementation of price regulation of fixed voice access and/or origination. This work shall be continued and conclusions for further fine-tuning shall be drawn, also evaluating SMS-Termination. One can also touch on the topic of termination rates from an international perspective. These problems could become less important with the further implementation of the recommendation on termination rates in the following years. However, significant differences between national and international termination rates have the potential to cause competitive distortions.

#### 4.4 Benchmarks

In order to monitor harmonisation it is important to collect data and compare the evolution of markets in different countries. BEREC produces benchmarks itself but also co-operates with the Commission and CoCom. During 2012 BEREC will continue this co-operation. The BEREC regulation requires BEREC to monitor and report on the electronic communications sector, and publish an annual report on developments in the sector. Benchmarks will also be used for that purpose. Furthermore, having the BEREC-Office at its disposal to assist on the production of benchmarks, BEREC will have the chance to evaluate its own benchmarks and the co-operation with other organisations. This task is not easy to perform particularly in the light of the difficulties arising due to different measurement methods used by various institutions such as e.g. the OECD. As a result it is becoming more difficult to ensure the comparability and the accuracy of data. The role of BEREC should be supplementary, complementing if deemed necessary, but not replicating existing benchmarks. During 2012 BEREC will build up on the results of the strategic review of its current activities related to benchmarking and also include Fixed termination rates and SMS Termination rates for benchmarking purposes as well as evaluating to include further Benchmark exercises in the future.

##### *Deliverable:*

- a) *BEREC MTR and SMS Snapshot;*
- b) *BEREC FTR snapshot;*
- c) *BEREC Annual report on developments in the sector;*
- d) *BEREC Report on a methodology for the benchmarking of mobile broadband prices.*

##### *Deadline:*

- a) *MTR and SMS Snapshot P2 and P4/ 2012;*
- b) *FTR Snapshot P4/2012;*
- c) *Annual report on developments in the sector P4/ 2012;*
- d) *Report on a methodology for the benchmarking of mobile broadband prices P2/2012.*

*Public Consultation: No*

#### **4.5 Promotion of Broadband**

BEREC shares the objective of the Commission of comprehensive broadband coverage in Europe. In its broadband Communication the European Commission explicitly referred to the BEREC Work Programme of 2011, suggesting that BEREC include measures to support broadband development as a priority in its work programme. BEREC recognises the important role of broadband networks in the further development of the economies of Europe and the benefits that they can bring to its citizens. There are different mechanisms/tools which can be used to promote broadband, but any activity needs to take into account that its success will depend on supply and demand side activities. So BEREC has to be aware that supply and demand side are interrelated. The SMP regime and implementation of the NGA Recommendation are probably the most well known instruments for NRAs. However, the (public) funding of networks, the inclusion/exclusion of broadband access in the universal services obligation (USO) and the promotion of open access, pursuant to the state aid guidelines, can also contribute to the promotion of broadband coverage.

As a carry over of the 2011 work programme BEREC will publish a report on different mechanisms to promote broadband adoption.

*Deliverable: BEREC report on different mechanisms towards the promotion of Broadband*

*Deadline: P1/2012*

*Public Consultation: Yes*

#### **4.6 Access to special rate services**

Providers of shared cost, DQ-services, premium rate or freephone number services as well as some premium SMS service providers often pay an origination fee to the operator of the originating network from which the user calls the information service. Sometimes these origination fees seem excessively high compared to the cost. This seems especially the case for the wholesale fee for mobile originating traffic that is destined to freephone numbers/services. For this kind of service, voice or SMS origination seems to have similar features to voice or SMS termination in the sense that there is no alternative for the provider of the information service. The provider can choose either to pay the fee, allow the callers to pay the fee in some Member States or disconnect from the originating network.

The objective of this BEREC project was first to investigate the situation and market forces regarding these services in different Member States, which may include some form of benchmark as part of the investigating exercise.

*Deliverable: BEREC Report*

*Deadline: early 2012*

*Public Consultation: Yes*

#### **4.7 Cross-border and demand side related issues**

Some articles in the regulatory framework ask for a cross-border approach. BEREC shall have a closer look at pan European services not only with regard to consumer protection but also with regard to feasibility for such services, as they may face difficulties. BEREC is the platform for NRAs to adopt a consistent approach and make sure that the procedures are clear in case the situations described in the relevant article occur.

Subjects that fall into this category are:

- Accessibility to ECS for disabled citizens and harmonisation questions. Further input will be requested by the EC based on the report of the End-user EWG.
- Consumer rights (articles 20, 29 and 30 USD): given the amendments to these articles it would be appropriate to consider how this could affect the work of NRAs. It may also be appropriate to explore current practices and to establish some best practices.
- Article 21 Framework Directive: resolution of cross-border disputes.
- Reliability and accuracy of caller location information in particular for emergency calls
- Article 28 (2) Universal Service Directive: According to article 3.1 I) of the BEREC Regulation, BEREC is required to provide assistance to NRAs (upon their request) on issues related to fraud and misuse of numbering resources. This role implies the need to define the relevant procedures for such collaboration.
- Registration issues: An increasing number of market players offer services at the boundaries of the European Framework. Sometimes it is not very clear whether a market player is subject to the Framework or not, i.e. when it is not clear if the service that is offered is an ECS. Since it is undesirable that every NRA has its own approach, BEREC should investigate whether there is a consistent approach towards the relevant players.

Furthermore there is a growing demand of services which are carried out in more than one Member state (i.e. DQ-Services) and across internal EU-borders. Extensive work about this theme was carried out already during the year 2011 and a BEREC report on cross-border accessibility of numbers will be published during 2012.

*Deliverable: Report on the current accessibility of numbering resources pursuant to Art. 28 (1) USD: P2/2012*

*Deadline: P2/2012*

*Public Consultation: No*

#### **4.8 Business services**

The retail market for the provision of high-end services to businesses is mainly cross border nature while the wholesale market thereto is national due to the fragmentation in the ownership of essential infrastructure across Europe. This might create an access problem for multinational

business service providers. In this field the BEREC Report on the impact of administrative requirements on the provision of transnational business electronic communications services has already been published during 2011.

#### **4.9 Cooperation with RSPG and ENISA**

In recent years BEREC has strengthened its cooperation with RSPG. Effective spectrum management is an important instrument for meeting competition objectives and as well as securing the widest possible service coverage. BEREC, from its economic expertise, will continue to analyse the impact of fixed-mobile convergence, complimentarily and potential substitution and its effects on fixed and mobile communications markets in terms of voice and broadband, in order to assist NRAs in their next round of market analysis.

BEREC, together with the RSPG, could also offer new insights into other key policy areas such as how spectrum is valued by Member States. As part of the 2011 RSPG Work Programme, both bodies are combining their respective expertise to estimate which criteria has been used to assess economic and social value of spectrum, both currently and in the past. This report will apply not only to spectrum being released as part of the digital awards but also to other bands where best practice can be shared (e.g. 2.6 GHz). Elements, which will be addressed, include methods of award, authorisation processes, coverage obligations and impacts of infrastructure sharing. Questions of further harmonisation shall also be evaluated.

Furthermore, during 2012 BEREC plans to further explore possible cooperation models with ENISA in the context of aspects of the Regulatory Framework dealing with security and integrity of networks and services.

Deliverable: Conditions for the attribution of the frequencies - Economic and social value of spectrum

*Deadline: P1/2012*

*Public Consultation: No*

#### **4.10 International cooperation**

The electronic communications sector is a highly dynamic global market. Therefore while BEREC needs to focus on the European market, it is also necessary to track developments elsewhere to be aware of and in a position to respond to emerging challenges. It is beneficial for BEREC to have cooperation with regulatory authorities in regions outside the EU in order to learn from each other.

There is growing interest from non-EU regions in the European regulatory approach, the promotion of which can contribute to build harmonised regulatory frameworks and policies that will further promote competition, investment and social welfare. For several years many NRAs have participated in international cooperation activities. Programmes have been established by

the Commission to foster cooperation and market development in foreign countries. Twinning and TAIEX are common tools to finance cooperation between Member States and beneficiary countries. Whereas groups like the Eastern Partnership (EaP) for beneficiary countries in the east or EMERG for the Mediterranean countries were formed in Europe, Regulatel covers the Latin American countries. During 2011, both individual NRAs and BEREC have participated in several events and programmes.

In 2012, the main focus for BEREC will be to implement a systematic approach towards international cooperation. BEREC will aim at strengthening mechanisms to allow exchange of information and experience. BEREC will build on current NRAs' international activities, therefore allowing for a more efficient resource allocation while avoiding overlapping individual NRAs initiatives.