



GSMA Comments on BEREC's Draft Strategy 2015 – 2017

INTRODUCTION

The GSMA welcomes the opportunity to submit its views on the BEREC Strategy for 2015 - 2017. BEREC plays an increasingly important role as an advisory body in ensuring a consistent and proportionate regulatory approach in the European Union and we look forward to a continued and enhanced cooperation. This contribution follows the structure of the draft strategy paper, addressing each of BEREC's strategic pillars in turn and then providing input on some of the market- and regulatory developments identified. It should be read in conjunction with our response to BEREC's Work Programme for 2015. The GSMA remains at BEREC's disposal for any follow up questions and would welcome the opportunity to meet with BEREC representatives to further discuss any of the points raised in these two papers.

A key priority for the new European Commission will be the review of the electronic communication framework. This is urgently needed to modernise regulation so that it takes better account of market developments and competition from OTT services, and to ensure a more horizontal approach in terms of services regulation to the benefit of consumers - same service/same protection. BEREC's work on the review will be an important contribution and GSMA looks forward to contributing to this process.

BEREC STRATEGIC PILLARS AND PRIORITIES

1. Promoting Competition and Investment

- Article 8 covers a broad list of objectives that need to be prioritised so that Europe can meet its connectivity challenge and deliver the infrastructure needed to underpin growth and jobs. Investments, and particularly the need to incentivise private investments in networks, should be BEREC's top priority. This would be also more in line with the objectives developed by the new President of the European Commission.
- Competition remains an important objective but the short term and long term consumer interest needs to be better reconciled. We believe that regulation should be tilted away from managing end-user prices and increasing the number of competitors, to encouraging investment and innovation in networks. Operator revenues are a key driver for investments, whilst innovation and investments in new technologies such as LTE are the best stimulators for the unit price decreases that benefit customers. As an example, US operators benefit from significantly higher ARPU than their European peers and as a consequence Europe is lagging behind the US in 4G network penetration. Regulation should therefore be geared towards better encouraging and supporting operators' investments in networks. The challenge of developing new networks should shape the design of auction conditions,

especially in terms of access obligations or spectrum bands reserved for new potential entrants.

- Regulation should also adopt a global perspective, assessing its impact not only at a local level but also on the competitiveness of EU industry vis à vis the rest of the world.

2. Promoting the Internal Market

- **Level Playing Field** - BEREC and policy makers should adopt a holistic approach when considering the internal market dimension. Consistent regulatory practice within the EU is important but is currently too narrow and should take into account prevailing market developments. With OTT players now competing with operators in the same markets, it is time to review the framework to deliver a level playing field, to ensure better consumer protection within the EU and fair competition among all players.
- **Spectrum** - Broad and bold reform to the management of Europe's spectrum assets is required. The growth of Internet access over mobile broadband is dramatically increasing demand for spectrum and securing access to long-term harmonised spectrum is critical. Policy makers and regulators should support and promote the on-going reallocation of radio spectrum to the communications industry so that operators can continue to meet consumer- and business needs for faster connection speeds and greater capacity. This process needs to be coordinated at the European level.
- Policies recently supported by the Commission and the European Parliament concerning spectrum licensing provide the right answers to these issues. There is also a need to ensure award processes avoid being structured to extract excessive payment for spectrum as this has a direct impact on the financial capacity to invest in infrastructure.

2. Empowering and Protecting End Users

- **Consumer protection** - trust is central to the take up and use of new digital services, and consumer protection rules make a significant contribution to fostering that trust. However, more harmonisation is required between Member States, particularly to enable the provision of pan-European offers, since differences in national consumer law are one of the main obstacles to the full and effective development of the digital single market. Greater consistency is also required in regulating between different providers of the same service. If a service satisfies the same consumer needs as another, they should both be treated the same way by regulation, irrespective of the technology being used, which might be providing the service, from where the service is provided, or where the end-user is located. In that sense, moving from a sector specific framework on services to an EU general or cross-sector law would tackle this issue, at the same time as ensuring a better level of harmonisation across the EU.
- **Open internet** - the GSMA fully supports the concept of the Open Internet and its central role as a platform for economic growth, innovation and social inclusion. Ever increasing data traffic is smartly and actively managed by network operators to optimise and to ensure the best possible experience for all users, and this is becoming even more important as

increasing pressure is put on network capacity. Different types of traffic have different requirements and need to be managed efficiently. This does not mean that the Internet is distorted or that customers are not able to enjoy content, services and applications of their choosing; it just means that services work better and networks run more efficiently. Openness should also be assured across the whole ICT value chain.

- Today the mobile industry is playing a crucial role as an innovation platform for new services, but it has the potential to deliver even greater benefits to society in the future with a whole range of new applications that can spread the benefits of mobility to sectors such as energy, health, transport and education. For mobile to fulfill this potential, network operators must be able to develop services that meet the needs of consumers and charge different prices for differentiated products. Any restrictive measure e.g. which might attempt to limit innovation and especially competition from network and service providers, will harm consumer choice and will put Europe at a disadvantage as compared to other regions of the world, with effects not only on the ICT sector, but also on the whole European economy.
- Europe needs an Open Internet policy framework that focuses on general principles; recognises the consumer benefits that flow from traffic management, irrespective of the level of congestion; and provides appropriate freedom and flexibility for the development and delivery of innovative services alongside general Internet access.

MAJOR TRENDS AND DEVELOPMENTS

1. Market, technology and end-user developments

- **The growth of OTT services** needs to be taken better into account so that the regulatory framework can be properly adapted to the digital age. It is time for more consistency in the application of the same rules to the same services, independently of who is providing them (operators or OTTs). This area covers consumer protection rules, data protection and network and information security rules. Similarly, the question of whether competition law and practice needs to be adapted to the digital economy should also be discussed. To the extent that customary telecommunications services are seen as functionally equivalent to services provided by OTTs, the fact that telecommunications service providers are highly regulated in their commercial activities, while OTTs are generally not regulated at all, can distort competition between the two categories of provider.
- The GSMA estimates that cellular **Machine to Machine (M2M)** connections will account for almost 1 billion of the 10 billion total mobile connections expected worldwide by 2020. The IoT services enabled by these connections will provide significant positive socio-economic benefits to citizens, consumers, businesses and governments in Europe and around the world.
- Operator capabilities such as security, billing and charging and device management can enhance the IoT by enabling the development of new services. Through the provision of these extra value services to their customers, operators can support innovation and the future growth of the network.

- Governments and regulators can realise significant social and economic benefits from the growth of IoT services by ensuring that policies and regulations are flexible, balanced and technology neutral. Excessive, prescriptive or technology-biased regulation risks stifling innovation, raising costs, limiting investment and harming overall citizen welfare.
- The increasing importance of **data protection and network and information security** rules across the entire value chain is vital in encouraging trust in, and take-up of, new digital services. The guiding rule should be 'same service/same protection'. At the same time, the assessment of the value of personal data in the context of regulation and competition, and the need to guarantee consumer welfare and privacy can no longer be seen as separated issues. A stricter coordination among authorities is desirable so as to produce policies in a holistic and consistent way.
- Further progress is needed within Europe to reduce barriers to efficient **market consolidation**, and enable scaling up, by simplifying merger reviews and taking a more cautious approach to the imposition of remedies.

2. Regulatory developments

- BEREC's engagement and contribution to the review of the regulatory framework will be important in informing the European Commission's work in this area. We believe in fundamental reform based on the following objectives:
 - encouraging private investments;
 - achieving a level playing field on the regulation of services;
 - ensuring better consistency between ex ante regulatory objectives and ex post competition objectives;
 - improving harmonization in terms of spectrum policy and conditions for allocation.
- The main goals of the review should include:
 - promoting the global competitiveness of the Union and the European digital industry, as well as investment and innovation;
 - promoting sustainable competition within the single market by ensuring fair rules between all the different categories of actor competing in this market, in particular ensuring that fully substitutable services are subject to the same rules, and to reduce sector-specific market regulation;
 - securing simplified, predictable and convergent regulatory conditions and ensuring harmonised, consistent and effective application;
 - ensuring that the regulatory framework is adequate for the digital age and delivers an internet ecosystem that supports the entire economy.

BEREC OUTPUT AND OPERATIONAL EFFICIENCY

- We would like to congratulate BEREC for its continued efforts to improve the transparency and visibility of its work, and to strengthen its interaction with stakeholders at both the Working Group and Chair levels, through events like the stakeholder forum.

About GSMA

The GSMA represents the interests of mobile operators worldwide. Spanning more than 220 countries, the GSMA unites nearly 800 of the world's mobile operators with 250 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and Internet companies, as well as organisations in industry sectors such as financial services, healthcare, media, transport and utilities. The GSMA also produces industry-leading events such as Mobile World Congress and Mobile Asia Expo. In the European Union the GSMA represents over 100 operators providing more than 600 million subscriber connections across the region. www.gsma.com