



**Vodafone's response to BEREC's consultations on its
Strategy for 2015-2017 and Work Programme 2015¹**

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¹ Vodafone welcomes comments or questions on the views expressed in this document. They should be directed to Markus Reinisch at markus.reinisch@vodafone.com



Introduction

Vodafone welcomes BEREC's consultations on its 2015-2017 Strategy and 2015 Work Programme and agrees with the main thrust of this proposed activity. As a European operator with over 130 million customers² across Europe, mobile networks in 12 EU Member States and a growing European fixed infrastructure presence following recent fixed line acquisitions in UK, Germany and Spain, Vodafone has a significant stake in the matters raised by BEREC in its consultation documents.

Vodafone is committed to the growth of the European communications market, having invested €28bn in our European network and spectrum over the past five years alone. We also innovate, for example by building a Machine to Machine (M2M) platform and growing our M2M business from seven employees in 2009 to 1300 employees today. We wholeheartedly support BEREC's strategy that "*effective and sustainable* competition is what drives *efficient* investment" and we have introduced sustainable competition in all the markets in which we operate, whether fixed or mobile. We firmly believe that the communications industry is the foundation for a vibrant European economy and look forward to working with BEREC in respect of its 2015-2017 strategic objectives.

We have a number of specific comments on items raised by BEREC in the context of its Work Programme for 2015, which we set out below by reference to the relevant BEREC Strategic Priority.

Strategic Priority 1: Promoting Competition and Investment

BEREC should not let the importance of ensuring a suitably consistent approach on Equivalence of Inputs (EoI) fall off its radar during 2015. Despite manifesting the need for EoI in the Costing and Non-Discrimination Recommendation³, we have not observed any significant efforts by NRAs to define and oversee the implementation of EoI. There are also specific considerations which apply in business connectivity markets, and there is no reason why EoI would not be an equally suitable remedy in these markets as well. We welcome the consultation on the Economic Replicability

² We have over 130 million customers across Europe, supported by our operations in 12 EU countries – [Czech Republic](#), [Germany](#), [Greece](#), [Hungary](#), [Ireland](#), [Italy](#), [Malta](#), [Netherlands](#), [Portugal](#), [Romania](#), [Spain](#), [UK](#) – and [Albania](#).

³ European Commission (2013) 'Commission Recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment' C (2013) 6761 11th September 2013



Test as defined in the Costing and Non-Discrimination Recommendation and recommend that a similar consultation be undertaken at the earliest on EOI. It would indeed be beneficial for NRAs to have ongoing central guidance on what works and what doesn't.

There may also be additional relevant considerations such as the important role that passive infrastructure access (e.g. duct and dark fibre access) may play in achieving the policy goals that underpin an Eol regime. These considerations should also be assessed by NRAs as part of their Eol cost/benefit analysis and it will be important for BEREC to take an active role in sharing experience and learnings across Member States. This is also an area where we have been carrying out our own study and we will of course be sharing our findings with BEREC in due course.

We very much endorse BEREC's proposal that the work that has been done to date on Virtual Access Products should be made "*more ambitious and results-oriented*". In fact, this should be the goal for all BEREC activity in respect of wholesale fixed access products, virtual or otherwise.

In particular, BEREC's activity should involve a comprehensive benchmarking analysis of Service Level Agreements (SLAs) and Service Level Guarantees (SLGs) across Member States. This would constitute the basis for the definition of best practices and harmonisation across member states. Vodafone has carried out extensive analysis in this area and we would be very happy to share our findings with the BEREC review team. The Quality of Service consideration that BEREC has identified in its draft 2015-17 Strategy (referencing net neutrality and mobile coverage as areas where this may be required) is equally relevant to securing fit-for-purpose access to incumbent fixed networks.

The developments identified by BEREC in section 3.1 of its Work Programme are all relevant, in particular we support the need to analyse the potential offered by network sharing arrangements in light of the trend towards market concentration. We have entered into mobile network and also fibre sharing agreements in a number of Member States and our experience is that it can provide significant pro-competitive and pro-consumer benefits.

We also note that BEREC will be assessing the transition from PSTN to all IP-technology. In so doing, BEREC should recognise that non-IP products are still an important part of the landscape (particularly for operators active in providing services to the enterprise sector). This was noted by Ofcom in its 2013 Business Connectivity



Market Review, where Ofcom found that although they expected that many businesses will increasingly favour (lower cost) IP services over non-IP services, migration of enterprise applications can be disruptive and typically requires investment in new or upgraded equipment. Ofcom concluded that it expected *“migration to proceed gradually and that there will be significant demand for Traditional Interface leased lines during the timescale of this review and beyond”*.⁴

We do however think there is scope for BEREC to consider what should be done when certain geographic areas have sufficient fibre coverage and whether legacy non-IP infrastructures such as copper can be switched off.

Strategic Priority 2: Promoting the Internal Market

We believe the priority activity for BEREC in this area should be the future allocation and renewal of spectrum. We would encourage ongoing harmonisation of spectrum policy across the EU to provide the following:

- timely access to spectrum - addressing delays to the release of mobile spectrum in particular member states e.g. the 800 MHz band in Spain, and looking ahead to the release of the 700 MHz band around 2020;
- adequate harmonised spectrum - supporting industry efforts to identify, harmonise and secure further mobile spectrum bands over the long-term, to support industry innovation and growth, including 5G;
- sufficiently long terms - extending licences to 25+ years, and encouraging administrative renewal, to allow a longer investment horizon for implementing and upgrading mobile technology;
- open, efficient and fair award processes – allowing national variations in award design but preventing discrimination against existing players and artificial scarcity;
- fair prices – reserve prices reflecting opportunity costs to alternative users rather than pre-empting auction outcomes, and award processes that focus

⁴ See Ofcom’s forward looking assessment of the Business Connectivity Market at paragraphs 3.43 – 3.45 of the Business Connectivity Market Review, available at <http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/final-statement/>



on identifying the most efficient users rather than the maximum revenue that can be raised per se, and

- measures to ensure fair distribution of spectrum among market players is maintained in the event of mergers.

In addition, there are currently significant inconsistencies in the availability, price and quality of key Enterprise fixed access products across the EU. One consequence of this is that European businesses may find it more difficult to secure communications services from the same supplier – and pan European providers may find it more difficult to compete with national providers, including incumbent firms.

In our view the inclusion of the proposal for harmonised fixed access products in the Connected Continent Regulation proposed by the European Commission in September 2013 is a welcome initiative that could promote competition and investment in the industry. We would support BEREC's involvement in this area – facilitating the deployment of best practice wholesale fixed access services across Member States is a vital next step after benchmarking best practice in the first place.

We also believe that BEREC should focus on measures to achieve harmonisation of consumer protection requirements across the EU (which drive innovative EU products to scale and delivers more certainty to end users). This should be light touch, principles based in order to be flexible enough to adapt to new technology and the same rules should apply to the same services. This element is currently missing from BEREC's draft work programme.

BEREC is correct to be monitoring the development of M2M services as this is an innovative technology that has great potential to transform the European economy. It is vital that this emerging technology is understood by NRAs, and that any regulatory approach is proportionate and technology neutral. M2M is also an area where international cooperation is likely, given that global enterprises are incorporating M2M applications into their operational processes and products for use in many countries across the globe. These companies seek a consistent regulatory approach, driven by a desire to derive economics of scale from their global supply chains.

We very much agree that BEREC needs to take an active role in preparing for the next Framework review, which should amongst other things revise the definitions of Electronic Communication Services (ECS) and Electronic Communications Networks



(ECN) – both of which have blurred with the convergence of communications services and development of networks. We acknowledge that this was to some extent covered in BEREC’s preliminary informal views on the set of questions put by Catherine Trautmann MEP, but it is essential that the subsequent questions posed by BEREC in that response are also brought into the work programme, for example whether to classify OTT players as ECS and also the regulation of equipment. As BEREC noted in that response, “*concerns might arise when proprietary operating systems limit the transferability/portability of applications and data from one system environment to another*”.⁵ This is a concern that we would share.

Strategic Priority 3: Empowering and Protecting End-Users

We agree with BEREC’s strategy to give priority to user protection and user access to clear and relevant information. However, it is not obvious which of BEREC’s proposed work packages is designed to review whether the current regulatory framework actually delivers good outcomes for consumers – or whether the current information requirements merely serve to confuse consumers. We would encourage BEREC to focus its attention on how to ensure that consumers have the right information and have access to better ways of receiving the information so that they are able to make the right choices.

We also support BEREC’s proposed report of OTT services, which should cover all salient questions, including those identified in paragraph 3.2.5 of the draft work programme and also BEREC’s response to the questions posed by Catherine Trautmann MEP.

We are very supportive of BEREC continuing with its work stream on ecosystem dynamics and demand-side forces in net neutrality developments from an end-user perspective, but this should also cover impact on the service side, and especially whether net neutrality restrictions would encourage or restrict innovation at the edge.

The use of encryption by third parties also needs to be assessed in this context as it may prevent network operators from efficiently managing traffic, offering parental

⁵ Final paragraph of page 12 of BEREC response at www.europarl.europa.eu/document/activities/cont/201306/20130617ATT67940/20130617ATT67940EN.pdf



controls and virus protections and ensuring the security of the network. This can result in operators being unable to meet various regulatory requirements.

Finally, we note BEREC's ongoing priority of initiatives to facilitate operator switching by non-residential customers. At present this appears to be an internal BEREC activity and we would ask that there is an opportunity for industry to engage with this review. For example, Vodafone has taken a lead role in advocating for specific action in this area in the Netherlands, and the Ministry of Economic Affairs subsequently set up a special working group focused on eliminating switching barriers with respect to small and medium enterprises. We would welcome the opportunity to share our experiences in this area with BEREC.

We thank BEREC for the opportunity to comment on its proposed 2015-17 Strategy and 2015 Work Programme and look forward to working with BEREC on these important topics over the years to come.