

EBU response to the public consultation on the draft BEREC Strategy 2015-2017 (BoR(14)119) and the draft BEREC work programme for 2015 (BoR(14)120)

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The European Broadcasting Union (EBU) and its members, public service media organisations from 56 countries across Europe and beyond, welcome the opportunity to respond to this public consultation. We appreciate BEREC's transparent working methods as well as the opportunities it provides for stakeholders to engage and interact with BEREC through public consultations, stakeholder fora and debriefing sessions.

The EBU welcomes the fact that BEREC organizes its strategic outlook for 2015-2017 around three strategic pillars – promoting competition and investment (I); promoting the internal market (II) and empowering and protecting end-users (III) and contributed to increasing the visibility of the output scheduled by BEREC. We would just like to highlight the inherent links between the different strategic pillars. While we support BEREC's understanding under strategic pillar I that "effective and sustainable competition is what drives efficient investment" (page 3 of BoR(14)119), we also believe that ensuring end-users continued ability to choose the services of their choice (under strategic pillar III) directly underpins competition in broadband access markets. By establishing effective mechanisms empowering end users in broadband markets and by maintaining and effectively enforcing open Internet safeguards, the incentives to invest in networks and superfast broadband are also likely to be optimized.

The EBU comments below particularly focus on two domains of BEREC activities which are essential to public service media organisations, namely BEREC's workflow on safeguarding the open Internet and BEREC's scheduled analysis of the impact of convergence and growth of OTT services in the European Union.

"Safeguard an open Internet and ensure a common approach to net neutrality"

The EBU welcomes BEREC's continued focus on empowering and protecting end-users particularly the proposed workflows aimed at safeguarding the open Internet (see pages 18-20 of BOR(14)120). In general, we believe that strong legislative safeguards for the open Internet at EU level - as currently discussed in the framework of the proposed EU "connected continent" Regulation - must go hand-in-hand with effective systems monitoring the quality of Internet access and the impact of new services and products in this market and enforcing open Internet rules. In this respect, BEREC plays an essential supporting role for NRAs. Thus, we appreciate that *"BEREC will ... focus on safeguarding an open Internet and ensuring a common approach to net neutrality, so that the Internet remains a fertile platform for the development of new innovative services."*

As regards the **monitoring of Quality of Service (QoS) in context of net neutrality** (see page 18 of BOR(14)120), we support BEREC's commitment to develop *"implementable technological scenarios for QoS monitoring"* in order to develop an opt-in monitoring system. As previously highlighted in the EBU submission relating to the

2014 draft BEREC report 'Monitoring quality of Internet access services in the context of net neutrality', **we support the BEREC recommendation that the measurement beyond the ISP leg should be used** to account for the connectivity of the ISPs interconnection to the Internet. Such measurement allows testing the “real-world” throughput an internet service provider (ISP) can provide to connect an end-user to the open Internet.

Transparency of the actual current throughput of the service delivered by an ISP is essential. Data throughput is important for end-users to be able to consume media services over the Internet. Watching video or listening to radio will not be possible if the speed varies or the service is interrupted frequently. Broadcasters often use adaptive streaming techniques to modify the real-time viewing quality to match the current available speed without interrupting the continuity of the video. However, if the speed drops substantially, the audio or video cannot be displayed.

The development of monitoring systems should also facilitate the gathering of relevant information concerning the impact the simultaneous use of specialized services may have on the quality/availability of Internet access services. While the EBU supports the approach that **specialised services need to continue to co-exist dynamically alongside a robust internet access offer**, it endorses the principle that **specialised services shall not impair the quality of internet access services.**

Concerning the **traffic management investigation** (pages 19-20 of BoR(14)120), EBU supports **BEREC’s consideration that “there is substantial value in repeating the exercise, so as to provide updated data and identify evolving practices more accurately.”** The EBU understands that the exact modalities of this second investigation round still somewhat depend on the mechanisms and conditions included in the EU “connected continent” Regulation - which is currently being discussed in the Council – and that due account needs to be taken of this Regulation. **However, the genuine need for such an investigation exercise can never be dismissed.** It would provide an updated view of traffic management practices because BEREC rightly pointed out in 2012 that *“the reliability of quantitative information was, to a certain extent, limited”* under the first traffic management investigation. While some current traffic management practices are justified by general interest objectives (protect network security, implement court orders) or are meant to prevent network congestion, other are purely aimed at implementing certain business models. Throughout the discussion on the proposed EU “connected continent” Regulation, the EBU is consistently defending the enshrinement of a clear principle at EU level that **discrimination against specific content is forbidden.** This is crucial to avoid a situation where network operators discriminate against certain offers of content that compete with their own services, restricting choice and access for Europeans. **In order to assess the risk for discriminatory behavior on behalf of ISPs and to enable eliminating it whenever it occurs, we welcome reliable data and mapping of current practices by BEREC together with NRAs.**

“Analyse the impact of convergence and the growth of OTT”

EBU welcomes BEREC’s intention to *“conduct an overall analysis of OTT activities and business models and their impact on the electronic communications sector.”* (see pages 15 and 16 of BoR(14)120) The audiovisual media landscape is very complex, much influenced by a growing range of mostly global and increasingly vertically integrated players that are strengthening their positions mostly on the broadband network/platform market.

Pursuing public interest objectives in this landscape requires a proper understanding of the multi-platform environment and the role of digital intermediaries as well as companies with considerable market power. Thus, a BEREC report offering accurate data about latest developments in the market would be a very valuable tool – alongside work to be undertaken by the European Commission and other regulatory bodies - in the wider process of developing an effective and comprehensive public policy response to the long-term challenges linked to convergence. The EBU looks forward to contributing to this exercise in the course of 2015.
