

ETNO Reflection Document on the draft BEREC Strategy 2015-2017 and Work Programme 2015



BoR PC04 (14) 17

October 2014

- ETNO welcomes the opportunity to provide its views on BEREC's draft Strategy for 2015-2017 (BEREC document BoR (14) 119) and draft Work Programme for 2015 (BoR (14) 120). We decided to share our views on both documents in the same file, instead of providing two separate responses.
- ETNO supports all initiatives aimed at fostering the dialogue between BEREC and stakeholders, such as the Stakeholders' Forums that BEREC has organized in the past two years. We encourage BEREC to continue engaging in open discussions and increase the transparency of its work, in particular by subjecting its foreseen activities to public consultation.

Comments on the Draft BEREC Strategy 2015-2017 (BoR (14) 119)

a) BEREC's Strategic Pillars (pp. 3-4)

- In its first Strategic Pillar, BEREC sets as a primary goal the promotion of competition and investment. ETNO shares the view that investment and innovation in next generation electronic communications infrastructures is a central goal to be targeted by policy-makers and regulators.
- We therefore encourage BEREC to focus its work in 2015-2017 on incentivising investment in high-speed fixed and mobile broadband infrastructure, ensuring sustainable competition in electronic communications markets.
- As stressed in our recently released Agenda for Europe¹, we believe that a lighter and less complex regulatory framework for the rollout of NGA infrastructures, a level playing field among all players of the digital value

¹ The Agenda can be downloaded on the ETNO website, at: <https://www.etno.eu/etno-agenda-for-europe>.

chain and a new public policy framework for the digital industry can provide the right incentives to maximize investments and innovation in the European digital sector, while improving European citizens' lives.

- As a general comment, we also underline that the role of regulatory authorities should be better aligned with the network investment objectives and a new, cohesive and light-touch regulatory and legislative framework, fit for the digital reality, should be put in place.

b) Major Trends and Developments (pp. 5-7)

- ETNO agrees with BEREC that the following market and technological trends will be central to the evolution of the electronic communications sector in the coming years:
 - The growth of OTT services and the need to address the regulatory challenges that this raises.
 - The growing demand for bandwidth-hungry services, together with the continued migration from PSTN to all IP-technology, which requires significant investment in high-speed electronic communications networks across Europe.
 - The need to secure sufficient spectrum resources for wi-fi and other wireless technologies, also as a consequence of the increased use of bandwidth-hungry services.
- In addition to these, ETNO believes that the following key trends should be considered:
 - The existing fixed electronic communications networks will increasingly require significant additional investments in fibre to replace a significant proportion of the copper, in order to remain competitive.
 - In several Member States, local/regional fibre deployment by players such as utility companies and municipalities will lead to increasingly competitive and heterogeneous market structures in high-speed broadband access.
 - In many EU countries, cable operators have been rising as strong, largely unregulated competitors in both fixed broadband and, increasingly, wireless broadband markets.
- None of the above-mentioned trends were anticipated when the basis of the current European telecoms framework was being developed in the late 1990s.
- This entails that, more than fifteen years after the liberalisation of the sector, the framework objectives of ensuring open and competitive markets are not compatible anymore with a bias towards entry promotion policies. The focus has to shift to the promotion of innovation and investments in next-generation network infrastructures, favouring outcomes that are dynamically efficient and sustainable in the long run.

c) BEREC's strategic priorities (pp. 8-12)

- As far as BEREC's strategic priorities are concerned, we would like to comment in particular on the need to foster "a favourable climate for investment" and to support innovation.
- While we of course agree with these goals, we doubt that they can be fully achieved by maintaining the regulatory status quo. In fact, we believe that asymmetric access regulation that systematically targets the former telecoms incumbent operators does no longer provide an adequate response to the current market situation. As next generation networks are rolled out, markets are increasingly characterized by multiple actors at network access level, including municipal networks and publicly funded rural NGAs, cable operators, and increased competition from wireless broadband networks. Moreover, platform convergence blurs the traditional market boundaries between fixed and next generation mobile services with strong effects on at least some user groups.
- The diversity of the actors operating at the access level and the high level of competition achieved in Europe should lead to less and more equitable regulation, limited to those geographic areas characterized by absence of competition. It is worth noting that the main success story of alternative infrastructure roll-out in the past decade have been cable networks.
- In elaborating its reflection on the next review of the framework, we therefore encourage BEREC to think boldly beyond the current practices and models. For instance, a possible way to respond to developments in competition and the regulatory challenges posed by an all-IP, Internet-driven next generation network environment could be to radically simplify regulation with the objective of:
 - Ending sector specific ex-ante regulation of services;
 - Replacing current asymmetric regulation with a simplified single access model on fixed infrastructures, free of price regulation except appropriate non-discrimination conditions in areas where ex-ante regulation is still proven warranted.
- Finally, ETNO would like to comment on BEREC focus on "safeguarding an Open Internet" (p.11).
- We agree with the following objective, as stated in the draft Strategy: "ensuring a common approach to net neutrality, so that the Internet remains a fertile platform for the development of new innovative services".
- In doing so, it is of paramount importance that EU rules on the Open Internet support continued innovation in networks and services. Care should be taken that service innovation is not limited to certain technologies/networks or services and in ensuring that operators can efficiently manage rapidly growing Internet traffic in line with technology developments.
- We also stress the fact that market and technological developments occurring in our industry are extremely fast-paced and cannot be entirely foreseen by legislators and regulators. This should pose a caveat against any attempt to regulate the Open Internet through strict definitions and concepts whose effectiveness and value in time is impossible to assess.

Comments on the Draft BEREC Work Programme for 2015 (BoR (14) 120)

- ETNO takes note of BEREC's foreseen activities for 2015. Before looking in detail at BEREC's proposed actions, we would like to make some general comments.
- Firstly, we welcome that BEREC is willing to look at the electronic communications sector from a broader perspective than that adopted until now, expanding its focus beyond the telecoms industry. This was reiterated by current BEREC Chair Goran Marby and incoming Chair Fatima Barros at the 2014 Stakeholders Forum. The focus on the impact of OTT services on regulation of the electronic communications sector is a clear example in this direction.
- From the consumer perspective, BEREC's approach towards assessing OTTs' crucial role in the Internet value chain is an important step towards ensuring a consistent level of consumer protection standards for equivalent services. ETNO therefore supports the introduction of such a comprehensive approach.
- We also appreciate the reference to "the need for network investment as a result of increasing demand for bandwidth, especially from Over-The-Top players (OTT), and the need to support the deployment of fast and ultra-fast broadband on both fixed and mobile networks" as key issues to be looked at.
- The outlook for our sector confirms that fostering private investment in high-speed broadband infrastructure will remain a key challenge for EU regulation over the next years. ETNO encourages BEREC to work towards lifting regulatory obstacles to new high-speed networks and technologies. This means that light, flexible solutions for access to NGA infrastructure should replace traditional approaches based on physical access and that wholesale price flexibility (allowing investors an appropriate return on investments) and no longer cost-based regulation, should be the default regulatory option for NGA access.
- To this end ETNO encourages BEREC to revise as soon as possible, and at the latest in 2015, its Common Positions on remedies in markets 4 and 5 to reflect these options for improving regulation in the light of technology and market developments.
- Having said that, ETNO would like to comment on some of the specific items foreseen in the draft Work Programme:

Strategic Priority 1: Promoting Competition and Investment

1) Implementation of the Recommendation on Relevant Markets

- The new Recommendation on Relevant Markets was adopted recently by the European Commission. ETNO has welcomed the de-regulatory elements contained in the revised text. In particular, we have welcomed the removal from the list of the markets to be regulated ex-ante of former telephony access markets, in the light of such dynamics as competition from Over the Top

(OTT) services, ongoing transition to all-IP and intensified fixed-mobile substitution.

- We also believe that the Recommendation sends an important signal that next generation broadband networks no longer need to be subject to ‘physical unbundling’ regulation, which often proves technically or economically unviable for new fibre technologies. Instead, where absence of competition is identified, active products may be used to offer open access to such networks.
- We take this opportunity to highlight the need for a swift implementation of the new Recommendation, particularly as far as deregulation of former markets 1 and 2 is concerned, and we encourage BEREC and the NRAs to act in this direction.
- We take note that BEREC will organise an internal workshop to share experiences from NRAs, focusing on the market analysis notifications submitted since the revised Recommendation's entry into force and on the feedback received from the EC and other stakeholders.
- We will be pleased to provide our feedback and we would very much support the organization of open workshops involving the direct participation of stakeholders.

2) Common Position on Geographical Segmentation

- ETNO supported the recent analysis of the geographic dimension of broadband markets conducted by BEREC. We concur with BEREC that geographic segmentation becomes rather more important as markets and infrastructures develop in a fragmented fashion in many Member States. Fresh work on geographic segmentation including the spreading of ‘best practice’ should be considered in 2015.

3) Challenges and drivers of NGA roll-out and infrastructure competition

- We welcome BEREC’s intention to “consider options which foster investment in high-speed broadband infrastructure while preserving a competitive environment and a level playing field” and “to study the broad regulatory approaches towards incentivising NGA investment”.
- In this exercise, we encourage BEREC to think boldly beyond existing practices and concepts.
- In particular, we encourage BEREC to reflect on the current wholesale access framework and on its impact on investment in next-generation networks, considering that, as recalled above, the main success story of alternative infrastructure roll-out in the past decade have been cable networks.
- We also propose BEREC to reflect, as a possible way to respond to the regulatory challenges posed by an all-IP, Internet-driven next generation network environment, on the opportunity to radically simplify regulation.
- ETNO considers that, as a result of this reflection, it should be possible to identify areas where de-regulatory progress can be made. We also believe that, contrary to what suggested in BEREC’s Work Programme, such reflection should not provide the basis for additional future regulatory intervention.

4) Preparing migration to “all-IP networks”

- We note with interest BEREC’s intention to conduct a comprehensive analysis of the regulatory implications of “all-IP migration” in the IP eco-system as a whole.
- We take the opportunity to recall here some findings of a study conducted by Plum Consulting et al. for ETNO in 2013². The authors found the following:
- *“We anticipate that networks in the EU will move to all-IP technology over the next seven years:*
 - *Mobile networks which shift to LTE will need to migrate to voice over LTE (VoLTE). Whilst handsets run on both legacy and LTE networks, legacy switched voice services will be supported. However, operators are now planning for the transition away from this dependence.*
 - *Cable networks already offer VoIP services over IP networks.*
 - *Fixed telecommunications operators also plan to migrate to all-IP architectures. Eight operators were surveyed in an anonymous survey conducted by ETNO for Plum. All have plans or are conducting studies into PSTN/ISDN Network transformation. Of those with firm plans the target date for transformation is before 2020, with the earliest planning to complete the transformation by 2017. Most of the operators surveyed envisage the migration of fixed voice to VoIP over either xDSL or Fibre”.*
- In the light of this evidence, the authors conclude that:
- *“On a forward looking basis the provision of services (in particular voice) and the need for wholesale access regulation should be assessed taking account of the transition to all-IP networks”.*
- We encourage BEREC to take into account and assess these trends, in particular with a view to a forward-looking implementation of the new Recommendation on Relevant Markets.
- Moreover, we note that services based on all-IP technologies provide a variety of substantial advantages to end-users, and possible minor issues which may arise within the migration to future-proof all-IP networks are expected to be minimal. BEREC’s plans to monitor the effects on end-users should consider both advantages and downsides equally.

5) Facilitation of access to radio spectrum

- ETNO appreciates BEREC’s recognition of the essential role of radio spectrum for the development of broadband and its continuing cooperation with the RSPG.

² Plum Consulting et al., "Relevant Markets in the Telecoms Sector. The Times They Are A-changing", June 2013. Full report available [here](#).

- ETNO argues that European institutions should promote policy measures which
 - Favor and enhance harmonization in the assignment of spectrum;
 - Increase market certainty, thus incentivizing network investments, for example through the definition of a longer (of at least 25 years) or undetermined duration of the rights of use;
 - Promote a more liquid and simplified secondary market for spectrum trading;
 - Ensure an overall simplification of the regulatory requirements attached to spectrum licenses, in order to avoid creating unnecessary regulatory burden; and
 - Minimize conditions that can distort market competition among players/operators, such as reserving significant portions of spectrum for new entrants.

- We hope that BEREC's engagement in the European policy debate and its activities with regard to radio spectrum may contribute to achieve the above-mentioned goals.

Strategic Priority 2: Promoting the Internal Market

1) Subjects linked to the proposal on a Connected Continent regulation

- ETNO takes note that, “subject to the continuation of the legislative process in 2015, BEREC will undertake monitoring of the Connected Continent dossier and its developments at the legislative level” and that “depending on the final version of the relevant provisions, BEREC will also contribute, as appropriate, to the implementation of any new rules which require action on its part”.
- As far as the provisions related to roaming are concerned, please refer to the relevant section below (“International Roaming”).
- As far as the provisions related to the Open Internet are concerned, we encourage BEREC to develop its actions under the following guiding principle, stated in the Draft Strategy: “ensuring a common approach to net neutrality, so that the Internet remains a fertile platform for the development of new innovative services”.
- As mentioned above, in doing so, it is of paramount importance that EU rules on the open Internet support continued innovation in networks and services. Care should be taken that service innovation is not limited to certain technologies / networks or services and in ensuring that operators can efficiently manage rapidly growing Internet traffic in line with technology developments.
- We also stress the fact that market and technological developments occurring in our industry are extremely fast-paced and cannot be entirely foreseen by legislators and regulators. This should pose a caveat against any attempt to regulate the Open Internet through strict definitions and concepts whose effectiveness and value in time is impossible to assess.
- Moreover, Open Internet rules should be applied to all players active in the Internet value chain (including OTTs) so as to ensure a level playing field.

- Finally, ETNO supports an effective level of consumer protection rules based on the principles of transparency and choice. However, the resulting effort for industry through new regulation must be balanced with actual benefits for consumers. Taking this into account, a further tightening of the current draft rules, which already impose significant burdens on industry, appears not to be proportionate.

2) Preparation of the next framework review

- ETNO takes note that, within the context of the next framework review, “BEREC will carry out a comprehensive analysis of all the areas of the framework that require review”, also taking into account “the subjects raised during the discussions on the Commission’s Connected Continent legislative proposal”.
- Among the potential topics to be analysed by BEREC in the context of this exercise, we welcome the reference to the role of OTTs. With this regard, ETNO believes that Europe must rapidly adapt its public policies towards the whole ICT sector, recognizing its globalized nature and the increasingly outdated policy distinction based on the type of market players.
- On a technologically neutral basis, telecom operators, Internet agents and content providers should all be subject to consistent rules when providing the same services. Potential areas to be addressed may include, in particular, privacy and data protection, net neutrality, switching, numbering, data portability and safety-related measures.
- In many areas of regulation, service-based competition by Internet players is posing challenges to existing regulatory concepts, notably consumer protection obligations applying to providers of electronic communications services, while end-users of substitutable web-based services do not enjoy similar protection.
- ETNO has long been advocating for a rebalancing of the regulatory burden, which could take the form of a reduction of the scope of sector-specific service regulation and, if necessary, a wider use of cross-sector regulation.
- As stated above, we also encourage BEREC to focus its reflections on the need to create a more favorable climate for investment in next-generation electronic communications infrastructures. This goal should be put at the centre of the forthcoming Review of the Framework.
- More specifically, we encourage BEREC to reflect on lifting regulatory obstacles to new high-speed networks and technologies and recognise that simplified solutions for access to NGA infrastructure may replace traditional approaches; and to advocate for a regulatory system which can guarantee an adequate return on investment in NGA networks, ensuring a level playing field between competing infrastructures.
- In conclusion, we reiterate that ETNO has long been calling for an ambitious reform of the electronic communications framework. In our view, the review should be informed by the following clear priorities:
 - Fostering as much as possible investments (especially private ones) in next generation network infrastructures;
 - Simplifying fixed access regulation, taking into account all relevant technologies, with a view to better rewarding investments;

- Ensuring a consistent and predictable regime for the allocation of spectrum resources to mobile.

3) International Roaming

- We would like to comment herewith on BEREC's ongoing assessment of a potential "Roam-Like-At-Home" scenario, as envisaged by the European Parliament in its first-reading of the draft Connected Continent regulation.
- With this regard, ETNO read with interest the assessment made by BEREC in its "Preliminary Analysis of a "Roam like at home" scenario based on the proposal of the European Parliament adopted on 3 April 2014" (BoR (14) 135).
- We share BEREC's analysis on the complexity of properly designing and implementing a RLAH framework in a way that does not harm specific categories of consumers and operators and distort national competitive markets.
- We also fully share BEREC's concerns with regard to the timing of the introduction of RLAH and the need to abolish decoupling obligations mandated by Roaming III if and once RLAH enters into force.
- When considering the introduction of a RLAH scenario, as anticipated during the 2014 Stakeholders' Forum, we would also like to underline the following points:
 - a) *The timing of the introduction of a "Roam-like-at-home" scenario should be carefully planned*
 - The introduction of a RLAH price regulation should allow operators enough time in advance to prepare and adapt for the new scenario.
 - A minimum period between the amended Roaming regulation and the introduction of a 'RLAH' obligation is therefore a necessary requirement given the complexity of the implementation.
 - More specifically, the implementation date for RLAH should be made dependent on the existence of reliable fair use rules and safeguards against domestic market distortion, supplemented by an appropriate implementation period of 12 to 18 months after the definition of the relevant BEREC guidelines (which should be adopted after a thorough consultation with stakeholders).
 - Adaptation to the RLAH scenario and implementation of the safeguards require changes in IT and billing systems as well as in contracts, which cannot be done swiftly due to the need for a sufficient migration period.
 - In any event, the entry into force of RLAH cannot occur before mid 2017, which is also more consistent with the Roaming III Regulation timetable.
 - Finally, as currently being discussed by EU Member States, we would welcome allowing the option for operators to offer consumers the possibility to "opt out" of RLAH in return for other advantages offered by the same provider.

- b) *If RLAH is mandated or otherwise offered, remove decoupling obligations*
- The obligation to offer the separate sale of roaming services imposed by Roaming III becomes irrelevant once RLAH is provided by MNOs. In fact, as the purpose and aim of the introduction of the separate sale of roaming services was to increase competition and by doing so bring roaming retail prices closer to domestic levels, there is no need to maintain these structural measures once the aim is reached.
 - Maintaining the separate sale of roaming services would bring no benefits from the roaming customers' point of view, and would result in an inefficient allocation of resources. This applies to the two decoupling obligations: single IMSI but also LBO.
- c) *The need to mitigate the negative side effects of RLAH on competitive domestic markets*
- Without fair use provisions on retail side and related safeguards to the functioning of the wholesale market there is a strong risk of negatively affecting competitive domestic markets via fraud and arbitrage scenarios.
 - 'Permanent roaming' offers could be used to distort national competitive mobile retail markets by operators who have not invested in their own infrastructure and spectrum in the given Member State. Such a scenario would hamper mobile operators' incentives to invest in network infrastructure.
 - Finally, fair use provisions at retail level would also allow operators to fairly balance treatment between heavy roamers, light-roamers and non-roamers.
 - Fair use provisions should fulfill some general requirements. In particular, they should:
 - i. Be consistent and suitable with all types of tariff structures;
 - ii. Be transparent, simple to explain and understand for customers;
 - iii. Be easy to implement for operators (any complex solutions which would require deployment of an undue level of cost and resources to implement should be avoided);
 - iv. Be flexible enough to be used as a competitive tool by all MNOs in order to differentiate from competitors and adapt to customer needs. Operators should remain able to define their individual retail strategies for abolishing roaming surcharges. A great diversity of offers is already present in the market based on various fair use policies.
 - Moreover, while principles for fair use policy could be defined at the EU-level, operators should remain able to implement them according to local market characteristics.
 - Finally, while the fair use provisions are essential for the reasons explained above, they will not be sufficient to deal with all the side effects of the RLAH implementation. Consequently, the EU

institutions might consider the possibility to introduce a small and fixed fee while roaming services would be consumed at domestic rates. This small fixed fee, or access right, could be regulated taking account national circumstances and monitored by NRAs.

d) Carefully consider the wholesale aspect of RLAH

- In presence of a RLAH obligation, careful consideration should be given by legislators and regulators to the wholesale market in order to avoid hampering competition in domestic markets.
- On the wholesale market operators should be able to recover their investments and costs. There are large differences in costs between countries due to differences in e.g. labour costs, taxes, or spectrum costs as well as geography and population density. Therefore, wholesale prices cannot be brought back to the lowest cost rate in one country and neither below domestic wholesale prices. Moreover, the wholesale market is competitive and agreed wholesale rates are far below the established caps of Roaming III.
- Any intervention on the wholesale market should ensure that operators are able to recover costs, avoid the risk of arbitrage and ensure that innovation incentives are in place.
- With regard to the proposed Connected Continent Regulation, we consider that RLAH cannot be reasonably introduced before the safeguards to address the aforementioned risks are assessed, defined and implemented. Any change to the wholesale market regulation would in any event require a robust impact assessment and public consultation on the foreseen proposals.

4) Report on OTT Services

- ETNO notes with interest that BEREC “intends to assess the potential changes in the ICT value chain and the possible evolution of digital markets in the Internet ecosystem”.
- In this context, we welcome the intention of BEREC to “conduct an overall analysis of OTT activities and business models and their impact on the electronic communications sector, both in terms of competition and consumer issues, as well as their impact on the current regulatory framework”.
- In many areas of regulation, service-based competition by Internet players is posing challenges to existing regulatory concepts, notably consumer protection obligations applying to providers of electronic communications services, while end-users of substitutable web-based services do not enjoy similar protection.
- ETNO has long been advocating for a rebalancing of the regulatory burden, which could take the form of a reduction of the scope of sector-specific service regulation and, if necessary, a wider use of cross-sector regulation.
- As an alternative, OTT providers that offer services that are functionally equivalent to services offered by electronic communications providers should have the same degree of regulation applying (for instance in terms of consumer protection, net neutrality and network security).

- This work should not be limited to analysing services offered by OTTs in competition with existing telecoms services. All the different elements of the ICT value chain should be analyzed to check for strong market positions and possible market distortions.
- We hope that BEREC will undertake this workstream with urgency and well before the end of 2015, taking our considerations into account. ETNO will be pleased to give its contribution to this debate.

Strategic Priority 3: Empowering and Protecting End-Users

1) Feasibility study of QoS monitoring in the context of NN

- In commenting on this item of the Work Programme, we refer to the arguments contained in our response to the consultation for BEREC's draft report "Monitoring Quality of Internet Access Services in the Context of Net Neutrality" (April 2014).
- ETNO believes that monitoring the quality of broadband performance can be a positive and fruitful exercise both for European citizens and for European market players operating along the broadband value chain. Beyond legal obligations stemming from the Universal Service Directive (USD) and further best practice at national level, ETNO supports cost-effective and appropriate steps to increase transparency to enable consumer choice and, by this, support network competition.
- We reiterate our viewpoint that only reliable measurement tools can provide such transparency. Non-reliable measurement tools (e.g. online web portals) often erroneously report low network performance and increase end user complaints and therefore can foster a feeling of mistrust. Indeed, the growing availability of non-reliable tools is a negative incentive to invest in high-speed networks and may unduly affect end-users' trust towards network operators.
- According to ETNO, the development of reliable measurement tools needs to be carried out cautiously and be preceded by a thorough analysis of the goals that BEREC wishes to achieve. Such a tool may be used (1) to validate transparency compliance with regards to Net Neutrality, (2) to inform the end-user after contract conclusion on the speed of his/her personal broadband connection or (3) to serve as a support mechanism before contract conclusion for those customers searching for objective information on what can be expected from different broadband offerings in the market. The overall objective has an important impact on the design of the tool.
- ETNO believes that it is impossible to achieve all objectives with one measurement tool. For example, measuring an operator's network quality may involve a measurement tool that excludes all external influences (home network, potential Internet server congestion etc.), which could indeed be the preferred assessment. Depending on the choice made with regard to the measurement approach, BEREC's or NRAs' communication will need to provide proper guidance on the correct interpretation of the measurement results.
- In defining the scope of future BEREC work in this area, ETNO suggests that the relationship with the Net Neutrality concept be handled with caution. As

regards IAS in terms of physical access to the Internet, ETNO suggests that the exercise of measurement of quality by regulators be carried out by sticking to the legal provisions of the USD, that is by taking into account very well defined parameters contained in the Directive and avoiding the misuse of generic concepts such as Net Neutrality (to date). Since the USD already provides provisions to measure the quality of service for the sake of efficiency, additional legal rules to supervise Net Neutrality do not appear to be currently appropriate. Any approach intended to protect the quality of Internet access service from the interference of specialized services could have counterproductive effects and actually result in less efficient use of network resources and therefore a lower quality for Internet access service.

- As to the concepts and parameters inherent to measurement tools, ETNO also would like to highlight that close attention must be given, for the sake of accuracy, to the characteristics of the technology platform whose quality is measured and to the specificity of national broadband markets. The possible definition of a single European-wide system designed to monitor and measure the quality of broadband on all national levels must be sufficiently flexible to allow an adjustment to the individual national characteristics.
- Furthermore, ETNO believes that European network operators should be involved, from the very beginning of the process, in the definition of a possible European opt-in system of monitoring.

2) Review of the scope of Universal Service

Regarding the potential activities to be undertaken by BEREC in this area, ETNO would like to stress the following:

- ETNO member companies continue to support the endeavour of clarifying Universal Service rules and especially the aim to include safeguards to prevent an undue burden for the sector as well as unfair restrictions to the right of compensation for the Universal Service providers. ETNO will carefully consider any BEREC activity aimed at informing the decisions of the European Commission in this area.
- ETNO encourages BEREC to focus its reflections on the circumstances under which it is to legitimate for a Member State to interfere in a market by means of imposing obligations, and to highlight that such interference by means of imposing obligations to some operators cannot be justified unless a persistent market failure has been demonstrated.
- As a general remark, we would like to highlight that, to prevent any deterioration of the competitiveness of the European telecoms industry, no additional burden on telecoms operators should be envisaged given the wide scale availability of “basic-broadband” (fixed and mobile) ensured by the market, as recognised by the European Commission in its latest broadband scoreboard.
- ETNO would be concerned that the introduction of any cap as from which broadband has to be provided under universal service – regardless of its level and nature – may encourage national, regional and municipal governments to

abandon public funding of local broadband schemes and instead avail of the Universal Service regime and its option for industry funding to achieve the broadband for all objective.

- In ETNO's opinion, speeds of maximum 1 Mbps largely fulfill the objective of avoiding social exclusion. If we look at the current state of demand of broadband services, it is apparent that there is not a significant demand justifying the need for a higher speed. Moreover, operators are heavily investing in higher speeds to develop the broadband market and they are providing new and innovative services under commercial market conditions and using other available funding instruments, such as structural funds or state aids.
- Along this same line, ETNO supports the view that the scope of the revision of Universal Service should be strictly limited to what is needed to provide a safety net ensuring that a minimum set of services is available at an affordable price and taking into account the risk of market distortions. Services such as e-health or e-education could require extremely high-speed connections. Therefore, they should be covered by other public policies because their development cannot be reached by means of Universal Service policies. In this sense, the USO must remain a social safety net.
- NRA practice in some Member State countries when calculating the costs incurred by the operator to whom universal services are imposed so far has shown that such intangible benefits have been considerably overestimated, and are far from reality. In the light of this experience, and in particular in the case of broadband services, the notion of intangible benefits should be reconsidered in its entirety, since the identity between the access network operator and service provider is not univocal. Given that the designation mechanism establishes that a candidate operator should estimate "ex ante" (at the time of the designation) the net cost of provision, the issue of intangible benefits assumes great importance for the sustainability of an offer.
- Finally, with regard to the cross-border regulatory cooperation within the scope of Art. 28(2) of the USD, we note that fraud is an area of major concern that should be considered in-depth. Special attention should be paid to cross border practices and on how to better coordinate NRAs efforts in this field.