Body of European Regulators
for Electronic Communications

BEREC

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BEREC Report on the outcome of the public consultation on the draft Work Programme for 2016

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1. Introduction

During its 24th plenary meeting (1-2 October 2015, Riga) BEREC approved for public consultation the document Draft BEREC Work Programme 2016. The role of the public consultation is to increase transparency and to provide BEREC with valuable feedback from all interested parties.

In accordance with the BEREC's policy on public consultations, BEREC publishes a report summarising how stakeholders' views have been taken into account. In addition, BEREC also publishes all individual contributions on its website, taking into account stakeholders' requests for confidentiality. The public consultation was open from 2 October to 30 October 2015.

BEREC also held a public hearing on the BEREC Work Programme 2016 on 15 October 2015 organised within the 3rd BEREC Stakeholder Forum Meeting. The 3rd BEREC Stakeholder Forum Meeting was open for participation to all interested parties.

This document summarises the responses received to the public consultation and presents BEREC's position with regard to suggestions and proposals put forward in those responses, as relevant. In total 14 responses were received from the following stakeholders: ZTE, NGI, FTHH Council, ECTA, C² Coalition, Cable Europe, ETNO, MVNO Europe, COOP Voce, WIND, BEUC, Tele2, INTUG and GSMA.

Generally we can say from the reactions and comments by stakeholders that the topics chosen for the Work Programme 2016 are relevant. In some cases suggestions for additional items have been made. However, some of them are covered already in other parts of the Work Programme 2016, others are outside the scope of BEREC's remit. Where no suggestions have been made, the reflections of the stakeholders are briefly summarized to show the relevance of the topic, especially for those items that sparked the most interest (among them NGA challenges, oligopolies, OTT, NN, and revision of the USO). In those cases stakeholders often simply repeat what they have said in the public consultations (e.g. on the Oligopoly Report and the OTT Report) or put down their general views. They are not commented in this moment as this relates to the future work to be done by BEREC on the topics next year.

2. Wholesale Access Products

In promoting competition and investment FTTH Council asked BEREC to recognise the trade-offs between the different forms of regulated access granted and stress the importance of a thorough and effective implementation of the Cost Reduction Directive and other, further cost reduction measures. This has been dealt with the deliverable of a CDR workshop (TOP 5).

MVNO Europe suggested that increasing attention is warranted to wholesale mobile inputs since the draft WP2016 seems rather focused on wholesale fixed inputs. MVNO Europe requested BEREC's particular additional attention to: (i) the wholesale mobile inputs needed to supply the retail cluster market of domestic voice/sms/data, (ii) the wholesale mobile inputs needed to supply the retail cluster of domestic and international roaming services, (iii) the wholesale market situation for mobile/wireless data-led downstream offers.

MVNO Europe: mobile wholesale access products: require what was formerly M15.

2.1. Common Position on layer 2 wholesale access products (WP 1.1.)

ECTA welcomed the work developed so far on Layer 2 Wholesale access products (L2 WAPs) and the effort made by BEREC to collect and systematise the regulatory rationale developed by those NRAs which have mandated L2 WAPs.

ECTA believes that this exercise can help clarify what constitutes best practice regarding the justification for mandating L2 WAP, the technical implementation of L2 WAP, and aspects such as points of hand-over.

ECTA cautioned BEREC against the acceptance and potential spread of 'bad practice', in particular in terms of NRAs being unduly tolerant of inadequate technical specifications. ECTA urged BEREC to revise this text in order to ensure that the WP2016 in no way indirectly suggests that physical access could be considered unviable or become less relevant in an NGA setting.

Tele2 looks forward to the work of BEREC Common Position on layer 2 wholesale products. Tele2 expressed the view that the Common Position should allow for viable VULA access to incumbent infrastructure, but also continue to allow for MDF access, at least for as long as incumbents are delivering these services to themselves.

ECTA/Tele2 suggestions were taken up by BEREC and the relevant part of the WP was deleted.

2.2. Enabling Internet of Things (WP 1.3.)

All respondents considered the topic relevant, some are in favour of a more harmonized approach pointing out the importance of such an approach for enabling cross-border services. GSMA welcomed the work BEREC on the Internet of Things and in particular on Machine to Machine communication. GSMA stressed that it is important that BEREC recognizes the truly global nature of these services. IoT and M2M users most often require global distribution coverage and managed platforms for economic viability and the provision of consistent global services. In light of its different nature, GSMA urged BEREC to focus on encouraging the development, growth and investment in this sector all the while making sure all stakeholders and key players are involved in the process.

INTUG expressed the view that Machine to Machine (M2M) applications especially using mobile devices demand more flexible approaches to connectivity, for example with the management of SIM cards and identifiers, and with charges for cross-border connectivity. Therefore INTUG urged BEREC to give priority to this area.

2.3. Migration to all-IP in the access network (WP 1.4.)

ECTA recalled that maintaining competition in the transition to all IP be should be made a key priority in this work stream. In the transition to all IP, access takers must be able to continue to avail themselves of fit for purpose wholesale access products. Wholesale demand will 'migrate' to an all IP context because the all IP networks will be predominantly controlled by the same (SMP) operators who owned the PSTN network. Hence ECTA considers the need to make the safeguarding of competition a clear element and priority of this work stream. ECTA asks for assurance that migration is done in a way that competition is preserved (regulatory safeguards).

2.4. Current developments in IP interconnection markets and related issues (WP 1.5.)

Cable Europe supported BEREC's initiative to launch an expert workshop with the OECD on IP-interconnection. For the time being, Cable Europe considered that IP interconnection

issues like peering agreements are well handled by the market. No situation has demonstrated the need for ex ante regulation. It is important to leave to the market the possibility to develop new business models without regulatory sword that would block investment. Any competition failure can be remedied by competition law.

2.5. Monitoring implementation of the BEREC revised Common Positions - 3rd phase (WP 1.6.)

ECTA welcomed BEREC's upcoming report on the results of the monitoring exercises yet we urge BEREC to go further and reinforce actions aimed at ensuring the consistent availability of key wholesale access products throughout the EU. Furthermore ECTA stressed that BEREC should include in its Work Programme 2016 a deliverable which would go beyond the best practice tables on wholesale access which currently exist.

BEREC confirms that this request is already partly covered with the part of 1.1. of the draft Work Programme 2016.

3. Challenges and drivers of NGA rollout and infrastructure competition (WP 2.)

This topic caused great interest and showed that it is highly relevant in todays' circumstances. NGI suggested that the necessity of the FWA networks to ensure a direct visibility between the radio mast, where the BTS is arranged, and the small antenna placed in the customer (residential or business) location allows this technology to be especially appropriate for sub-urban and rural areas. Therefore NGI stressed the above-mentioned feature and the different deployment costs outline the complementarity between fixed wireless and optical fiber networks. NGI urged BEREC to consider this complementarity in order to boost that infrastructure mix necessary to ensure a favourable climate for the investment. BEREC considers it as a carry-over and will continue to work started already.

4. Oligopolies (WP 3.)

A number of stakeholders repeated what they have said in their submissions to the public consultation on the Oligopoly Report. This shows that the topic is still relevant. Some

respondents point out a link to OTT providers. The topic at the same time caused some negative reactions. Especially Cable Europe and GSMA were "allergic" to the topic. ETNO is against broadening the regulatory approach.

4.1. Input to the Review with regard to oligopolies (WP 3.1.)

With regard to this specific workstream, ETNO reiterated its concerns and remarks, already expressed in its response to the public consultation on BEREC's draft report on oligopolies. ETNO stressed that broadening the scope of regulatory intervention, in addition to enhancing complexity, would be both ineffective and inefficient and would send a wrong message to investors. In fact, it could well risk hampering investment incentives.

4.2. BEREC input on mergers & acquisitions (WP 3.2.)

ETNO took note on this project to be launched by BEREC. In this context, ETNO encouraged the Body of Regulators to assess the impacts of market concentration on efficiency and investment, by adopting an approach based on dynamic rather than static efficiencies. ETNO is reluctant to deal with the topic and suggests to also reflect the link to investments made after a merger.

GSMA supported with great interest BEREC's intention to commission a fact finding study on market developments post-mergers. GSMA encouraged BEREC to analyse the fullest possible dataset of relevant indicators of consumer outcomes over the longest time period possible. Similar studies by GSMA found that mergers can ultimately lead to consumer benefits such as lower unit prices, enhanced quality of service and greater coverage in remote communities.

5. Input to the Review with regard to spectrum (WP 4.)

ETNO argued that European institutions should promote policy measures which favor and enhance harmonization in the assignment of spectrum, enabling economies of scale. Furthermore 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 would be beneficial.

INTUG asked BEREC to focus on improving the level of spectrum harmonization, which is essential for optimizing international services, and should seek to prevent licensing from being used as a mechanism for governments to tax the industry and its customers.

GSMA urged BEREC to continue to work closely with the RSPG on spectrum issues in Europe and coordinate their efforts. In particular, GSMA commended the work on best practice for spectrum policy on the Telecoms Framework Review so as to foster agreement between all ministries and regulators in the EU ahead of the work in Council.

6. Implementation of the Cost Reduction Directive (WP 5.)

NGI considered important to remark that the implementation of the Directive should be in line with the technological neutrality principle, especially for those technologies able to ensure connectivity services of 30 Mbps in download or more. They are also in favour of free access to any kind of infrastructure.

7. Preparation of the Review (WP 6.)

BEREC noted that no respondent questioned the role of BEREC to provide input to the Review. BEUC expressed the view that as BEREC prepares its detailed input into the review of the regulatory framework, it is of utmost importance that it strongly protects and strengthens these pro-competitive principles with a view to ensure that the reviewed framework continues to foster competition to the benefit of consumers.

8. Economic impact of OTTs/CAPs on market definition and competition (WP 7.)

Majority of respondents repeated their comments made in the public consultation on the OTT Report. Therefore BEREC considers the relevance of the topic continues to stay highly significant.

9. International Roaming (WP 8.)

A number of respondents questioned the use of the term "Roaming Regulation IV". All stakeholders expressed the view to be involved in the roaming discussions in the near future.

10. Input to the review of the Termination Rates Recommendation (WP 10.)

MVNO Europe advocated full harmonisation of MTRs as well as SMS MT. In addition that if the 2009 EC Recommendation were to be amended or converted into an EC Decision (Art 19 Framework Directive) containing EU-wide binding wholesale call termination rates in 2016, it would consider very peculiar not to have wholesale roaming charges (voice/sms/data) fully harmonised at the same time.

According to Tele2, the review of the Termination Rates Recommendation should address the differences that currently exist between countries that have implemented the Recommendation and those that have not. The current situation creates an imbalance between countries and also affects mobile roaming.

11. Net Neutrality (WP 11.)

Net Neutrality topic naturally caused great interest and all respondents agree on the very big importance for this item. Similarly to the case of Roaming, stakeholders all expressed their commitment to be involved in the future discussions. According to BEUC the Telecoms Single Market Regulation lays down the general rules that should, in theory, protect the openness and neutrality of the Internet in Europe. Yet many of these rules are broad in their scope and insufficiently clear. BEUC stressed that the Guidelines that BEREC is mandated to develop are therefore of crucial importance. Furthermore BEUC also suggested that Net Neutrality issues 'beyond the last mile' need to be addressed.

11.1. Regulatory assessment of QoS in the context of net neutrality (WP 11.2)

Relative importance of topic (not too many respondents), but different views on how to address it.

12. Input to the Review with regard to the revision of the Universal Service Directive (WP 12.)

The USO topic caused great interest, at the same time a number of stakeholders expressed reservations against the inclusion of BB in the scope of the USO. ETNO member companies continued 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 Universal Service providers. ETNO also suggested that the cost of Universal Service should not anymore be supported by the electronic communications sector. As Universal Service is a social goal and benefits society as a whole, it is logical that it is supported by society as a whole through public funding.

13. Accessibility Workshop (WP 13.)

Tele2 welcomed the workshop on accessibility. Tele2 requested that the workshop not only focus on what providers of electronic communication services can do. Fixed and mobile data networks have expanded the different ways people can communicate and have made communication more accessible. However services, such as emergency services, but also interaction with government agencies, doctors etc. have not kept pace, offering often only the traditional methods of telephony and face-to-face interaction, instead of communication via apps, videoconferencing or chat.

14. Benchmarks (WP 14.)

WIND welcomed the BEREC yearly Benchmark Report on MTR, FTR and SMS, at the same time encouraged BEREC to extend the information gathered in these reports, in particular considering at least the last 10 years. WIND suggested including also the indication of countries that regulate MTR/FTR prices only for call originated by customer of EU/EEA operators. Furthermore WIND proposes to introduce new benchmarks on USO.

Regarding bundling (WP 14.3.) Cable Europe expressed the view that the new business dynamics, innovative technologies and the benefits for the consumers will have to be carefully addressed by regulators. Ample room should be left to competition law to examine bundling practices in the telecoms sector.

15. Other topics

FTTH Council stressed that certain pan-European issues such as transparency measures in terms of the network performance remain an issue today. While some have tested networks deliver speeds according to advertised speeds but others give persistent underperformance. FTTH Council suggested that a more systematic and Europe-wide assessment would be a

good complement to the current proposals on consumer empowerment. BEREC notes that this issue will be covered under the WP item 11.2.

The C² Coalition remarked that numbering has been an element that has been missing from the BEREC's work programme for the past years, and would encourage the BEREC and National Regulatory Authorities (NRAs) to focus more of their attention to this area, especially in light of the migration to an all-IP environment, an issue which does appear on the BEREC Work Programme. Though C² Coalition realised that numbering is not necessarily a BEREC core competence, it noted that BEREC does look at the flaws/shortcomings of numbering in the context of IoT/M2M. These shortcomings could hence be looked at more broadly.

Tele2 requested that BEREC also researches the difficulties faced when switching telecommunication providers, particularly by small and medium enterprises. According to Tele2 SMEs often are not protected in the same way as consumers, but do not have the negotiating power of large enterprises. As a result SMEs find themselves locked-in or with significant challenges when they want to change operators. BEREC notes that currently there is no need for further work in this area given the high priority items of providing input to the Framework Review and the substantial work done on this issue by BEREC in recent years.

According to INTUG business users have become increasingly concerned about the difficulty and the cost exposure associated with managing their software licence assets. This area has become a major source of revenue for software suppliers, some of whom derive 25% of their income from customer audits, which are hard to challenge. INTUG has produced a proposed Code of Conduct, which could be made available to BEREC. This has become more significant as an issue because of the use of cloud-based applications and access by third parties using mobile devices, where licence allocation is hard to administer. This issue is however outside of BEREC's scope.

GSMA mentioned that given the convergence of communications services and the increase in competition between telecom operators and other providers, sector-specific service regulation must be reviewed in parallel with general service regulation, in order to ensure consistent consumer-protection standards. This includes the need to carry out an overall assessment of the current definitions and requirements, encompassing all digital products and services regardless of the provider and of the way by which they are provided to the customer.

Therefore GSMA recommends that BEREC look at consumer protection issues from a more horizontal perspective in order to advise the European Commission to use the current extensive overhaul of legislation as a chance to come up with modernised, simplified and

effective rules that shall apply horizontally to all services serving communications needs, irrespective of the technology, the business model and the provider. These issues are however outside of BEREC's scope.