30th Ordinary Plenary Meeting of the Board of Regulators

Hosted by French <u>Autorité de Régulation des Communications Electroniques et des Postes</u> (Arcep)

Conclusions

Chair: Sébastien Soriano

President
French Autorité de Régulation
des Communications Electroniques et des Postes (Arcep)

23 - 24 February 2017 (Paris, France)

Contents

Annex – List of BoR documents approved for publication

Main Results of the 30th Meeting of the BEREC Board of Regulators

The BEREC Board of Regulators (BoR) held its 30th ordinary plenary meeting on 23-24 February 2017 in Paris, France.

During the meeting the BoR discussed and/or approved the following documents:

1. Documents approved for publication

1.1 As 'A' items:

- BoR Decision on the appointment of a new Co-Chair of the Market and Economic Analysis Expert Working Group

1.2 As regular items:

- Summary report on the outcomes of the Workshop on IoT technologies and their impact on regulation;

- BEREC update survey on the implementation and application of the universal service provisions – a synthesis of the results;

2. Documents approved for internal use

2.1 As regular items:

- BEREC Report on the implementation of symmetric regulation: description of existing practices and consideration of future challenges

3. Discussion on topics of strategic importance

During the plenary meeting BoR discussed the draft public consultation document on the BEREC Mid-term strategy 2018-2020 and decided to approve the document for public consultation. BoR members also discussed the ongoing review of the telecommunications regulatory framework. Another topic was the exchange of experience between NRAs on implementation of the Net Neutrality rules.

4. Documents submitted for information and/or consideration

The BoR took note of the information provided in the following Reports:

- Information on the electronic voting procedures since the last plenary meeting;

- Information on planned electronic voting procedures;

- 2017 BEREC Work Programme status update;

- 11th Assessment Report on Article 7/7a Phase II cases;

- PRD on BEREC Mid-term strategy 2018-2020;

5. Oral up-date on important topics

The BoR was briefed in relation to several other important topics, as follows:

- Follow-up of the WACC study

- Draft BEREC Guidelines on Regulation (EU) No. 531/2012 as amended by Regulation (EU) No. 2120/2015 (Excluding Articles 3, 4 and 5 on wholesale access and separate sale of services);

- Draft 18th International Roaming BEREC Benchmark Data Report;

- BEREC International activities.

6.   Next meeting

The next ordinary meeting of the BoR will take place on **1 and 2 June 2017 in Lisbon (Portugal)** and will be hosted by the Autoridade Nacional de Comunicações (Portugal).

Introduction and participation

The BEREC Board of Regulators (BoR) held its 30th ordinary plenary meeting on 23-24 February 2017 in Paris, France.

The meeting was attended by the Heads and/or high-level representatives of the NRAs established in each EU Member State which have primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services. Heads and high-level representatives of the NRAs from the EFTA States and the States that are candidates for accession to the EU, the Commission and the EFTA Surveillance Authority also took part in the meeting.

List of documents

The list of documents approved by the meeting for publication in compliance with the BEREC Regulation and the BoR transparency rules is presented in Annex to the Conclusions.

Items discussed

A short overview of the information presented under each agenda item, a summary record of the proceedings and a record of the conclusions reached by the BoR under each agenda item is each presented below.

1.   Opening of the meeting and adoption of the agenda

Document(s)	BoR (17) 31 Draft BEREC Agenda
Introduction by	BEREC Chair (ARCEP)
Information presented	The BEREC Chair opened the meeting and presented the draft agenda for approval by the BoR. The BoR was invited to suggest any additional issues to be raised or presented under "Any other business" (AOB).
	One NRA requested to add a brief update on the work on the BEREC Work Programme 2018.
Conclusions	Agenda was approved with an additional topic dedicated to the BEREC Work Programme 2018.

2.   List of 'A' items

Document(s)	Approval for publication:
	BoR (17) 32 Draft BoR Decision on the appointment of a new Co-Chair of the Market and Economic Analysis Expert Working Group
Introduction by	BEREC Chair (ARCEP)
Information presented	The BEREC Chair presented the list of "A" items as indicated above.
	He informed the BoR that the call for a replacement of the MEA EWG Co-Chair, who had resigned from her position, had been launched by the BEREC Chair on 27 January 2017 in accordance with the article 11 of the Rules of Procedures of the Board of Regulators. Based on the assessment of the candidates the draft decision of the Board of Regulators on the

	appointment of a new Co-Chair of the Market and Economic Analysis Expert Working Group was submitted to the BoR for approval for publication.
Conclusions	The document listed as an 'A' item was approved.

3. Information from Chair

Document(s)	BEREC BoR (17) 33 Miniboard EWG clusters and division of tasks
Introduction by	BEREC Chair (ARCEP)
Information presented	The BEREC Chair informed the meeting on his recent activities as BEREC Chair and about key meetings with EU Institutions and stakeholders: - CES Conference on 5-8 January in Las Vegas (participation in the IoT roundtable); - Meeting with BEUC on 16 January in Brussels; - Meeting with Director General of DG Connect, Mr Roberto Viola on 16 January in Brussels; - MLex-ETNO Regulatory Summit on 25 January in Brussels; - ITRE Committee public hearing on 26 January in Brussels; Next meetings: - GSMA Mobile World Congress which will take place on 27 February – 1 March in Barcelona; - Internet Engineering Task Force meeting on 26-31 March, Chicago, USA. In addition, the BEREC Chair informed the BoR on the split of responsibilities between the BEREC Vice-Chairs which has been decided during the Miniboard meeting in Nice on 19 January 2017.
Conclusions	The BoR took note of the information.

4. Information from the BEREC Office

Document(s)	BoR (17) 34 Information on the electronic voting procedures since the last plenary meeting BoR (17) 35 Information on planned electronic voting procedures BoR (17) 36 2017 BEREC Work Programme status update BoR (17) 37 11th Assessment Report on Article 7/7a Phase II cases
Introduction by	BEREC Office Representatives
Information presented	The BEREC Office submitted for information the updated contact lists of the BEREC Heads, CN members and the BEREC Office, the outcome of the recent electronic voting procedures, the upcoming e-clearance procedures and information on the implementation status of the 2017 BEREC Work Programme. In addition, the BEREC Office also presented a summary of the recent Article 7/7a phase II case. According to the current Internal Guidelines for the elaboration of BEREC Opinions in Article 7 and 7a Phase II cases (BoR (16) 225), BEREC Office has to prepare an assessment report after the completion of the work of BEREC Phase II Expert Working Groups in order to identify possible weaknesses, points for improvement and the obstacles found. The present report summarizes the Phase II investigations opened under Art 7/7a FD in 2016.

	The BEREC Office representative briefed the BoR about the progress made on the major projects that are currently underway, notably on the Net Neutrality study, the study on the Effects of Mergers and Acquisitions, Information Sharing Portal, BEREC regulatory training for NRAs, the online platform for public consultation (a short demo of the new tool was presented under the item 6 of the BoR agenda) and the Annual Activity Report 2016.
Conclusions	The BoR took note of the information.

5. Information from the Commission

Document(s)	No documents
Introduction by	Commission Representative
Information presented	The EC representative informed the BoR about the following issues:

The EC representative informed the BoR about the following issues:

Geo-blocking Regulation

Inter-institutional agreement on Geo-blocking was reached.

The proposal for a Geo-blocking Regulation would prohibit traders from discriminating between customers (both consumers and other traders) buying online and offline for reasons related to their nationality, or place of residence or establishment. Provisions of the new regulation will enter into force 9 months after adoption. There will be no need for consumers to change their contracts.

Roaming wholesale regulation

The representative of the EC noted that the third trialogue held on 1 February led to a political agreement on wholesale caps for data, without recourse to a derogation mechanism. The co-legislators now need to ensure formal adoption in time for the entry into force of RLAH on 15 June 2017. In addition, he presented the agreed price caps for data:

- a step by step reduction over 5 years for data caps decreasing from €7.7 per GB (as of 15 June 2017) to €6 per GB (as of 1 January 2018), €4.5 per GB (as of 1 January 2019), €3.5 per GB (as of 1 January 2020), €3 per GB (as of 1 January 2021) and €2.5 per GB (as of 1 January 2022).

Implementing Regulation on Fair Use Policy and Sustainability

On 15 December 2016, the Commission adopted an Implementing Regulation on Fair Use Policy and Sustainability. The approved FUP introduces multiple safeguards for operators to be able to provide Roam-like-at-home in a sustainable manner. The Commission services consider effective implementation of the Regulation a priority and will therefore promote clarity about the new rules, in particular through its continued engagement in the BEREC EWG.

European Electronic Communication Code/ WiFi for EU

The EC representative informed the BoR about the joint declaration signed between legislators (Council, EP and EC) on 13 December 2016 which placed European Electronic Communications Code (EECC) directive among the top legislative priorities of the EU. Regarding the WiFi for Europe he informed that the Council has adopted a partial general approach and the EP needs to finalise its examination of the proposal in order to start trialogues.

Decision on the 470 -790 MHz (UHF Decision)

The EC representative informed the BoR that the European Parliament and the Council reached an informal agreement in December 2016 to assign the 694–790 (700) MHz band to wireless broadband services by 30 June 2020 with a possible derogation for two years, applicable in case of *"duly justified"* reasons.

E-privacy/Communication on Building a European Data Economy

The representative of the EC informed the BoR that the EC has proposed a reform of the privacy rules for electronic communications. The EC adopted a new proposal on e-Privacy Regulation on 10 January 2017 to-gether with the Communication on building a European data economy. The latter deals with the sharing, the ownership, portability and liability of data and *inter alia* proposes to address unjustified restrictions to the free move-ment of data across borders, as well as several legal uncertainties, and prepares the ground for next steps. Public consultation on the policy measures on the policy measures with respect to sharing, ownership, port-ability and liability of data proposed in the Building a European Data Econ-omy will run until 26 April 2017. He then informed on a number of important Letters of intent which the EC intents to sign in this respect at the occasion of the Digital day in Rome on 23 March 2017.

The new e-Privacy proposal is extending the scope of current rules to all electronic communication providers. It introduces maximum harmonisa-tion. Privacy rules will also apply to new players providing electronic com-munications services (OTT) which is in line with the definitions in the pro-posed Code. This will ensure that these services guarantee the same level of confidentiality of communications as traditional telecoms operators. New rules would also aim to create new possibilities to process communications data and reinforce trust and security. The rules concerning cookies have been simplified. The proposed regulation allocates competences for over-seeing the various mechanism of the regulation to the Art. 29 Working Party of the Data Protection Authorities in order to reach maximum coher-ence with the General Data Protection Regulation.

Cybersecurity

The EC representative informed the BoR that the EC has launched the REFIT evaluation of ENISA including its mandate. In view of the new challenges in cyber security, the EC plans to present a new legislative measure by the end of 2017, which will not only include a proposal for new cybersecurity legislation, but also other related elements.

Regarding the implementation of the NIS Directive the EC representative informed the BoR about the progress made. A cooperation group, supporting strategic cooperation and the exchange of information on cyber-attacks between Member States has been set up. The Commission adopted on 1 February 2017 an implementing act laying down the procedural arrangements for the functioning of the cooperation group.

Digital Economy and Society Index (DESI)

He noted that the EC is planning to publish The Digital Economy and Society Index (DESI) on 3 March 2017. The country reports will be published in May 2017, following the prior consultations with the Member States.

Conclusions	The BoR took note of the information.

6. BEREC Mid-term Strategy 2018-2020

Document(s)	BoR (17) 10 PRD on BEREC Mid-term strategy 2018-2020 (for information) BoR (17) 38 Draft Public Consultation Document on the BEREC Mid-term strategy 2018-2020
Introduction by	Chair of Ad hoc EWG on BEREC Mid-term Strategy 2018-2020 (PTS)
Information pre-sented	The Body of European Regulators for Electronic Communications (BE-REC) was established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009. BEREC commenced its activities in January 2010. In the course of 2011 it became able to fulfil all its functions under the Framework. Since that time, BEREC has adopted two Mid-term Strategies. The first was published on 23 February 2012, for the period 2012-2015. The second, published on 5 December 2014, presents the strategic outlook for the subsequent 3-year period 2015-2017. It was agreed that the mid-term strategy will be reviewed periodically; therefore, as the current strategy will expire on 31 December 2017, work on its update has started so that it is adopted when the 2018 Work programme is adopted for public consultation. An ad hoc EWG on BEREC Mid-term Strategy 2018-2020 has been set up for this purpose. The PRD of the group had been approved by the BEREC Chair and was presented to the BoR for information. The ad hoc EWG Chair informed the BoR on the planned work on the draft Mid-term strategy 2018-2020, presented the schedule and initial discussions related to it. The EWG Chair informed the BoR that the review of the medium-term strategy would follow a two-step process of stakeholder consultations: 1. The first consultation in the early stage of the process consists of broad and open questions to stakeholders on major market developments and how the work of BEREC is perceived. The first consultation is expected to be launched on 8 March 2017. 2. The second consultation on the draft strategy review will be launched at P2. To conduct these two public consultations, BEREC will take advantage of the new online consultation platform tool which had been deployed by the BEREC Office and was presented to the BoR by the BEREC Office representative. The ad hoc EWG Chair presented to the BoR for discussion and approval a draft Public Consultation Document on the BEREC Mid-term strategy 2018-2020. The document consists of three parts: the cover note and two sections – the first on market end technological developments, the second on how BEREC works and engages with stakeholders. Two latter sections contain draft questions to be addressed by stakeholders.

	Answers received in the first public consultation will serve as an input to the ad hoc EWG work. The public consultation is to be launched on 8 March 2017 during public debriefing and will be open until 5 April 2017.
	The second public consultation will be on the draft BEREC Mid-term strategy 2018-2020 and will be launched after P2 with a view to adoption in P3.
Conclusions	The first consultation document on the BEREC Mid-term strategy 2018-2020 was adopted for public consultation.

7. Regulatory Accounting – Oral update on the follow-up of the WACC study

Document(s)	No document
Introduction by	RA EWG Co-Chair (BNetzA)
Information presented	The workstream "Follow-up on the WACC study of the Commission" is a work in progress intended to look at The Brattle Report published on 18 July 2016 and intended to assist the Commission in preparation of guidance regarding WACC calculation methodologies (to be) used by NRAs. The RA EWG Co-Chair informed the BoR on recent developments related to the work on the WACC and presented information on the EWG's analysis at this stage. She outlined the main outcomes of the analysis and recalled the purpose of the WACC for regulation.
	The EWG Co-Chair reminded the BoR that, originally, it was planned to submit a draft Report for approval for publication to the BoR at P1. However, in the light of the information from the EC that it is going to launch a public consultation on WACC calculation methodologies, the BoR concluded that the recent work of the EWG will be continued with a view to using the analysis as a BEREC input into the EC public consultation.
Conclusions	The BoR took note of the information and approved the next steps as proposed by the EWG Co-Chair.

8. Remedies

Document(s)	BoR (17) 39 Draft BEREC Report on the implementation of symmetric regulation: description of existing practices and consideration of future challenges
Introduction by	REM EWG Co-Chair (Ofcom)
Information presented	The EWG Co-chair began by emphasising that the work will feed into the work of RF EWG in the context of the regulatory framework review.
	He presented the work of the EWG and the main results of its analysis.
	The report is descriptive and does not seek to be normative – it sets out NRA experiences regarding symmetric regulation with a view to exploring and sharing best practices. It includes an examination of the rationale of NRAs for their symmetric regulation policy and an assessment of outcomes that NRAs attribute to symmetric regulation but it does not make any recommendations on policy matters.
Conclusions	The document was approved for internal use.

9. Roaming

9.1 Oral update on Draft BEREC Guidelines on Regulation (EU) No. 531/2012 as amended by Regulation (EU) No. 2120/2015 (Excluding Articles 3, 4 and 5 on wholesale access and separate sale of services)

Document(s)	No document
Introduction by	Roaming/mobile EWG Co-Chair (RTR)
Information presented	EU Regulation 2015/2120, adopted by the European Parliament on 27 October 2015 and published in the Official Journal of 26 November 2015 (TSM Regulation), included amendments to the Roaming Regulation 531/2012, and has been supplemented by the Commission Implementing Regulation of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges.
	The BEREC Guidelines present an update of the former BEREC Guidelines on the third Roaming Regulation excluding Article 3, 4 and 5. This is considered necessary as the third Roaming Regulation amended by the TSM Regulation incorporates substantial changes to the existing provisions and leads to significant changes in the current roaming regime.
	The BoR was informed by the EWG Co-Chair on the progress made so far by the EWG on the preparation of the final document and next steps to finalise the Guidelines. The document will be approved in e-clearance procedure, which is foreseen in the second half of March.
Conclusions	The BoR took note of the information.

9.2 Oral update on the draft 18th International Roaming BEREC Benchmark Data Report

Document(s)	No document
Introduction by	Roaming EWG Co-Chair (RTR)
Information presented	The BEREC Benchmark Report on IR presents the results of the 18th round of data collection on European international roaming services. The Report will cover the period from 1 April 2016 to 30 September 2016.
	The EWG Co-Chair informed the BoR on the progress made by the EWG in their work and further steps to finalise the Report. She reported that the data collection exercise has to be revised to finalise the report, thus the e-clearance procedure will be launched as soon as data gathered are consistent, probably at the end of March.
Conclusions	The BoR took note of the information.

10. Regulatory Framework – Oral up-date on the ongoing review of the telecommunications regulatory framework

Document(s)	No document
Introduction by	RF EWG Co-Chairs (AGCOM/NMHH)
Information presented	The European Commission has launched a review of the EU regulatory framework for electronic communications for the first time since 2009. A draft Directive establishing a European Electronic Communications Code (EECC) and a proposal for a new Regulation on the Body of European

	Regulators of Electronic Communications were published on 14 September 2016.
	The Co-Chairs of the RF EWG informed the BoR about the progress made by the EWG in the analysis of the draft European Electronic Communication Code, recent developments on the regulatory framework review and meetings related to the ongoing review in which the EWG Co-Chairs participated.
Conclusions	The BoR took note of the information.

11. Implementation of Net Neutrality rules – exchange of experiences

Document(s)	No document
Introduction by	Heads of NRAs
Information presented	Two members of the BoR presented their national cases related to the implementation of the Net Neutrality rules.
Conclusions	The BoR took note of the information.

12. Next Generation Networks –Outcomes of the BEREC Workshop on IoT technologies and their impact on regulation and publication of its proceedings.

Document(s)	BoR (17) 40 Draft Summary report on the outcomes of the Workshop on IoT technologies and their impact on regulation
Introduction by	NGN EWG Co-Chair (BNetzA)
Background information	The BEREC held an experts workshop dedicated to the topic "Enabling the Internet of Things (IoT)" on 1st February 2017 in Brussels. The EWG Co-Chair reported that stakeholders discussed the regulatory implications and solutions that might be required to ensure a large-scale and sustainable IoT roll-out that delivers significant benefits to citizens and consumers across several industry sectors. The workshop was attended by 100 participants. The video record of the workshop is available on BEREC YouTube channel.
	The workshop was split into 4 sessions. Session one focused on privacy, network security and consumers' rights. Session two was dedicated to diversity of business models and interoperability. Session three discussed the issue of scare resources (number and frequencies). The last session focused on IoT industry use cases (energy and transportation).
Conclusions	The document was approved for publication.

13. End-users

Document(s)	BoR (17) 41 Draft BEREC update survey on the implementation and application of the universal service provisions – a synthesis of the results
Introduction by	End-users EWG Co-Chair (ANCOM)
Background information	According to Article 15 of the Universal Service Directive (USD), the Commission has a legal obligation to periodically review the scope of universal service in light of social, economic and technological developments.

	The European Commission started working on potential revisions to the Universal Service provisions in 2014. At this time BEREC launched a questionnaire on behalf of the European Commission and, based on the results, adopted an internal report on the implementation and application of the universal service provisions among NRAs.
	In September 2016, the European Commission's proposals included a review of the universal service provisions.
	The draft BEREC document is a synthesis of the main results on the implementation and application of Universal Service provisions and is an update of the 2014 internal report.
	The End-User EWG Chair presented to the BoR the main points emerging from the analysis.
	The document covers issues such as the designation of Universal Service Providers, assessment of net costs, compensation mechanisms, assessment of unfair burden, assessment of the impact of the Universal Service provisions upon competitive outcomes, and measures NRAs have implemented on the affordability aspect of universal service obligations, such as retail price caps.
Conclusions	The document was approved for publication.

14. BEREC international cooperation

Document(s)	No documents
Introduction by	Representatives of BEREC Vice-Chair responsible for international cooperation (CNMC) and BEREC Vice-Chair responsible for BEREC Chair and Vice-Chairs study trip (Ofcom)
Information presented	The representative of the BEREC Vice-Chair responsible for international cooperation briefed the BoR in relation to forthcoming BEREC international activities.
Conclusions	The BoR took note of the information.

15. AOB

a. BEREC Work Programme 2018 and conclusions of meeting

Document(s)	No documents
Introduction by	BEREC Chair 2018 and Vice-Chair 2017 (RTR)
Information presented	The BEREC Chair 2018 informed the BoR on the work schedule of the BEREC Work Programme 2018. The same procedure as in previous years will be followed. The first step is to launch a call for inputs to all stakeholders which is foreseen for March 2017.
	In April inputs gathered from the stakeholders will be prioritised, the first draft BEREC Work Programme 2018 should be ready for P3 for adoption for public consultation. Then it will be presented at the Stakeholder Forum, finalised and adopted at P4.
Conclusions	To launch a call for inputs to the draft BEREC Work Programme 2018

b. Information on the next plenary meetings (31 May - 2 June 2017, Cascais)

Document(s)	No documents
Introduction by	Representative of the meeting host (ANACOM)
Information presented	A representative of the meeting host, ANACOM provided information on the logistics for the meeting.
Conclusions	The BoR took note of the information.