

Draft

BEREC MEDIUM TERM STRATEGY OUTLOOK

14 December 2011

1. Background

BEREC's task is to promote the consistent application of the regulatory framework and thereby contribute to the development of the internal market for electronic communications. In doing so, BEREC aims to play its part in the promotion of growth and innovation in the EU. BEREC can also provide considerable expertise and professional advice on European policy initiatives and related debates in the electronic communications sector.

To do so, members of BEREC recognise that the development and implementation of medium term strategic goals will help to further enhance the effectiveness of BEREC in this respect. The members of BEREC therefore have agreed to consult on the following strategy outlook for the coming 3-5 years. The strategy outlook will be subject to regular review.

2. BEREC's mission

The role of BEREC is described in article 2 of the BEREC Regulation:

(a) develop and disseminate among NRAs regulatory best practice, such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework;

(b) on request, provide assistance to NRAs on regulatory issues;

(c) deliver opinions on the draft decisions, recommendations and guidelines of the Commission, referred to in this Regulation, the Framework Directive and the Specific Directives;

(d) issue reports and provide advice, upon a reasoned request of the Commission or on its own initiative, and deliver opinions to the European Parliament and the Council, upon a reasoned request or on its own initiative, on any matter regarding electronic communications within its competence;

(e) on request, assist the European Parliament, the Council, the Commission and the NRAs in relations, discussions and exchanges with third parties; and assist the Commission and NRAs in the dissemination of regulatory best practices to third parties.

Within the scope that the Regulation sets out in its considerations and the main text, BEREC has to deliver its results. The members of BEREC have high ambitions with respect to these tasks. The EU institutions and stakeholders all have high expectations of BEREC's central role in ensuring greater regulatory consistency across Europe, and contributing to the Digital Agenda more widely.

3. Results that matter, on topics that matter

The main focus of BEREC in the medium term will be on its contribution to the realisation of the internal market. The contributions in this area, both upon request from the EU institutions and on its own initiative, will include in particular:

- a. Adopting common regulatory approaches and best practices in areas where differences impede the internal market, and monitoring conformity with those approaches thereafter.
- b. Issuing robust and respected opinions on Article 7 cases.¹
- c. Advising the EU institutions on draft legislation and regulation.

As BEREC wants to deliver results that matter, the output of BEREC will have to deal with the topics that matter to citizens and stakeholders. In this sense, the focus of the work of BEREC will be aligned with the policy priorities of EU institutions in the European electronic communication markets. BEREC therefore takes account of the goals of the Commission's Digital Agenda, in light of the regulatory objectives enshrined in the Framework Directive.

The electronic communications sector has been a dynamic sector for years. We cannot predict future developments in this sector based on past experiences. However, the founding principles of the European Framework since 2002 - economic market analysis, technological neutrality, bringing regulation of this sector closer to competition law - has enabled NRAs individually and as a group, previously within ERG and today as BEREC to adapt to the sector's rapid evolutions. Based on its experience and knowledge, BEREC considers that the following developments will have major consequences for future regulation.

Communication is changing towards **wireless and IP and it is increasingly converged with media services**.

Electronic communications services have a major impact on society, innovation and the overall competitiveness of economies. In this context, mobility and increased bandwidth are fundamental drivers. Nowadays voice, SMS and e-mail continue as traditional means to communicate, while chat and social media become more fashionable. Data traffic in mobile networks is increasing dramatically, while SMS traffic is decreasing. We see a decline of fixed voice minutes and a rise of mobile voice minutes.

¹ Article 7 and article 7a of the amended Framework Directive describe the process in case an NRA takes a market analysis decision. That NRA has to notify its draft decision to the Commission and to BEREC. Both BEREC and the Commission can then provide the NRA with advice. If, in a later stage, a final decision is notified, the Commission may have serious doubts regarding the decision. In such a case, the Commission has to ask BEREC for advice. The Commission has to take the utmost account of that advice.

Traditional telecom industry players are increasingly providing media related services, whereas content providers and Over-The-Top players are challenging conventional business models in the telecom sector.

Networks are converging; until now PSTN/GSM networks have typically been used for voice, television networks for TV, etc. Networks are now being used to transport all services.

The traditional operators are providing both transport and services and will want to preserve and develop their business models. End users should be able to benefit from this technological progress to the maximum extent.

End user focus becomes increasingly important. In the absence of demand for broadband services investment in infrastructures is uncertain. End users expectations must be taken into account as early as possible, while the complexity of converged services requires reinforcement of users' capacity to understand and make the best use of the services. This requires going beyond the classical approach that is predominantly based on promoting competition as such, in particular because it is sometimes very difficult for the end user to optimally choose between different offers. The existence of competitive markets in itself is not enough. Transparency and other users' rights, such as switching and quality of service, are necessary to enable end users (including those with disabilities) to derive the most value out of electronic communication services.

The complexity of technology and services offered require even more ***protection and empowerment of end-users***. In the field of internet security and privacy breaches we find enough examples to state that the biggest victims are not even aware that they are a victim.

Europe is not isolated. These developments happen globally and a more ***global approach*** is needed to promote the interests of EU citizens. Therefore BEREC is increasing its co-operation with FCC, EMERG, Regulatel and the Eastern Partnership. Similarly BEREC aims to co-operate with regulatory platforms in related sectors, such as ENISA, RSPG, EPRA, OECD, ITU and ERG-Post.

Against the background of the aforementioned developments in infrastructure, services and consumer trends, BEREC envisages the following main themes for the coming years.

1. Infrastructural developments: Next generation networks

BEREC will contribute to both the promotion of sustainable investment and competition. Setting out a regulatory framework that provides the right incentives for investment in new (fixed and mobile) high-speed networks that will in turn support innovation in content-rich internet services, is part of this challenge. It also includes addressing the territorial divide and facilitating access to radio spectrum. In this scope, BEREC will develop a coherent view on the effects of next generation

networks (fixed and mobile) and co-operate effectively with the Commission in this area. BEREC will keep its common position on access remedies up to date, in particular in respect of NGA, in which BEREC is trying to strike the correct balance between promoting competition, innovation and investment. BEREC will also address issues related to new business models in a convergent IP environment. In these areas, ensuring access to end users will be the focal point for BEREC.

2. Consumer empowerment: boosting consumer choice and protection

There should be a broader focus on more empowerment of end users. Regulation to promote competition in itself cannot always ensure that end users profit optimally from all possibilities. BEREC will continue to prioritise consumer issues, such as transparency and quality of service, affordability and accessibility which are at the same time an outcome of and a pre-condition for a competitive market. Within this context, BEREC will contribute effectively to the ongoing policy debates on net neutrality and universal service by providing robust and timely analyses and expert advice on market practices and regulatory options. In doing so, BEREC recognises that the new regulatory framework shows an increased emphasis on the protection of end users and the reinforcement of related provisions (including for users with disabilities). Regulation – in cooperation with other bodies - needs to ensure the protection of end users against privacy breaches and internet security issues.

3. Service related developments

BEREC's work on international roaming, net neutrality (e.g. quality of the internet access service), and on special rate, and/or cross-border, services will continue. These topics contain aforementioned aspects as consumer protection, enhancing competition and the creation of the internal market. To contribute usefully to policy debates on sector developments, BEREC will continue to work on common concepts and statistics, in particular the elaboration of better methodologies to ensure comparability of data. Based on this, BEREC will monitor developments, perform and disseminate analyses and briefings on key notions and proposals, participate in public debates and provide reports in response to requests by the EU Institutions or on its own initiative.

The three items that are mentioned above are at the core of BEREC's work programme for the next 3-5 years. BEREC will not restrict itself to just those three areas of works, but they will have priority. These are the topics that BEREC will work on in order to be perform its duties successfully. BEREC will review this focus regularly and will make amendments if (market) developments so require.

4. Quality: the level of ambition

Working on the right topics, BEREC needs to ensure that the results are effective, timely and of the highest possible quality. This is needed to meet the level of regulatory predictability and consistency that BEREC is expected to deliver according to the Framework Directive. The level of ambition is thus defined as follows:

1. Common Positions clearly identifying best practices.
Such positions leave no room for unexplained divergent approaches by individual NRAs that form a barrier to the internal market, while permitting necessary flexibility to take full account of national circumstances. BEREC members will exercise due transparency by explaining these national circumstances. BEREC will also monitor compliance with the Common Positions.
2. Guidelines that recognise greater scope for different approaches;
BEREC will define guidelines, which are somewhat more flexible towards differences in regulatory approaches.
3. Sharing of best practices, information and experiences between NRAs;
BEREC will share information and experiences in order to raise further the quality and consistency of the individual NRAs decisions.
4. Monitoring and Benchmarking exercises;
BEREC will continue to monitor market developments and publish reports on these, in order to provide NRAs as well as policymakers with sound factual input for their decision making. BEREC will publish each monitor with an analysis of the figures, indicating any trends that may be visible.
5. Article 7/7a procedures;
The competence of BEREC to assess market analysis decisions of individual NRA's on the basis of article 7/7a of the Framework Directive, is far-reaching but is essential to the development of the internal market. BEREC and its members have the responsibility to make sure that there are no unjustified different approaches when it comes to market regulation. BEREC has the expertise and means to give meaningful and valuable assessments to enhance the internal market.

An important guarantee of the quality of those outputs will be the application of the regulatory principles of economic analysis and technological neutrality. In addition, BEREC will closely interact with citizens, undertakings and EU institutions. BEREC will have a regular dialogue with the Commission both at a working level and at an executive level, and anticipates ad-hoc requests for work.

BEREC will also pro-actively identify critical EU policy priorities and offer advice (e.g., to the European Parliament and the Council). For an effective interaction with EU institutions and other stakeholders, BEREC needs to have a presence in Brussels in addition to its main quarters in Riga.

5. Efficiency

BEREC is a body, composed of 27 NRAs all of whom operate under heavy budget cuts. This puts a constraint on the available capacity to meet all the ambitions set out in this paper. This is why it is important to efficiently use the means and resources available to BEREC. BEREC has at its disposal the expertise of 27+ NRAs – which according to the Framework directive have to be equipped with sufficient human and financial resources – and the capacity of a fully equipped Office. By agreeing on this medium term strategy BEREC is convinced to effectively contribute to the development and better functioning of the internal market for electronic communications thereby reaching the goals set out in the abovementioned EU policy initiatives.
