



BEREC medium term strategy: ECTA response

We appreciate the opportunity to comment on BEREC's medium term strategy outlook. Setting longer term priorities is helpful in providing regulatory certainty for investors. We agree with the broad direction of the three themes that BEREC has proposed – Next generation networks, consumer empowerment, and service-related developments. However, more should be done to align these themes with the three objectives assigned to national regulators in article 8 of the Framework Directive (in particular those relating to competition and the single market) and with the specific goals and projects listed in the European Digital Agenda (especially reinforcing the single market for telecoms and promoting fast and ultra-fast Internet). The “service developments” theme appears to be the least well elaborated. We suggest the following amendments to improve the coherence and ensure the completeness of BEREC's mid-term strategy.

Multi-annual themes

Next generation networks

We welcome the confirmation that next generation networks will be at the heart of BEREC's ongoing work. However, more emphasis should be given to outcomes experienced by the market (including digital agenda take-up targets) and on a forward-looking view of infrastructure which covers not just “investment” per se, but how to achieve open infrastructure that will deliver broadband goals and support competition in the long run – creating a virtuous circle of investment, innovation and competition.

BEREC and its members should aim to be proactive in incentivising positive NGA developments going forwards which aim to derisk NGA roll-out by minimising investment costs and maximising take-up. This is particularly important in view of the fact that, in the absence of clear guidance, the market seems to be delivering closed NGA networks in many cases with limited competition and poor take-up rates for services that could put achievement of the DAE goals in jeopardy. We agree that updating best practice guidance to reflect NGA would be helpful in this respect (this guidance should view investment, innovation and competition as complementary and not as “trade-offs”). However, more is needed. The Commission NGA Recommendation suggests that BEREC should work on product specifications (Recommend 34). We would like to see this work on technical “standardisation” reflected in the forward programme. Attention should also be given to defining where access is granted (aggregation points) as the location of these points is likely to determine the competitive structure of NGA going forwards, as well as to migration of customers from legacy to new networks. Demand for NGA should not, as suggested in the paper be uncertain, but rather very clear if it is viewed as a successor to current generation networks with similar bottleneck characteristics.

As regards next generation “core networks”, we believe that the transition from switched to IP interconnection will present challenges for the “termination” regime, which should be examined by

BEREC. The increased trend towards bundling of content and telecoms services may also create new competitive challenges that should be assessed by NRAs. We suggest the following amendments to the theme to reflect these suggestions.

1. Infrastructural developments: next generation networks, High speed Internet and digital services

BEREC will contribute to ~~both~~ the promotion of sustainable investment and competition in high speed broadband and related services. Setting out a regulatory framework that provides the right incentives for investment in open and competitive new (fixed and mobile) high-speed networks that will in turn support innovation in content-rich services, is part of the challenge. It also includes addressing the territorial divide and facilitating access to radio spectrum to support the development of competitive high speed mobile networks. In this scope, BEREC will track the deployment and respond to the regulatory challenges ~~develop a coherent view on the effects of~~ associated with 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, work on technical standards and definitions for key NGA remedies, and promote best practice in the migration from legacy to NGA networks, in which BEREC is trying to strike the correct balance between with a view to promoting competition, innovation and investment. BEREC will also address issues related to new business models in a convergent IP environment including the transition from current termination regimes to those based on IP interconnection and the effect of bundling on competition in broadband services. In these areas, ensuring ~~access to choice and value for all categories of~~ end users will be the focal point for BEREC.

Comment [IG1]: This better reflects the "outcome" objective highlighted in the Digital Agenda

Comment [IG2]: Digital agenda and EU2020 strategy stress importance of investment in open and competitive networks

Comment [IG3]: The NGA Recommendation envisages such work on standardisation

Comment [IG4]: Appropriate regulation should not imply the need for any trade-off between competition, innovation and investment.

Consumer empowerment

We agree that consumer empowerment is crucial to reap the full benefits of a competitive market. However, it is important to note that the Framework envisages that competition is the primary means to achieve positive consumer outcomes and consumer protection regulation is normally viewed as being an adjunct to competition (tools to enable consumers to exercise choice) or otherwise is appropriate only where market failures persists despite competition. BEREC should ensure that consumer protection measures do not replace efforts to ensure that the markets are effectively competitive, as this could result in intrusive measures which address the symptoms without addressing the underlying cause.

In particular, achieving "net neutrality" requires a combination of ensuring competitive markets alongside a consumer's ability to make an effective choice. "Switching" could therefore usefully be added to the scope of this theme. Universal service may be achieved through means other than traditional universal service obligations under the EU telecoms framework (such as through state aid for underserved areas and competition to deliver greater affordability).

We also note that the consumer protection provisions of the EU Regulatory Framework have been largely defined to address the characteristics of mass-market services provided to consumers and SMEs, i.e., generally standardised services provided under common terms and conditions, on a mass market basis, to users who may have limited technical knowledge and, compared to larger business customers, less bargaining power. BEREC should therefore clarify that its efforts as regards

consumer empowerment will be focused on the residential and SME segment. Suggested text amendments follow:

2. **Consumer empowerment:** There should be a broader focus on more empowerment of ~~end users~~ consumers. This may be necessary both to enable consumers to exercise their choice and in circumstances where rRegulation to promote competition in itself cannot always ensure that ~~end users~~ consumers profit optimally from all possibilities. BEREC will continue to prioritise consumer issues, such as transparency, ease of switching 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 consumers~~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.

Service related developments

This theme seems to be the least coherent of the three proposed, and includes disparate work streams which could overlap with the other two themes. We suggest that it could be renamed “fostering development of the single market” and aligned with the EU telecoms framework objective for regulators to contribute to the development of the internal market (article 8.3 FWD) and with the associated priority in the DAE to reinforce the single market for telecoms (paragraph 2.1.4¹). In addition to roaming and benchmarking, which are already cited, relevant work streams could be BEREC’s input to Commission Recommendations which seek to harmonise the application of regulation (costing and non-discrimination are cited in the DAE as examples) and support for cross-border services including services to multi-national businesses (likely to be cited in the study prepared for the Commission on the “cost of non-Europe”). BEREC’s input to article 7 cases is also important in furthering the single market and in fulfilling BEREC’s remit in this regard.

3. ~~Service related developments~~ Fostering development of the single market
BEREC has a specific remit under the EU Telecoms Framework to ensure the development of consistent regulatory practice and consistent application of the Directives as well as advising the Commission on issues with a cross-border impact. In this context BEREC’s work on international roaming, net neutrality (eg quality of the Internet access service), and on ~~other special rate and/or~~ cross-border, services including services to multi-national businesses will continue. BEREC will also engage with the EU institutions on Recommendations and other initiatives to harmonise the application of EU Directives as well as providing input on

Comment [IG5]: Suggest focus on “cross-border” and “consistency” issues under this heading to align with Framework and DAE objectives and distinguish from the “forward-looking policy” focus of the “NGN” theme.

¹ 2.1.4 **Reinforcing the single market for telecommunications:** The DAE notes that the Commission will prioritise guidance on key regulatory concepts (costing and non-discrimination) and a durable solution for roaming in this context. They also highlight cross-border issues such as numbering and the importance of benchmarking. We understand that the study on the “cost of non-Europe” which is due for publication shortly, may also raise the issue of consistency of regulation for pan-European business services.

~~specific national cases under the article 7 procedure. 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 [benchmarking exercises and](#) 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.

BEREC as a European body

We find it helpful to see the different types of BEREC output listed in chapter 4. However, there is little indication here as to the issues on which BEREC will strive to achieve common positions as opposed to more flexible policy papers. We believe that on key issues such as NGA – where work is needed on best practice remedies, technical standards, migration and pro-competitive network architectures, it is essential for BEREC to aim high and deliver a common position with a common commitment from regulators to follow the guidelines as far as possible.

BEREC could also usefully support initiatives to improve standards in areas such as the enforcement of non-discrimination by collecting comparable data on KPIs.