

**BEREC WORK PROGRAMME 2012
Telekom Austria Group's (TAG) Comments
4 November 2011**

Telekom Austria Group^[1] (TAG) welcomes the possibility to comment on BEREC's present draft work programme (WP) for 2012. Generally, we are of the opinion that BEREC's work programme addresses the main issues. Having said this, we think it is necessary to add the following aspects in order to enrich the work plan for 2012:

Ad 3.1 Art. 7 FD-Procedures:

At its core, Art 7 FD procedures aim at harmonising the application of remedies in the EU. We believe that BEREC should increase its efforts to reach fully harmonised remedies in the EU in cases where the underlying competition issue has a significant impact on the functioning of the Common market (especially due to the cross-border significance of the underlying service).

A good example for a strong cross-border relevance of a regulated service are termination services, particularly mobile termination services since they are the technical/commercial basis and precondition for all EU voice roaming traffic. So far, however, we still miss any strong effort by BEREC to effectively abolish the huge differences (in EUR terms) that still exist between member states' MTRs.

Our comment should not be misunderstood. We are not convinced that effective harmonisation is needed in each and every case. For example, in case of ULL pricing, we are not convinced that effective harmonisation is needed - due to the lack of strong cross-border effects on ULL pricing (and also due to the widely differing situations on member states fixed/converged markets).

To make our point clear: We think that BEREC should evaluate on which product markets/for which services due to their underlying effects on the functioning of the Common Market (and potential distortions of it) a strong and effective harmonisation is needed and for which markets/services this is not the case. Consequently, BEREC should focus its harmonisation efforts under Art 7FD on the group of markets/services where effective harmonisation is needed.

Ad 3.2 International Roaming:

We urge BEREC to improve its approach to data retrieval for prices at wholesale level. BEREC's current way of retrieving data for prices at wholesale level is delusive as it leads to the wrong conclusion of a lack of competition in the wholesale market. Since BEREC asks operators for average prices on wholesale services, BEREC continuously misses the point, that contractual structures for

^[1] Telekom Austria Group is a leading communication provider serving approximately 22 million customers in eight countries in Central and Eastern Europe: Austria (A1 Telekom Austria), Bulgaria (Mobiltel), Croatia (Vipnet), Belarus (velcom), Slovenia (Si.mobil), the Republic of Serbia (Vip mobile), the Republic of Macedonia (Vip operator) and Liechtenstein (mobilkom liechtenstein). In 2010, the Telekom Austria Group employed about 16,500 people, generating revenues of approximately EUR 4.65 billion.

wholesale services are much more complex, and, if looked at the essential commercial effects of these contracts, the findings on the degree of competition in these market would be completely different.

Last year BEREC has started an activity to ask (some) operators for better/more precise data. However, also this questionnaire was to some extent over-simplifying today commercial agreements and has (obviously) as a consequence not clarified the most important point: That effective competition is the commercial reality on wholesale roaming markets across Europe.

Therefore, we ask BEREC to (re-)start a specific and profound activity to analyse wholesale roaming markets across Europe, hopefully with the result to reduce the political pressure to continue to regulate wholesale price caps.

Ad 3.4 Consumer Empowerment + Ad 3.5 Network Neutrality

We want to underline that we support a dialogue with all relevant stakeholders that goes beyond the BEREC draft guidelines on transparency in the context of network management.

In addition to BEREC's draft guidelines we require further clarification of the scope of "network management" and on "relevant information on network management". We also believe that the five key criteria for an effective transparency policy put forward by BEREC are a good starting point to drill down the necessary information requirement; these criteria need however to be further developed and defined. What is more, we want to stress that an additional criterion should be included to the direct information approach. This means, service providers shall be obliged to not less (but also not more) than "reasonable efforts" in order to make/keep their customers informed about network management measures relevant to them. Finally, we are in favour of further discussions on an indirect approach to producing understandable information to end-users.

We would also like to refer here to our input to the BEREC consultation on net neutrality and transparency of November 2011.

Ad 4.8 Cooperation with RSPG: Spectrum related issues

We request BEREC to support the implementation of the RSPG at national level within the period prescribed. Timely delays in the implementation in different EU Member States potentially will increase the digital divide in Europe - with negative effects not only on the respective member state but most likely also on the whole EU.

We also think that BEREC should **play a much more active role** (e.g. via a dedicated best-practice exercise between NRAs) when it comes to the **national spectrum allocation procedures**. As a matter of fact, today NRAs (together with national Ministries) are responsible to set a number of highly important framework conditions that hugely impact the valuation of any particular spectrum that is to be assigned: e.g. via spectrum caps, coverage obligations, assignment/auction methods, reserve prices, etc. Looking at the current practice in Europe, we see many different approaches taken by NRAs/Ministries related to such important questions. We believe that spectrum is a very important driver for the healthy development of the EU as a Common Market. Having said this, we see a strong necessity to stronger harmonise the approaches taken by national authorities when allocating spectrum to the telecommunications industry. Even though we admit that the current legal framework does not (yet) give the EC/BEREC a strong formal role, we still believe that BEREC (and also RSPG) could practically be much more active than it has been so far in this area.