

2nd BEREC Stakeholder Forum Meeting

Hosted by the BEREC Office

Summary

of the Outcomes of the 2nd BEREC Stakeholder Forum Meeting

Chair: Mr Göran Marby
Director-General of the
Swedish Post and Telecom Authority (PTS)

16 October 2014, Brussels

Introduction and participation

On 16 October 2014, BEREC held the 2nd meeting of the BEREC Stakeholder Forum in Brussels with a view to strengthening the dialogue on issues of strategic importance between BEREC and the relevant stakeholders. This meeting was organised in accordance with a decision of the Board of Regulators of 25 February 2014.

The BEREC Stakeholder Forum has been established with a view to providing a direct interactive platform for discussion between BEREC and its stakeholders. This platform supports the traditional consultation process taking place before the adoption of final versions of BEREC documents.

The meeting was attended by high-level representatives of the stakeholder associations at European level active in the fields of competence of BEREC; the National Regulatory Authorities (NRAs) primarily responsible for overseeing the day-to-day operation of the markets for electronic communications networks and services established in the EU member states, the EFTA states and the states that are candidates for accession to the EU; and the European Commission. The list of organisations present at the 2nd BEREC Stakeholder meeting is provided in Annex I.

The focus of the meeting was strategic issues relevant to the medium and long term regulation of the electronic communications markets in Europe. The meeting also served as a public hearing on 4 key published BEREC documents which are currently undergoing consultation. The Meeting Agenda is presented in document [BoR \(14\) 68 final](#), available on the BEREC website.

The meeting focused on the following main topics:

- Draft BEREC Strategy 2015-2017 and draft BEREC Works Programme 2015;
- Margin squeeze test;
- Future model for roaming.

On the draft BEREC Strategy and draft BEREC Work Programme 2015, participants generally considered that BEREC's proposals were very much along the right lines, in particular in respect of its proposed strategic pillars: competition and investment; the Internal Market; and empowering and protecting end-users. Speakers took the opportunity to highlight proposals of special significance to their organisations and a few additional items were suggested. However, it was realised that BEREC's proposals were already very ambitious and that rigorous prioritisation was needed.

With regard to BEREC's proposals on ex-ante margin squeeze testing, only a few stakeholders took the opportunity to speak. Nevertheless, some very different views were expressed on how such tests should be conducted.

The future of international roaming also attracted some strong and differing views, on a number of important questions – for example, the appropriate timescale for introduction of “Roam like at Home”; the desirability of “fair use criteria”; the need for careful assessment of winners and losers from any change; and the need and extent of reform of wholesale pricing. There did however appear to be a common view that the existing decoupling provisions would be redundant following the introduction of “Roam like at Home”.

Most speakers made a point of expressing their appreciation for the Forum, noting that it provided a useful opportunity for a broad spectrum of opinion to be presented to BEREC simultaneously and was a valuable complement to formal written responses to public consultations. More generally, BEREC was requested to maintain its policy of active engagement with stakeholders at multiple levels.

Items discussed

Opening remarks

Mr Goran Marby, BEREC Chair, welcomed participants, noting that this was the second stakeholder workshop, following the successful inaugural event in September 2013 in Riga. He noted that BEREC was nevertheless a young organisation and was still exploring how best such events should be run. Introducing the agenda, he said that the event was a valuable opportunity for BEREC to obtain ideas and feedback from stakeholders. The first session would concentrate on BEREC's overall approach – for the first time, the medium-term strategy and the work programme for the next year could be discussed side by side. These were currently under consultation. Oral comments made during the session would be taken into account but written comments were also very welcome. Subsequent sessions would be devoted to specific important topics – margin squeeze and international roaming.

So far, BEREC could be happy that only about 5% of NRA regulatory notifications gave rise to concerns expressed by the Commission. This showed that the BEREC harmonisation model was working well. Mr Marby emphasised how important it is for BEREC to develop an appropriate strategy so that NRA practises could evolve to remain appropriate for a fast-developing market.

Session 1: Draft BEREC Strategy 2015-2017 and draft BEREC Work Programme 2015

Introducing the draft BEREC Strategy 2015-2017, **Mr Jack Hamande (BIPT), BEREC Vice-Chair**, noted that the intention was to be evolutionary rather than revolutionary. BEREC

wanted to be very clear about strategic pillars, to identify a good number of the important challenges and to develop a method of addressing them. Regular feedback from stakeholders reminds BEREC of the need to focus on quality, efficiency, effectiveness and simplicity.

Mr Hamande went on to introduce the 3 strategic pillars of BEREC strategy – promoting competition and investment (including in infrastructure); promoting the internal market; and protecting and empowering end users (including business users).

He ran briefly through a number of important market features which needed to be factored into regulatory practices – bundling, convergence; over-the-top (OTT) services; the growing need for bandwidth; fixed/mobile convergence and the interdependency of fixed and mobile networks; end user issues such as data protection, privacy, network information and reliability; and market consolidation and the impact on investments. BEREC is also well aware of a number of relevant EU regulatory developments and the consultation document therefore sets out some ideas and reflections about topics which might be addressed in future, including OTT services; consolidation; the impact of IP technology; fixed-mobile convergence; symmetric regulation; ex-ante assessments; and review of radio spectrum.

Turning to the strategic pillars identified by BEREC, Mr Hamande stressed that the strategic priorities would be reflected not only in the work programme for 2015 but also those for 2016 and 2017. Under the first pillar – Competition and Investment – he said that promoting effective competition and fostering a positive climate for investment remained key issues, as was supporting innovation, taking full account of new services, new business models and new types of architecture. Under the Internal Market Pillar, BEREC would continue to support convergence and removal of barriers. This required BEREC to consider matters outside its traditional environment and to co-operate with other agencies with responsibilities touching on the convergent areas, for example ENISA, RSPG and the media regulators. Sensitive topics such as net neutrality would also get full attention. Turning to the third pillar – Empowering and Protecting End-users – Mr Hamande noted the change of wording to emphasise that the focus included business users and not only private consumers. There would be a continued focus on end user choice, accessibility and affordability. Without overlooking traditional concerns such as removal of barriers and safeguarding an open internet, BEREC would try to focus more on quality of service, measurement and definitions, OTT services and internet applications. BEREC will also continue to promote, directly and indirectly, online protection.

To work efficiently and effectively, BEREC needs operational and output efficiency and the BEREC Office is key to that. Mr Hamande stressed in particular the need to focus on three levels – improving the quality and consistency of individual NRA decisions through guidelines; engagement with the Commission; and improving working methods and the quality of outputs.

Next, **Dr Fatima Barros (ANACOM), BEREC Vice-Chair 2014 and Chair 2015**, presented the proposed BEREC Work Programme for 2015. She expressed appreciation for the contributions of numerous stakeholders so far in developing the thinking. The aim was to build a work programme which meets the needs of the sector – not only the regulators but also the stakeholders. The work on the strategy, the work programme and the revision of the structure of the BEREC Expert Working Groups all mutually reinforce one another. Later, there will be a mid-term review.

There was uncertainty at present about the direction of the new Commission and the finalisation of the Connected Continent Regulation. In 2015 there will be a Framework Review. BEREC needs to be flexible to deal with these uncertainties and to be ready to change priorities. BEREC cannot do everything and will need to be transparent about its choices and to maintain effective lines of communication with stakeholders. Dr Barros also believed that the BEREC Office would play an increasing role in the coming years.

Turning to the make-up of the work program, Dr Barros recalled the 3 pillars and the overarching commitment to quality and operational efficiency presented earlier. Beginning with the promotion of competition and investment, Dr Barros said that there would be a focus on wholesale services. The work on monitoring the implementation of BEREC Common Positions on wholesale products would continue and best practices concerning virtual access products would be identified. Reports on these issues would be presented at the third Plenary of 2015. Implementation of the new Recommendation on Relevant Markets and agreement on a Common Position on geographical segmentation would be two key issues for BEREC during 2015. There would also be the challenge of how to foster investment in NGA roll-out while maintaining a competitive environment. This work was expected to continue into mid-2016.

On the internal market, Dr Barros outlined a large number of activities. She envisaged the need for a comprehensive analysis of the regulatory implications of a move to an all-IP ecosystem building on existing work on net neutrality, traffic management, transit, peering and termination. BEREC would complete its work on oligopoly analysis and regulation by the last Plenary of 2015 and expected that this would be an important input into the Commission's review of Market Analysis Guidelines and the Framework Review. Convergence with other sectors was of growing importance, as mentioned earlier, and BEREC was assisting with the growing wave of mergers and acquisitions which often posed difficult regulatory problems. A Plenary Workshop on these matters was planned for the first Plenary of 2015. There would also be a continuation of co-operation with RSPG on access to spectrum and a joint workshop was planned. The important work on Article 7/7A cases would continue. It was also intended to review practice in the implementation of the Recommendation on Termination Rates; an

internal report was anticipated for later this year. It would be necessary to revisit the topics in the Connected Continent Regulation in order to prepare for the Framework Review. BEREC believed that its practical experience equipped it to take a leading role in the Review. The future of roaming would be discussed in a later session but it was also worth noting that BEREC would of course continue with its various information-gathering and reporting responsibilities defined in Article 19 of the Regulation. There would be a study of OTT services. Even though these were unregulated, they have an impact on markets within BEREC responsibilities. BEREC would conduct an analysis of OTT business models and their impact on the sector, both in terms of competition and consumer issues. The implications of the growth of machine-to-machine services also requires consideration, especially regulatory issues such as privacy and data protection. BEREC also wants to increase NRA co-operation concerning the Universal Service Directive, especially so that NRAs can share successful approaches to problems of fraud and misuse. Various meetings and workshops were planned to take this forward.

With regard to empowerment and protection of end users, net neutrality and broadband quality are at the centre of BEREC concerns. There will be a feasibility study on quality monitoring in the context of net neutrality, leading to a decision of the best choice of monitoring system. An internal report will be ready by the end of 2014. The work on ecosystem dynamics and demand side forces in net neutrality, started in 2013, will continue into 2015. BEREC will adopt a Report, setting out its general approach which will support future national analyses by NRAs. BEREC also wants to contribute to the ongoing public debate on net neutrality issues, by way of a Report to be published by the end of 2015. BEREC believes there is merit in repeating the joint BEREC/Commission investigation into traffic management practices but the details remain to be settled. BEREC will also contribute to the next of the regular reviews of the scope of Universal Service. Last in this area, BEREC will study the question of switching for non-residential customers. This poses problems which are different from those in residential markets and BEREC wants to identify best practices which increase the fluidity of non-residential markets, especially for SMEs. An internal workshop will be organised to help take this forward.

Dr Barros stressed again BEREC's commitment to quality. The series of benchmark reports would be continued, for example on termination rates, with the aim of efficient dissemination of experience. There would be reports on OTT services, including analysis of prices. BEREC recognised the need to develop new indicators, reflecting market changes. The annual exercise to review regulatory accounting in practice would be continued with a report for the third Plenary of 2015.

On external communication, BEREC was committed to effective and transparent communication with stakeholders and this series of forums was an important part of this aim. Annual Reports on activities would continue to be published. BEREC also had a general commitment to assistance to and collaboration with the European Institutions, wherever its experience and expertise could be valuable. An information-sharing portal was being planned, allowing easy access to a wide range of information relating to markets and regulation from a variety of sources, open to all. Finally, Dr Barros noted the need to co-operate with regulatory agencies and groups in other regions of the world, leading to improved understanding of regulatory issues and techniques on all sides.

Dr Barros ended by noting that the proposed Work Programme had 33 deliverables, some started this year and some only in 2015. Moreover some activities would not be completed until 2016. But it was important that there was a deliverable – which might take one of a variety of forms - associated with each activity on the Work Programme. The proposal was open to consultation until 24 October. Oral and written comments were both welcome. A final decision would be taken at the December Plenary.

Following Dr Barros' presentation, a number of stakeholders gave short presentations¹. It was a common opinion expressed in these presentations that events such as the current one were a very useful complement to more formal consultation processes. BEREC's transparency and general approach to stakeholder engagement were also praised.

The key messages conveyed during the first session of the first meeting of the BEREC Stakeholder Forum (in order of presenting) are the following:

1. BEUC – Mr Guillermo Beltra

Mr Beltra made a point of emphasising BEUC's general satisfaction with the work of BEREC so far on consumer issues, for example roaming, net neutrality and switching. While being enthusiastic about the Forum, he registered a concern that he was probably the only consumer representative in the room. Although recognising the difficulties, he hoped BEREC would make more effort to attract more representation from consumer interests at future events. He suggested consideration be given to adoption of a model from the energy sector where national consumer organisations participated in a regular event, to good effect.

Regarding the first pillar of the BEREC Strategy, Mr Beltra implied that those who thought there was enough competition must be incorrect – because in that case there should be no constraint on investment, whereas many market players noted the inadequacy of resources

¹ Presentations made by EBU, ECTA, ESOA, FTTH Council and CERRE are available on the BEREC web-site

to make investments. He was also concerned about the adverse competition effects of consolidation and called for BEREC to keep a close eye on this.

Mr Beltra spoke in favour of enhanced co-operation between regulators but noted that it would be unsatisfactory for such co-operation on consumer issues to be limited to the sphere of responsibility of BEREC. On the contrary, it needed to embrace other types of agency such as consumer protection bodies and data protection agencies. He highlighted the problem of prohibitively high charges for international calls. He regretted that the Commission's proposal to deal with this in the Connected Continent Regulation had been abandoned. A single market could not be achieved until this problem was solved.

BEUC stressed the importance of BEREC's work on net neutrality – especially as there were an increasing number of challenging practices in the market. NRA expertise was crucial in this area to ensure that any regulation was practical and enforceable. Mr Beltra asked for BEREC to add to its programme work on zero-rating. (It was later confirmed that this suggestion was expected to be taken up.) In his opinion, this was not sufficiently discussed at present yet had the potential to harm innovation and restrict consumer choice. Finally he reiterated the importance of BEREC's work on universal service.

2. EBU – Mr Peter MacAvock

Mr MacAvock noted that public service broadcasters needed to deliver a wide range of content via a number of different delivery networks. In passing, he recalled that the BBC I-Player was the biggest generator of internet traffic volume in the UK.

Net neutrality was a key concern for the EBU. Mr MacAvock noted that wi-fi access represented the most significant route to consumption of media, given that most media was consumed indoors. Tiered subscription services had a major part to play in the consumer offer but should not be allowed to impair the quality of general internet access. Blocking or throttling should rarely be necessary. Where there was justification for them, there should be full transparency. EBU members were profoundly opposed to discrimination against specific content. BEUC supported the attempt to increase transparency associated with the measurement of internal traffic and real internet traffic speeds.

Finally, Mr MacAvock applauded the intention to launch a study of the impact of OTT services which he believed would be of increasing importance to EBU members.

3. ECTA – Ms Erzsebet Fitori

Ms Fitori said that ECTA was a strong supporter of BEREC's work on harmonisation, with the aim of promoting a genuine internal market and considered that the strategic priorities identified are the correct ones. In the time available, she proposed to highlight three issues.

Promotion of competition is the issue of most significance to ECTA, especially in the context of transition to NGA. ECTA agreed with BEREC's general approach but wanted to stress the vital contribution of local competition to the achievement of global competitiveness of the wider European economy. Premature deregulation of markets which hindered competition would undermine European competitiveness. Ms Fitori noted the huge gap which existed between availability and take-up of very high speed broadband (62% vs 15% according to recent Commission figures) and attributed this to ineffectiveness of local competition – for example, incumbents have an over 80% share of VDSL lines. Similarly, 26% of consumers had no internet connection for reasons of affordability. The nurturing of competition should therefore remain a key priority for BEREC.

ECTA supports the fostering of investments but considered that this should not only mean investments by incumbents. Ms Fitori noted that entrants made large investments in LLU, SLU and fibre, where these made commercial sense. Policies which over-focus on investment by incumbents therefore undermine the objective of a connected continent because they tend to restrict the ability of other players to invest. The more players that are investing, the greater the overall investment. Ms Fitori noted that availability of physical and, where necessary, virtual access products could be a vital pre-requisite to investment by entrants. She cited examples in Germany and Italy where entrants had rolled out fibre within a few hundred metres of premises, taking advantage of the availability of unbundled sub-loops of the incumbent. Ms Fitori considered that the evidence suggested that access regulation had had little effect on the investments of incumbents but a major beneficial effect on those of entrants.

Ms Fitori emphasised the importance of the margin squeeze discussion to follow later in the Forum. She noted that dominant players consistently attempted to leverage their market power to foreclose the market during a period of transition to new technology. Margin squeeze tests had an important part to play in underpinning effective competition during such periods. The eradication of discriminatory practices was equally important and she proposed that BEREC should look at SLAs, SLGs and the performance of the various wholesale access products.

She ended by referring to the importance of the forthcoming Framework Review and its potential, in her view, either to take Europe back to the Bronze Age or forward to the Gigabit Information Society.

4. ESOA – Mr Cecil Ameil

Mr Ameil emphasised the significance of satellites for communication services, not simply for delivery of television. ESOA agreed with ECTA about the need for a regulatory regime which fostered investment by all players and not simply the traditional network providers. He stressed the importance of multiple delivery networks to ensure universal accessibility and to avoid a digital divide. Given the bandwidth requirements of high definition (and future ultra high-definition) video services and their ability to serve a wide area, satellites would be an important part of the delivery landscape.

5. ETNO – Mr Francesco Versace

Mr Versace began by stressing the importance of creating a favourable climate for investment. This should be at the centre of the forthcoming Framework Review. He supported this by referring to some recent figures which showed that US investment per head in fixed and mobile broadband had run at twice the level of Europe. He believed that the other two main pillars of the Review should deal with the need for simplification of regulation of access to physical infrastructure and a review of the management of spectrum in Europe.

ETNO welcomed the increasing co-operation between BEREC and RSPG on spectrum issues. He believed this could be a key step toward a better, more harmonised approach to spectrum management in Europe. Mr Versace also commended BEREC's intention to analyse the impact of OTT services. ETNO believed in the principle that the same services should attract the same rules. Mr Versace hoped that ETNO would be able to contribute to that workstream as it progressed.

On the recently published Commission Recommendation on Relevant Markets, Mr Versace hoped that BEREC's implementation work would proceed swiftly, especially in relation to the former Markets 1 and 2.

6. FTTH Council Europe – Ms Karin Ahl

Ms Ahl suggested that 2015 would be year for an unusual number of new activities which would justify significant effort by BEREC. She mentioned in particular significant public expenditure in relieving blackspots and greyspots and the new Commission's expected approach to the digital agenda. She noted that the FTTH Council had published a number of papers, of which she wanted to discuss two.

The Council argues for realism in setting of targets for public broadband finance initiatives and welcomes the role which can be played by NRAs in guaranteeing this. BEREC has an important role to play in developing the discussion in this area.

On structural separation, BEREC needs to encourage a market structure that reflects the different economic and risk profiles of different assets. The services business is global in nature while infrastructure provision is local. Vertically integrated operations combine a large utility component with only a small technology component. However, capital markets tend to view investment projects as technology-driven, with a consequential uprating of the perceived risk. A different market structure would allow a huge quantity of investment to be re-rated, increasing incentives to invest.

Generally, the Council supported the proposed Work Programme and would like to contribute to some of the workstreams, in particular net neutrality. It would also welcome a workshop on implementation of the Relevant Markets Recommendation.

Finally, on the proposed work on broadband service quality, Ms Ahl advocated a comparison between advertised and actual broadband speeds and stressed the importance of transparency for consumers.

7. GSMA Europe – Mr Martin Whitehead

While being generally supportive of BEREC's proposals, Mr Whitehead wanted to stress two important points. He considered that BEREC should bring forward their planned work on the Framework Review so that it could play a key role in the developing thinking. He considered that much remained to be done to complete the Single Market and that Europe needed a broader and more comprehensive connectivity agenda that better meets the investment challenges. Improvements in speed, quality and the reach of Europe's broadband infrastructure will be central to underpinning growth in Europe's digital and its broader economy. He argued for change to tilt regulation away from retail price controls to a regime which was more favourable for innovation and investment. The new regime should fully reflect the new competitive environment and should guarantee that equivalent services were treated consistently, both from the point of view of the service provider and for the consumer. This consistency should also be matched with predictability and an avoidance of overly prescriptive rules.

Turning to BEREC's proposed report on OTT services, Mr Whitehead again saw this as an area which demanded early BEREC study. He referred to a large multi-region study of smartphone user perceptions which suggested that users largely perceive messaging services as interchangeable which are currently treated differently by the current Framework. He championed the case for open networks, arguing that legislation should guarantee that the internet remains unconstrained by any player, of whatever type.

Mr Whitehead recognised that while the responsibility for innovation and investment lies with industry, regulators have a part to play in shaping an environment in Europe that encourages investment in connectivity, enables innovation and builds trust and confidence in the take-up and use of new services by the region's citizens. He thought this was a very good fit to BEREC's three strategic pillars.

Mr Whitehead closed by noting that GSMA was enthusiastic to contribute to BEREC thinking, as it develops.

8. INTUG – Ms Danielle Jacobs

Ms Jacobs noted that the issues faced by business users were different in many cases from those faced by domestic consumers. But the problems of insufficient competition mentioned by previous speakers certainly applied to business markets. She subscribed to BEREC's view that it was necessary to look outside the traditional telecommunications markets in order to regulate appropriately. She gave the example of companies who wished to provide their employees with a single number so that they could be contacted either on a fixed line or a mobile handset; competition for provision of such a service was much less than you would expect from study of the individual markets. In the case of cloud services, a survey of her members showed that Google and Microsoft dominated provision. For voice services, many companies were using a Microsoft product.

Ms Jacobs proposed that NRAs should systematically monitor the quality of mobile services. An independent assessment would be valuable to business users who currently have to rely entirely on performance statistics quoted by the network operators themselves.

INTUG welcomed the Commission's definition of a new relevant market for high-grade business services and looked forward to providing any possible assistance to the NRAs and BEREC on implementation issues.

9. Cable Europe – Mr Matthias Kurth

Mr Kurth opened by remarking that in the few years since the establishment of BEREC there had been many positive developments in the market which delivered new services and more choice to consumers. He cited the example of Netflix which had apparently faced very low barriers to entry and now had a European customer base of several millions. This showed that not everything was bad although there was no doubt need for improvement in order for the Digital Agenda to be delivered. He noted that cable companies had made huge investments and that their networks were as capable of delivering very high bandwidth services as the fibre

of the telecoms incumbents. He drew the conclusion that these investments had been driven by infrastructure competition.

He moved on to speak about BEREC's proposal to work on oligopoly analysis. He pleaded for BEREC's thinking in this area to remain consistent with the principles of general competition law and not to develop a telecoms-specific competition doctrine. The latter could undermine the willingness of cable companies to invest. For this reason, he hoped that cable companies would be able to make an early input into BEREC's thinking.

Turning to quality of service, he considered that this was a very complex issue. Service quality was not purely under the control of service providers. In some cases, quality problems arose because of issues at the level of the core network. He felt that any further work by BEREC should attempt to identify the source of the problem and educate consumers on this matter.

Mr Kurth very much agreed with BEREC's approach to net neutrality which he characterised as careful monitoring and intervening only when necessary, avoiding over-prescriptive approaches. He hoped BEREC would maintain this approach but feared that others were too inclined to micro-manage. There was a danger in trying to define categories of specialised services now when the scope of future innovation was bound to remain unclear. He also considered it a fallacy that the introduction of new specialised services inevitably had an adverse effect on the quality of "best efforts" internet – surveys for the Commission and the Austrian NRA had shown this was not necessarily the case.

He closed by noting on the need to set clear priorities which in his view should be digital agenda, investment and innovation.

10. CERRE – Mr Serafino Abate

Mr Abate agreed with the BEREC view that it was necessary for BEREC to look beyond its traditional sphere of operation. He noted that competition in electronic communications had been much more successful than in other regulated utilities. However barriers still exist which restrict access for consumers to competitive offers. For that reason, he strongly supported BEREC's focus on consumer issues such as transparency, switching and interoperability. He argued that not all consumer issues were capable of solution by asymmetric regulation; some demanded a symmetric approach and there were some good precedents for that.

He thought that NRAs and BEREC might usefully intensify their role in promotion of e-health, e-learning and e-government which are very much live political topics. Looking forward to the new Framework, Mr Abate argued that the time was ripe for more experimentation in regulatory approaches in order to test what works well and what works less well. He thought that the new Relevant Markets Recommendation facilitated such experimentation. In revising

the Framework, the ever-growing complexity of the market needs to be fully taken into account. He noted that economies of scale and network effects inevitably meant that there would be a small number of players in some market segments – this should not automatically be thought to be a problem.

He closed by observing that a number of issues on the current CERRE work plan were relevant to BEREC's work programme.

11. Further interventions

Mr Marby took the floor to give a first reaction to the presentations. He noted that he had previously become used to hearing the view that BEREC and NRAs were the cause of all problems and was very pleased that view was no longer put forward.

He first expressed the view that it was clear that there was not yet enough competition and that the Digital Agenda would not be delivered effectively unless there was more. There was little scope for debate on that point. He considered that the role of the regulator was to ensure that where there was demand for services, there was also choice and that regulation did not prevent investment.

The market had changed very much from the time when monopolists made investments and drove through changes in technology and services at their discretion. These days, multiple players and multiple dimensions needed to be considered in satisfying consumer demand. In support of his point, Mr Marby referred to the BEREC ECODEM study which showed that use of the internet was very different in Nordic countries than in Southern Europe. Differences of this kind needed to be factored in to any assessment of appropriate regulation.

Responding later to a concern about whether BEREC had pre-determined views about market structures, Mr Marby said this was absolutely not the case. Regulators were not good at predicting the direction of market innovation and BEREC would not take a prescriptive approach.

Several participants raised points in subsequent interventions which were generally considered to be most suitable for bilateral exchanges.

Briefly summing up the discussion, **Mr Hamande** thanked participants for their constructive contributions and reminded them to submit any written comments by October 24. He noted that the opportunity for participants to participate in a forum such as this seemed to be much appreciated. Mr Hamande picked out a few topics which had particularly struck him as being important to participants - the Framework Review; OTT services; end user issues – business and domestic – and how to involve national end user bodies; convergence; new business models; and stimulation of demand.

SESSION 2: Margin squeeze – when and how?

The session was moderated by **Mr Domagoj Jurjevic, BEREC Vice-Chair**. Introducing the session, Mr Jurjevic said that the objective was to set out clearly BEREC's position as published in its guidance document and to get stakeholder feedback as to whether the economic replicability test (ERT) would provide more pricing flexibility for SMP operators, thereby stimulating more innovation while safeguarding competition. He noted that there were a lot of questions about key parameters where stakeholders' views could influence the outcome of the final document and consequently the outcome of individual NRA decisions. He then gave the floor, in turn, to several presenters².

1 Dr Annegret Groebel (BNetzA), BEREC Regulatory Accounting EWG Co-Chair and –and Ms Katja Mohar-Bastar (AKOS), Drafting Team Leader

Dr Groebel introduced the BEREC work in this area by noting that the Economic Replicability Test was an important aspect of the Commission Recommendation on consistent non-discrimination remedies. One key question is what is this test? If not the same as a margin squeeze test, what are the differences? The purpose of the Guidance Document was to set out a practical route to implementation.

Ms Mohar-Bastar said that the BEREC guidance dealt mainly with Recommendation 56 and Annex II of the Commission Recommendation and considered the matter from a regulatory accounting perspective. The main focus was on broadband services within the scope of Markets 4 and 5 from the 2007 Recommendation on Relevant Markets. According to the Recommendation, the ERT safeguards downstream competition in the case of non-imposition of wholesale price controls and needs to be applied alongside equivalence of input and a technical replicability assessment. Agreement on a clear methodology will make it much easier to combine it with the other two methodologies.

BEREC had drawn on existing NRA practice in applying margin squeeze tests and compared and contrasted the ERT and ex-ante margin squeeze tests. Past work of the Commission, ERG as well as caselaw from the European Court of Justice was also taken into account. Based on these sources, a methodology was developed. Procedural and transparency issues have also been considered and also turn out to be complex.

Turning to the conclusions, Ms Mohar-Bastar said that the objective was not only to safeguard competition but in particular also to ensure non-discrimination and transparency and to prevent

² Presentations made by BEREC, FTTH Council, ETNO and ECTA are available on the BEREC website

exclusion from the market. The test aimed to assess whether the SMP player's retail price was sufficient to cover all relevant wholesale and retail costs. She went on to discuss a number of parameters of the test:

- Reasonably Efficient Operator (REO) or Adjusted Equally Efficient Operator versus Equally Efficient Operator (EEO) – she noted that NRAs generally preferred to retain their existing use of REO rather than the Commission's preference for EEO
- Choice of cost standard – consistency problems could arise from use of one standard for wholesale cost assessments (typically LRIC) and another for retail prices (typically fully allocated costs)
- Choice of depreciation method – neither the Recommendation nor the Guidance is prescriptive
- Reasonable profit – this should be set so as to facilitate efficient investment. WACC should be the method used to calculate cost of capital.
- Retail costs – the draft Guidance lists a large number of these, including an allowance for common costs
- Average user – the choice of user profile is a key parameter but it is often difficult to obtain reliable data
- Time period for recovery of investment – this depends on the nature of the investment. For customer-related investments, the expected average customer lifetime should be used; for other investments, the period should be based on the useful economic life of the asset

Dr Groebel now took over the presentation. She drew attention to a problem of interpretation in Annex 2 of the Recommendation, relating to wholesale costs. Dr Groebel considered that the only reasonable interpretation was to use the regulated access price where this existed but otherwise the effective wholesale price paid. This would take account of relevant discounts. Dr Groebel noted that the NGA Recommendation gave an extended treatment of discounts and BEREC proposed to use the same approach for reasons of consistency.

In the case of non-regulated input costs, the ideal would be to use the access seeker's own costs. If these are not available, an alternative would be to use the corresponding access provider's costs as a proxy, usually based on LRIC+. Alternatively, it might be possible to use prices commercially agreed on the carrier market.

Dr Groebel turned to the choice of products for performance of the test. At the wholesale level, the choice should be the most relevant regulated wholesale product or the most relevant NGA-related wholesale input (which could be active or passive).

There may be a mix of legacy and NGA inputs and this mix will probably change over time. The test should evolve to reflect such change. Geographical variations in products should be taken into account, irrespective of whether the market definition is segmented geographically.

Dr Groebel considered that, currently, NRAs normally use a margin squeeze test in the context of cost-oriented wholesale prices. Therefore, she expected that NRAs would apply the ERT to a wider set of circumstances than envisaged in the Recommendation.

At the retail level, Dr Groebel noted that the Recommendation focused on “flagship” products. These might be the most popular but other factors might be relevant – for example, the products for which marketing spend is greatest. However, she thought there were good arguments to submit a wider range of products – bundles and stand-alone products – to ensure that all products were replicable and that there was no unfair cross-subsidy. This approach best safeguarded competition and avoided the NRA favouring one business model over another. However, it was inappropriate to be too prescriptive in the Guidance; the NRA was best placed to judge the set of products to submit to the test. She noted that bundles could potentially include unregulated components if such bundles were important in the market in question.

In the context of bundles, it was necessary to consider revenues rather than retail prices. Temporary discounts and promotions should also be taken into account. There are various ways to achieve this in the cost accounting methodology, fully described in the Guidance. Ms Groebel noted that an earlier ERG publication had recommended a notification obligation for such discounts and promotions so that their impact on the margin squeeze calculation could be assessed in advance. She explicitly sought views on this idea.

Dr Groebel now turned to the powers and responsibilities of the NRAs. The Recommendation envisages that NRAs would publish their methodology, in order to promote transparency and regulatory certainty. Where an NRA finds that a product planned to be launched would give rise to a margin squeeze, it must clearly act effectively to prevent it. The Recommendation notes that NRAs are empowered under Article 10 of the Authorisation Directive to take “appropriate measures”. Various types of measure can be envisaged – ordering a price change at either wholesale or retail level (or a combination) in order to remove the squeeze or an obligation not to offer

the offending retail product(s). This would not be necessary if the SMP operator voluntarily amends its intentions so as to find an acceptable solution which no longer gives rise to a squeeze. She noted that fines could be levied in the event that an abusive product is actually launched. That was the most significant difference between an ex-ante and ex-post test. The methodology should be consistent in each case.

Finally, Dr Groebel confirmed that consultation would close on 24 October and this should be considered to be a firm deadline. It would be difficult to take account of comments received after that time.

2. FTTH Council – Mr Hartwig Tauber

Mr Tauber thought that this test was potentially of great significance for the roll-out of fibre. While being fully in favour of competition, he noted that infrastructure competition was not always viable, for example in rural areas. Therefore, he hoped that the test would be applied in a way that did not disincentivise SMP operators from investing in fibre in unserved areas.

Mr Tauber thought that there was a danger of bringing in retail price regulation by the back door which would clearly be undesirable. Moreover, if any minimum retail margin calculated by this method was too generous, it would deter alternative operators from efficient investments in fibre. He noted that discounts were often essential to driving take-up of new services – it was essential that the test allowed some flexibility in dealing with these. Similarly, the test should not deter the offer of innovative bundles.

Finally, Mr Tauber pointed out that in the context of national market definitions, SMP players sometimes experienced intense competition in certain localities where there was alternative infrastructure. It would be unfortunate if the ERT deterred them from rolling-out fibre in those areas on the basis of calculations which might be valid nationally but not locally.

3. ETNO – Mr Marc Lebourges

Mr Lebourges noted that he was approaching the issue from an economic perspective. He stated that payback periods could be very long – anything from a decade to several decades. In the short-term, the investment is clearly unprofitable; in the long-term

,uncertain. He considered that if standard margin squeeze methodology were to be applied to the ERT, the outcome would be inconsistent with the Commission's stated objective of risk-sharing between fibre investors and access seekers. There would be guaranteed losses for the fibre investors and guaranteed profits for the access seekers. One way of avoiding this would be to use infrastructure lifetime rather than consumer lifetime as the benchmark. Another would be to keep the consumer lifetime but to use the LRIC cost standard only for downstream costs.

Mr Lebourges recalled that risk-sharing in wholesale prices is envisaged by the Commission's NGA Recommendation and the Recommendation on non-discrimination and costing. This could be accomplished in various ways, for example volume discounts, upfront payments and co-financing. He said that these could be considered as 2-part (fixed + variable) tariffs where only the variable component should be taken into account in the margin squeeze test.

In this way, Mr Lebourges felt that fair competition between SMP players and efficient access seekers would be guaranteed, provided that there was no foreclosure strategy to exclude access seekers. ETNO had studied 2 methods to prevent this. The first was for direct regulatory control of the wholesale access price; however, this appeared to be inconsistent with the philosophy of the Recommendation. The second was to add a Competition Migration Test, as recommended in an European University Institute paper authored by Mr Lebourges and a colleague and which was referenced in BEREC's Guidance. This test supported commercial negotiation between fibre investor and access seeker because the fibre investor needed the customers of their competitors to migrate to fibre in order to make their investment viable. This could not be achieved unilaterally on the basis of NGA retail strategy. Therefore a fair access agreement with competitors is necessary. Once the first access agreement had been signed, others would follow. Once the NGA market is competitive, the Competition Migration Test would be removed.

Mr Lebourges ended with some observations about the conduct of margin squeeze tests which applied equally outside the NGA arena. The EEO standard should be used without adjustment; the test should be limited to the global portfolio or to dominant products and should not be carried out product by product; finally, the wholesale product should be the most relevant in the geographical area.

4. ECTA – Ms Erzsebet Fitori

Ms Fitori emphasised the importance of this work. The lesson from the original introduction of broadband was that margin squeezes had been common and that this badly held back take-up. That mistake should not be allowed to be repeated.

She noted that a number of NRAs saw the margin squeeze test as a complement to wholesale price regulation. ECTA agreed with this approach, bearing in mind that margin squeezes had been found by the Court of Justice, even in cases where wholesale prices were regulated. ECTA also advocated that NRAs should carry out careful ex-post checks, in order to test the accuracy of the assumptions underpinning the margin squeeze test.

Ms Fitori noted that bundling was becoming increasingly common practice. It was important that SMP operators do not bundle unreasonably and should not squeeze the margins of bundles. ECTA recognised the complexity of the issues but it was important to get this right.

Margin squeeze tests should not be confined to wholesale/retail margins. Squeezes between different wholesale levels were not only theoretically possible but had occurred in practice, disincentivising the climbing of the ladder of investment by entrants.

Turning to the detail, ECTA supported the REO standard over the EEO standard and considered that the test should be carried out on each offer. In the absence of this, it might be the case that there was no margin squeeze for the aggregate portfolio but nevertheless an abusive cross-subsidisation between products. The test should also be passed by discounted products and products undergoing promotion.

Ms Fitori considered that the risk of too low an access price was the lesser one; on the contrary the real risk was of too high an access price, destroying the business case for entry and undermining the prospect not only of current competition but also of future competition further upstream.

The test should be carried out on a period-by-period basis over a typical customer lifetime for the given product.

Turning to procedure, ECTA believe that the test should be carried out before launch of a new product. Pre-notification was necessary, including for promotions and for bundles. The burden of proof for such pre-notifications should be on the SMP

operator. This should not extinguish any rights to submit a complaint subsequently, if a margin squeeze occurred in practice.

Finally, Ms Fitori advocated that NRAs should be equipped with an effective range of powers including the right to prevent launch of a product, to suspend or require removal of an abusive product from the market, and the right to require price adjustments at either retail or wholesale level. They should be empowered to levy appropriate fines for abuse, especially in the case of repeated abuses.

Dr Groebel took the floor again to deal with 2 points which had arisen during the presentations. She noted that the question of how to classify unbundled loops for the purpose of the test was a difficult one and might depend on national circumstances.

She confirmed that temporary discounts should be taken into account in the test, even where the motive was to increase user demand.

Dr Groebel agreed that both issues might benefit from clarification in the final Guidance.

SESSION 3: Looking for the future of roaming

This session was moderated by **Ms Asta Sihvonon-Punkka (FICORA), BEREC Vice-Chair**, who introduced the topic by referring to the Commission's proposals within the Connected Continent Regulation on which the European Parliament has expressed its initial views and which are currently under discussion in the Council.

Presentations³ were made by the following speakers:

1. Co-Chairs of the BEREC International Roaming Expert Working Group – Ms Elisabeth Dornetshumer and Mr Claudi Fauli Prats

Mr Fauli Prats began by recalling that BEREC had been asked by the Commission to advise on certain key questions arising from the proposal to abolish retail roaming surcharges, allowing roaming customers to “Roam like at home” (RLAH). The

³ Presentations are available on the BEREC web-site from BEREC, INTUG, EAFM, GSMA, ECTA, ETNO and Mr Scott Markus. A document setting out the preliminary views of BEREC on questions asked by the European Commission is also available there

document published to accompany this Forum should be regarded as a preliminary analysis of these matters. BEREC still stood by its Opinion published in May 2014.

The presenter pointed out that, for the purposes of the analysis, it had been necessary to make a number of assumptions about matters which had not yet been decided concerning how RLAH would work, in particular that RLAH has to be applied to all customers; to all types of domestic tariffs for all regulated roaming services; and for periodically travelling abroad.

It could be a challenge to introduce RLAH without causing charges for domestic retail mobile services to rise while allowing cost recovery at both wholesale and retail levels and avoiding market distortions. BEREC had established that domestic mobile prices in most countries are below the corresponding levels of wholesale roaming charges, especially for data services. Mobile providers might make consequential adjustments to charges for domestic services. There was a risk that customers who rarely or never use roaming services would then experience price rises without sufficient offsetting benefit. These risks might be mitigated by a retail “Fair Use Policy” and/or changes at wholesale level.

BEREC has identified a number of potential problems arising from the level of wholesale charges which might give rise to the above-mentioned undesirable outcomes and which need further investigation. Both low and high charge levels can give rise to problems. Problems arising from low charges may be mitigated by a wholesale “Fair Use Policy”.

Ms Dornetshumer then took over the presentation and summarised the risks arising from setting a wholesale roaming cap at an inappropriate level. Those arising from a relatively high wholesale roaming price cap would lead to adverse effects in the home market, while in the opposite case, the effects would be felt by the network operators in the visited market. She then set out a number of provisional BEREC views and issues for further study.

- BEREC observed that the lack of convergence of mobile termination rates increased the difficulty of introducing RLAH.
- BEREC supports in principle the introduction of “Fair Use Criteria” at the retail level. These could be set at a minimum level, to encourage competition, and could be defined in terms of time or volumes.

- BEREC has concerns about the timescale foreseen for the introduction of RLAH. It believes that the definition of any appropriate “Fair Use” policies and details of any necessary changes to wholesale caps should be available well in advance of the introduction of RLAH in order to avoid market disruption.
- BEREC notes that the existing decoupling obligations might be incompatible with the introduction of RLAH. Both that effect and the implications of any consequential abolition of decoupling obligations should be considered.

Ms Dornetshumer posed a number of questions on which BEREC sought stakeholders' views:

(a) On the matter of wholesale roaming:

- Do you consider that any wholesale measures are needed (including reduction of caps)?
- Do you consider that any additional measures (such as wholesale FUPs) are needed to limit the likely negative effects on national markets?
- Are there any restrictions to implement such measures?

(b) On the significance for RLAH of lack of convergence in national mobile termination rates

- Do you share BEREC's views?
- Do you have any suggestions how this problem could be addressed?

(c) On the introduction of retail “Fair Use” criteria:

- Do you think that the options mentioned are appropriate?
- Are there any technical restrictions?

(d) On the timescale foreseen for the introduction of RLAH

- Do you share BEREC's concerns?
- How much time do operators need to implement RLAH (adapt tariffs etc)?

(e) On the possible incompatibility between the existing decoupling

obligations and RLAH

- Do you share BEREC's views?
- What are the implications if the decoupling obligations are withdrawn from the regulation?

Ms Dornetshumer ended her presentation by noting that BEREC plans to publish a further consultation document covering these issues in December. In addition to the presentations and oral comments expressed at the Forum, written comments at this stage would also be welcome within the following week.

2. INTUG – Mr Nick White

Mr White said that roaming was one symptom of a general problem – the lack of effective competition in mobile communications. It is a problem not just in Europe but globally. INTUG's focus was on the business sector. Business users expect excellent mobile connectivity not only for traditional handsets but for an ever-increasing range of wireless-enabled devices. High roaming charges inhibit the optimum use of these devices and thereby inhibit trade. He noted that business customers covered an enormous range from those with a single traditional handset to those making significant use of a large number of handsets and other wireless devices

Mr White noted the enormous challenge of defining a “Fair Use” policy for the latter type of business customers in particular. He feared that as European roaming prices were pushed down, mobile providers would simply recover their revenue by increasing prices of other services. A more holistic approach to competition in mobile markets was needed. He recognised some of the issues highlighted in the BEREC presentation but pleaded that these should not be used as an excuse for delayed implementation of RLAH.

He ended by noting that the focus should be on economic growth, not on the interests of the mobile providers, and that the model adopted by decision-makers should be one of global borderless connectivity. Roaming was an outdated concept and acted as a brake on economic progress.

3. European Association of Full MVNOs (EAFM) – Mr Jacques Bonifay

Mr Bonifay noted the importance of MVNOs for competition. MVNOs currently account for 10% of the mobile market.

EAFM welcomes the RLAH policy, provided that this does not damage competition, lead to the exclusion of MVNOs or act against the wider interests of mobile users. He was disturbed that the Commission had failed to consider the impact of its policy on MVNOs.

It would not be acceptable to introduce RLAH without modifying wholesale regulation. MVNOs have no bargaining power concerning wholesale roaming rates and rely on effective wholesale regulation. Mr Bonifay considered that, in principle, a wholesale cap broadly in line with prevailing domestic access rates for MVNOs was about right. He noted that such rates varied considerably across Europe however, which gave rise to a practical problem. He thought a compromise should be achievable. In the absence of such wholesale reforms, MVNOs would be forced to withdraw from offering roaming services. In some countries where roaming was particularly important, this could even imply withdrawal from the market.

EAFM shares the BEREC analysis that RLAH should be an economically viable option for all providers, should not give rise to significant rebalancing of tariffs for domestic services, that wholesale reforms should be introduced sufficiently in advance of RLAH (EAFM believes at least 6 months in advance). It also agrees with BEREC on decoupling.

Mr Bonifay thought that problems of “permanent roaming” could be addressed, if absolutely necessary, by retail “Fair Use” policy. Such a policy should be simple, to avoid the need for expensive systems development work (he cited the large sums spent on implementation of decoupling for little benefit). However, “Fair Use” policy was a second-best solution, from the point of view of market transparency and user confidence. If wholesale rates were aligned with domestic charges for MVNO access, a “Fair Use” policy might not be necessary.

4. GSMA – Mr Jorge Morillo

Mr Morillo stressed the severe implementation challenges of RLAH and the importance of allowing sufficient time. GSMA considered that December 2015 is unachievable and that mid-2017 would be the earliest practical implementation date. It would be a mistake to require all tariffs to offer RLAH. Flexibility to opt out, as currently for the Eurotariff, would be important for consumers.

A retail FUP would be essential. This should be simple to operate, flexible enough to take account of different national market circumstances, transparent, suitable for use with all kinds of tariff structures and should facilitate compliance monitoring.

Mr Morillo noted that roaming offers had become more innovative and that, in particular, experience with small daily usage fees to give roamers access to domestic tariffs had been positive. He called for a careful impact assessment and public consultation on any proposals to reduce wholesale caps. Wholesale costs varied considerably across Europe; further reductions in wholesale caps would risk a waterbed effect, leading to rises in other charges. More generally, he warned against policies which could cause distortions in national markets.

Finally, Mr Morillo called for removal of the current decoupling obligation but warned against tinkering with the current practical €50 cut-off limit.

5. ECTA – Ms Erzsebet Fitori

Ms Fitori opened by confirming that ECTA supported a gradual path towards RLAH which allowed all providers (and not simply the largest) to compete. It was essential to allow sufficient time for implementation – 18 months should be about right. Additionally, clarity on wholesale regulation should be provided 18 months before introduction of RLAH.

RFU rules designed by BEREC would be essential. Restrictions on tariff design should be avoided in order to underpin competition. The operation of RFU rules should be monitored carefully,

Structural solutions would become redundant on implementation of RLAH and should be deleted

Wholesale regulation was a pre-requisite for RLAH as was harmonisation of national rates for mobile termination. However, there were differences of view as to the appropriate levels of wholesale roaming caps, reflecting different commercial interests. Challenger providers tended to argue for lower wholesale caps while larger MNOs, especially those with a Southern European footprint or a large volume of inbound roaming tended to support the existing caps.

6. ETNO – Mr Francesco Versace

ETNO considered that the impact of the most recent changes to the Roaming Regulation had not been properly assessed and should be given time. In any event, any introduction of RLAH should not be rushed – a 12-18 months implementation period would be appropriate during which time consultations with the stakeholders should continue. Introduction of an RFU policy would require a careful impact assessment.

Decoupling obligations would be redundant on the introduction of RLAH and should be removed.

Mr Versace warned about the risk of adverse consequential effects in domestic markets. RFU policies would definitely be needed. They should be flexible enough to accommodate different tariff structures, simple for consumers to understand and easy to implement without imposing undue burdens.

ETNO shared a number of BEREC concerns about the risks of inappropriate wholesale regulation. Mr Versace stressed that it was vital that network operators should be able to recover costs and should not be disincentivised from making efficient network investments.

Mr Versace praised BEREC's careful professional approach and stressed that, although roaming is a highly political issue, thorough analysis and assessment was necessary before implementation, in order to avoid unintended harm to the interests of certain consumers.

7. BEUC – Mr Guillermo Beltra

Mr Beltra began by noting that the BEREC's stakeholder consultation used to inform its published preliminary views had excluded BEUC. The views he was presenting on this occasion were preliminary ones; further consideration by the national consumer bodies would be necessary.

Mr Beltra referred to the different possible definitions of RLAH and to the question of untapped demand, both of which required careful consideration and assessment. He thought that a reduction in wholesale roaming caps would be essential to support RLAH, in order to underpin effective competition. BEUC did not have a firm position on the relevance of different levels of MTRs but called for efforts to harmonise them in any case as this would be beneficial more generally.

Mr Beltra called for serious consideration to be given to avoidance of RFU policies. He recognised this would be challenging but pointed out that they tended to undermine the purpose of RLAH. He supported INTUG's call for the eventual elimination of all roaming charges. He thought that the problems RFU policies were considered to address could be solved in other effective ways. In particular, if sustainability of RLAH was the concern, it would be preferable to focus on driving down wholesale costs.

In the event RFU policies were introduced, Mr Beltra called for the restrictions to be as non-binding as possible, facilitating competition on that dimension also, with the ambition for early removal. Mr Beltra also observed that although much of the focus of discussion about roaming was on holidays, for many customers, roaming was a reality every day or every week. That needed to be taken into account if an RFU constraint were defined in terms of time. If alternatively, limits were to be defined in terms of volume, Mr Beltra considered individual domestic usage to be more relevant than a national average.

8. WIK - Mr Scott Markus

Mr Markus noted that he was expressing his personal views and was not on this occasion representing his employer.

He emphasised the crucial importance of BEREC's work on costs, in order to

guarantee that the policy is sustainable. The history of roaming regulation demonstrated the need for consistency between wholesale and retail caps, both to avoid the risk of forcing companies to charge below cost and to ensure that the benefits of lower wholesale charges actually do flow through to consumers.

Mr Markus said that the significance of MTRs to regulation of roaming appeared to be underestimated. He considered that the introduction of RLAH meant that it was very important that variation in MTRs should be minimal, in particular for roaming calls received. While he accepted that regulation of MTRs is an issue which goes much wider than roaming, he thought it was time to consider moving from an asymmetric approach to regulation of MTRs to a symmetric approach.

Mr Markus referred briefly to his experience in regulation of roaming in the Gulf States which were following a European approach, albeit a few years behind. Their decision to collect market statistics using the same templates as BEREC was of benefit to both groups. And in the latest consultation, there was no intention to introduce decoupling.

Finally, he said that although roaming regulation did lead to welfare gains for consumers, there were even stronger arguments for regulation in terms of spillover benefits in the wider economy.

9. Interveners

A number of participants intervened in support of various points made by previous speakers. Additional points made included the following:

- One speaker referred to the expectation that any change to the regulation would give rise to winners and losers, both amongst classes of consumer and amongst market players. He called for a careful assessment of the extent of such wins and losses alongside any analysis of the aggregate position
- Another speaker expressed doubt as to whether a “wholesale fair use” policy could work. In response, **Mr Morillo** said that it was not known at the moment whether it could work in practice; it was simply an idea to be investigated.
- Two speakers mentioned that some European providers were now offering RLAH within their bundles and that this was apparently sustainable at current wholesale

rates

- It was noted that greater harmonisation of national numbering plans would be an advantage as the termination rates for certain number ranges could be very different from the standard rates and there was little transparency of these differences across Europe
- Another speaker thought that BEREC's concerns (echoed by others) about waterbed effects were overstated. It was pointed out that roaming played a small part in the choice of provider for most customers and that there was vigorous competition on prices for “headline” services, providing very little scope for “waterbed” increases in response to reductions in roaming revenue. The same speaker also pleaded for a careful technical assessment to be made of any transparency measures proposed and expressed the view that an obligation to introduce RLAH without the possibility of appropriate RFU limits would be a disproportionate intervention.
- Some speakers questioned the need for a 12-18 month implementation period, suggesting that the market players should already have started work. In response, it was argued that providers have been fully stretched implementing the current obligations and that, in any case, there was a limit on what could sensibly be done until details of the new obligations were clearer.
- It was argued that a reduction in wholesale caps would undermine incentives of MNOs to make network investments. Moreover, such a reduction was unnecessary as BEREC statistics shows that many operators do charges wholesale rates below the regulated cap. Referring to the point made previously about the need to avoid application of RLAH to all current tariffs, the speaker noted that some providers had hundreds of legacy tariffs still in use and that the system development and administrative costs of applying RLAH to all such tariffs could be disproportionate.

Ms Sihvonon-Punkka thanked the presenters and interveners for their contributions and reminded participants about BEREC's next steps. Written comments would be very welcome within the forthcoming week as in input to the ongoing internal work. In December, BEREC would publish its considered views in a formal consultation of stakeholders.

Closing remarks

Closing the meeting, Dr Barros thanked participants for their many constructive contributions and said that the points made had been carefully noted. She reminded participants that all three areas covered at the Forum were under consultation until 24 October. Written contributions by that date would be most welcome. BEREC did not have a closed mind. Good arguments would still be taken into account.

On the BEREC Strategy, she noted that stakeholders had called for more action, more speed, working closer to the market, paying more attention to market developments, looking ahead, paying more attention to consumers, being balanced, sharing objectives. It was difficult to argue. While in practice it was not always possible to meet all these objectives simultaneously, it was very useful for stakeholders to keep pushing in those directions.

Turning to the ERT, Dr Barros said it was clear that the issues were difficult and the test complex – but nevertheless crucial to implementation of the Commission Recommendation on non-discrimination.

On roaming, Dr Barros noted that NRAs were very concerned about the impact on the market. There would be inevitably be winners and losers and it was clear that there were very different views amongst the stakeholders. She noted in particular remarks about timing, the avoidance of “fast track”, waterbed effects, arbitrage concerns and the challenge for the Internet of Things. These were all challenging issues to deal with. Finally, Dr Barros characterised the developing market as the middle of a big storm. That was why it was so vital to have active engagement with the stakeholders. She looked forward to more such events during 2015 when she would be BEREC Chair.

All presentation made during the 2nd BEREC Stakeholder Forum meeting have been published on the BEREC website. A list of the presentations and hyperlinks to their published version is presented in Annex II.

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