

17 February 2016  
FTTH conference, Luxembourg

## **Keynote session on “FTTH and Digital Agenda Targets”**

### **The BEREC stand regarding the prospective regulation of access networks, looking at the Digital Agenda Targets**

Good morning everybody,

I am very pleased to have the chance to be here – and for me it's the first time - attending this landmark event which represents a unique opportunity to exchange views on the future of the sector with such a wide array of key relevant actors.

I am also honoured to be representing BEREC, the Body of European Regulators for Electronic Communications which, as you know, is entrusted with significant advisory tasks in implementing the sectoral framework and therefore plays an important technical role in orienting the definition of the national solutions for network regulation.

Such regulation has a crucial impact on the private sector's infrastructural investment choices, which, I guess, are the interests at stake here.

At the same time, and in a more forward-looking perspective, BEREC is committed to do its part in relation to the review of the current EU regulatory framework which was launched last year by the Commission as one of the key initiatives within the big picture of the Digital Single Market Strategy.

As a matter of fact, we in BEREC have been deeply committed to working with a view to identifying any appropriate adjustment to the framework, of course with a specific focus to ex ante regulation which, as you all are well aware, falls under the national regulators' competence.

In particular, we have been thoroughly considering any improvements always keeping in mind the goal of promoting high-quality broadband and ultra-broadband connectivity throughout Europe and hence meeting the Digital Agenda targets.

Let me stress indeed that, as BEREC, we do share the Commission's ambitious connectivity goals, and we are convinced that Europe needs to develop high-performance broadband infrastructure, bearing in mind that our target should be long-term consumers' welfare. When it comes to connectivity this means granting ubiquitous and top quality connectivity needs of consumers, small and medium enterprises as well as multinational companies and public administrations.

Also in line with the European Digital Single Market Strategy, we think that sectoral regulation can definitely play a role here but we also firmly believe that any regulatory intervention can effectively

display its potential work only when working in conjunction with all of the other policy actions impacting on the whole digital ecosystem and beyond.

Therefore, when thinking about how achieving the necessary infrastructural investment in high capacity access networks, we should not forget the wider Digital Single Market picture and should “*connect the dots that are outlined in the Digital Single Market strategy*”, as Commissioner Oettinger underlined.

What does that mean in practice? Well, it means that, together with sector regulation, several other levers should come to play here, as it would be misleading to think that private investment in ultra-broadband would be triggered without a demand for services provided over such brand-new platform. Moreover, whatever public investment in connectivity alone, not synchronized with effective market needs, would turn to be a waste of resources for right the same reasons.

The demand for broadband services is fundamental and it should be sustained, for instance, through improving the digital skills and expertise of European citizens and businesses, promoting the online provision of public services such as e-government and e-health, and speeding up on our data-driven economy.

These are objectives that a set of well-tailored publicly financed initiative could very efficiently pursue, while as far as the relationship between public funding and connectivity are concerned , well.....I will tell in a while.

But let me get back to the contribution that the sectoral regulation could give to the goal of connectivity; our approach is that effective and sustainable competition remains, within a flexible legal framework, the best driver for infrastructural investment.

By the way, this is explicitly recognized also in the Commission’s Digital Single Market Strategy and, more recently, in the European Parliament’s resolution *Towards a Digital Single Market Act*.

This is why keeping a pro-competitive framework is so important to us: as a matter of fact, while increased competition has been associated with more infrastructural investment, innovation and lower prices for end-users, there is little evidence of the link between consolidation and increased infrastructural investment.

This is also why we are convinced that the principles and regulatory objectives at the heart of the current pro-competitive EU legislative framework – promoting competition, the internal market, the interests of EU citizens, as well as efficient investment and innovation in new and enhanced infrastructures – could effectively serve the purpose of fostering connectivity in the EU.

In tight relation with this, we believe that the current SMP-based regulatory architecture, grounded on market analysis, identification of market power and imposition of relevant access obligations, should not be abandoned, given that the bottleneck features of broadband access networks remain also in an NGA context and ex ante regulation appears to be still necessary in many EU Countries.

Of course, more flexibility in terms of instruments available to NRAs should be introduced, in order for them to be able to intervene in such ever evolving context, within the specific markets of reference. The NRAs’ toolbox should definitely be supplemented; I am referring, for instance, to the conditions for imposing symmetric obligations, as well as to the NRAs’ means for addressing oligopolistic scenarios.

I guess you had the chance to have a look at the Opinion that BEREC published on last December on the review of the regulatory framework for electronic communications; I would refer to it for any further detail on possible improvement of the framework that may help boost the development of ultra-broadband connectivity across Europe. Let me just add something in this respect: so far, we all have been reasoning a lot around the main market and technology trends in the sector, their impact on competition as well as on consumer welfare, and the potential regulatory responses to any possible unbalance.

These are also the main features of the set of questions addressed by the European Commission within the public consultation; all in all the debate has been structured so far in a rather theoretical way.

More recently, the debate in Brussels seems shifting to possible regulatory adjustments that may promote private investment; therefore, in the next steps of the process, we would be glad to contribute to this debate and we would be grateful to share our thoughts with the Commission on any quite structured proposal.

As always in regulation (and not only, let me say....) the devil, or the heaven, is in the details and we, as national regulators, would be glad to help design a truly long-term competitive and investment-friendly regulatory landscape.

First, we consider that national approaches to meeting the digital agenda targets can definitely be different, depending on the specific national situations, and therefore, imposing from the above standard EU solutions to foster NGA, as well as stiff technical or competitive models, could be counterproductive.

In this respect, and coming to the type of infrastructural investment needed, we agree with the Commission – and no one could argue against - that fibre access networks would be top.

In the Opinion released last December to the Commission as BEREC, while we recognized the future-proof character of such kind of infrastructure, we also firmly stated the enduring validity of the principle of technological neutrality, hence the strength of the different and specific technological solutions progressively consolidated at national level, and the opportunity for NRAs not to push for any one, not even for a switch-off of copper networks.

I believe that such approach would help prevent disruptive effects on a competitive level, while absolutely not excluding innovative solutions.

Parallel to reasoning on the role of regulation in the context of the review, complementary mechanisms could furthermore be considered to promote NGA investment, such as the sector specific demand-side measures I was mentioning earlier, but also network deployment by non-telecom utilities, coverage obligations in spectrum auctions and so on... In this latter respect, I think we can all agree on the role that a quick take up of 5G networks could have in meeting the exponential growth of ultrafast mobile bandwidth by European citizens and in contributing as a booster for higher and higher demand of broadband connectivity, stimulating, in turn, the growth of a fixed ultra broadband access market.

Getting now to the issue of the rural divide, the role of the State Aid regime should be also adequately valued here, in order to help achieve the universal coverage of high-capacity networks in market failure areas.

Nevertheless, as we suggest in our Opinion, the consistency between the sectoral regulatory framework and the State Aid framework should be improved through the formal recognition of the NRAs' role in the State Aid context, so to maximise the effectiveness of such public interventions and avoid any crowding out effect of private investments.

Finally, also the role of Universal Service should be taken into account in this respect, but limited to ensuring the availability to all of basic connectivity services of a certain quality. Universal Service remains indeed a crucial part of the sectoral framework and, as BEREC, we are of the view that the determination of its exact scope at national level should be left under each Member State's responsibility, also with reference to any broadband-related obligations.

Overall, considering that, in our view, competition is the key sectoral driver for fostering NGA investment, hence meet our Digital Agenda targets – there are definitely others outside the telecom sector, but this is the main one under our remit - I think we should try to identify regulatory solutions compatible with preserving such healthy competitive dynamics.

I therefore feel it would be important to approach the review of our present framework, looking at the appropriate scope of our sector regulation in the wider landscape of the entire digital ecosystem (as rightly suggested by the DSM Strategy). At the same time, I would carefully avoid keeping any shot in the dark, taking approaches that may turn out to be disruptive of the current pro-competitive system: this is the reason why, I remain convinced that the landmark features, in terms of regulatory principles and objectives, and the fundamental patterns of the current regulatory mechanisms, should absolutely be preserved to the benefit not of competition in and of itself, but ultimately of European end-users.

So, now...what's ahead of us in operational terms?

Waiting for the Commission to disclose concrete ideas and proposals on the framework of the future, we are already looking into the specific regulatory adjustments to make with a view to promoting infrastructural investment. If you had a look at the BEREC Work Programme 2016, you will have seen indeed that we plan to continue our work on how promoting high-speed broadband investment, while preserving a competitive context and, in this respect, we will adopt after the summer a report on the challenges and drivers of NGA roll out and infrastructure competition.

Also, we will keep on working on active wholesale access products, on key technological developments such as Network Function Virtualization (NFV) and Software-Defined Networking (SDN) and Machine To Machine services, together with their regulatory implications.

So, I would like to conclude this intervention by warmly inviting you all to take part as much as possible to the public consultations of the draft documents that BEREC will issue this year, in order to let us benefit of your input, trying all together to design a legislative framework tailored to the future needs of the digital sector.