

# Public debriefing 44<sup>th</sup> BEREC Plenary meeting

Dan Sjöblom, BEREC Chair  
Virtual meeting 6 October 2020

Body of European Regulators  
for Electronic Communications

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Information on the election of the BEREC Chair 2022, Vice-Chairs for 2021 and public consultations, by BEREC Chair

BEREC Work Programme 2021 for public consultation, by incoming Chair 2021

BEREC response to the public consultation on the Digital Service Act (DSA) Package, by Market and Economic Analysis Co-Chairs

BEREC Guidelines on very high capacity networks – Outcome of the public consultation, by Fixed Network Evolution Co-Chairs

## **Q & A**

BEREC Report on the implementation of Regulation (EU) 2015/2120 and BEREC Open Internet Guidelines, by Open Internet Co-Chairs

BEREC Guidelines on intra-EU communications, 1st Intra-EEA communications benchmark report, 25th BEREC International Roaming Benchmark Data Report, by Roaming Co-Chairs

BEREC input to the revision of the Commission's access recommendations, by Remedies Co-Chairs

## **Q & A**

Wrap-up and Closing

## Oral update from Dan Sjöblom, BEREC Chair 2020

- BERECs work on the election of the BEREC Chair 2022 and Vice-Chairs for 2021
- Dates for Public Consultations

WG	Project	Launch date of PC	Closing date of PC	Duration
PFT WG	BoR (20) 163 Draft BEREC Work Programme 2021	6 October 2020	5 November 2020	30 days
SI WG	BoR (20) 168 Draft BEREC Guidelines to assist NRAs on the consistent application of geographical surveys of network deployments, Phase II	6 October 2020	5 November 2020	30 days

# BEREC Work Programme 2021

Michel Van Bellinghen, incoming Chair 2021

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**March 2020 – April : Launch of early calls for inputs  
NRA's, Stakeholders and co-chairs**



**1 April: Webinar on the Strategy and draft WP**



**May - June: Prioritisation exercise Co-chairs and  
NRAs**



**October - November: Public Consultation on draft WP  
19 October: Stakeholder Forum**



**December: Adoption of final WP**



- Monitoring **the impact of the EECC** at the forefront of BEREC's work, but also **forward-looking** approach, especially related to end-user provisions and the digital ecosystem
- The facilitation of successful implementation and consistent application of the **EECC** and the focus on **sustainability** will be important horizontal principles
- Ensure **VHCN and 5G** services are available timely
- Input to **co-legislators and the Commission** (Review of Roaming Regulation, BRCD, Access Recommendation, ....)
- **Breaking down the silo's**
  - Interaction with stakeholders: public consultations and workshops
  - Cross-cutting workstreams which would benefit collabo between WGs
  - **Strategy for relations with other institutions**



19 October 2020

online event  
14:00-17:00 CET

Agenda

## 8th BEREC Stakeholder Forum

Opening and welcome remarks

Introductory remarks

BEREC's Working Programme 2021

Handling of the Covid 19 crisis – a telecom's perspective

Q&A session

Keynote speech on digital platform regulation and collaboration  
between regulators

Panel discussion on regulation of digital platforms

Closing remarks on the regulation of digital platforms



# BEREC response to the public consultation on the Digital Service Act (DSA) Package, BoR (20) 138

MEA Co-Chairs,  
Jorge Infant (CNMC), Chiara, Caccinelli (Arcep)

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- ❑ Regulatory framework **inspired by ECS ex-ante asymmetric regulation** adapted to the specificities of DPs
  - ✓ Intervention aimed at digital platforms with significant intermediation power (SIP)
  - ✓ Built on experience and expertise in regulating ECS market to **address structural competition problems, protect end-user rights and keep the digital environment open and competitive**
  
- ❑ Combination of options 3a and 3b of the DSA IIA:
  - ✓ **Principle-based general prohibitions & obligations**
  - ✓ **Tailored remedies:** on a case-by-case basis and proportionate
  
- ❑ Regulatory framework where the scope and thresholds for intervention, as well as remedies are set in order to ensure regulatory predictability and proportionality
  
- ❑ Enjoying the benefits of a **consistent framework of intervention** (e.g. repeated interactions with the stakeholders, coherent reach of different objectives, etc.)

### Digital Platforms with Significant Intermediation Power (SIP)

- ❑ Active in predefined **Areas of Business** (Search, social networks, OS...) characterised by structural features (strong network effects, high barriers to entry and switching costs, significant economies of scale and scope)
- ❑ Presenting **structural and specific criteria**
  - Control over digital bottleneck and/or being an avoidable trading partner
  - Strong financial resources, easy or privileged access to capital markets
  - Organised into an ecosystem allowing the DP and leveraging power onto additional services/businesses, and/or control over key inputs/assets
- ❑ SIP identification based
  - Mainly on **absolute thresholds** for each Areas of Business at the EU level
  - Potentially also on an individual assessment when absolute thresholds are not met but SIP is de facto exerted (EU, regional or national level)

### Regulatory intervention

→ *Combination of general principle-based rules (DSA option 3a)  
and case-by-case remedies (DSA option 3b)*

- ❑ **Principle-based general obligations** (e.g. transparency) and **prohibitions** (e.g. unjustified discrimination among business users) applicable to all DPs with SIP but adjusted according to specificities: allows to streamline the regulatory process
  
- ❑ **Case-by-case remedies**, e.g.
  - Access to key inputs (e.g. data) or assets (e.g. technical functionalities) → to create a level-playing field for competitors/providers of complementary goods/services
  - Access to very large, overarching digital environments → i.e. also protecting end-users' rights to access/share content and applications
  - Other specific issues needing tailored intervention

### Institutional Design

→ *Application of existing authorities' relevant expertise  
at the EU and national levels*

- ❑ Intervention depending on geographical scope, strong coordination:
  - **EU body** (potentially the EC)
  - **EU-level Advisory board** (AB, similar to BEREC)
  - Competent **national regulatory bodies** (NRBs)
- ❑ Pan-EU to be addressed by EU body in cooperation with AB and NRBs
- ❑ NRBs: enforcement, disputes at a national level, data collection & monitoring, national cases (in collaboration with EU Body and AB)
- ❑ Advisory Board: Point of coordination among NRBs: consistency, guidelines, common positions, data aggregation, support for both, NRBs and EU body)

→ **BEREC and ECS NRAs well placed to take the role of AB and NRBs**

# BEREC Guidelines on very high capacity networks – Outcome of the public consultation

FNE Co-Chairs

Wilhelm Schramm (RTR), Björn Jonassen (BNetzA)

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# BEREC Guidelines on very high capacity networks

## Outcome of the Public Consultation (1)

- In total BEREC received 34 responses to the public consultation which ran from 10 March until 30 April

### **Main result**

- Comments were made mainly on the criteria a network has to fulfil in order to be considered a very high capacity network
- Several stakeholder explicitly agree, the other made comments on many different aspects

### **Criterion 1 (fixed, FTTB/H)**

- 6 comments; nearly all agree

### **Criterion 2 (wireless, FTT base station)**

- 9 comments; several explicitly agree, some suggest adaptations
- No need and possibility to change it, since criterion 2 follows from the EECC

# BEREC Guidelines on very high capacity networks

## Outcome of the Public Consultation (2)

### Criterion 3 (fixed, performance thresholds)

- 30 comments, several explicitly agree, other made comments on many different topics e.g.:
- Best technology approach and the network performance considered
  - Follows from the EECC, therefore, no possibility to change it
- Peak-time condition
  - A definition of this term has been included in the Guidelines

### Criterion 4 (wireless, performance thresholds)

- 17 comments on many different topics e.g.:
- Best technology approach and the network performance considered as in case of criterion 3
- Suggestions of higher and lower performance thresholds
- Microwave backhaul should also be possible
  - Is not excluded



# BEREC Guidelines on very high capacity networks

## Outcome of the Public Consultation (3)

### Examples of main topics of other comments

- How can the NRAs determine whether criteria 3 and 4 are fulfilled?
  - NRA may demand that a test service is implemented in the network
  
- QoS parameters should be in line with the BEREC Guidelines on net neutrality
  - These speed parameters cannot be used since they do not refer to ‘under usual peak-time condition’

## Questions on the first part of the debrief

# BEREC Report on the implementation of Regulation (EU) 2015/2120 and BEREC Open Internet Guidelines

Open Internet Working Group (OI WG)

Klaus Nieminen (Traficom), Michiel van Dijk (ACM)

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## **New:**

- Change in structure:
  - Overview of relevant topics of the past reporting periods in Annex I.
  - Current reporting period in the main body of the report
- Summary on Covid-19 Special Reporting Mechanism findings

## **Some highlights:**

- NRAs are active on this subject
  - Zero rating offers on the market in 26 member states, NRAs monitor
  - All but three NRAs assessed traffic management practices
  - 26 NRAs have been active on transparency of IAS products
  - ISPs have included the required speed information in 2/3 of the MS
  - Half of the NRAs have set national speed information specifications

## First appreciation of the ECJ judgment in cases C-807/18 and C-39/19 Telenor Magyarország

- Court has confirmed BEREC GLs on:
  - Relation between Art. 3(2) and Art. 3(3) (GL 37)
  - Agreements with end-users cannot derogate from Art. 3(3) (GL 19, 37)
  - Definition of ‘end-user’ to include CAPs (GL 4)
  - The assessment of TM restrictions after the data bundle is depleted while zero rating is continued (GL 41 and 55)
  - The Court confirms a case-by-case assessment (no categorical ban on all zero rating)
- There are still three upcoming cases on zero-rating cases
- At this stage: no apparent reason to engage in updating the GLs
  - Suggestion to add references to this ruling when GLs will be updated

Update of BEREC Guidelines on intra-EU communications,  
1st Intra-EEA communications benchmark report,  
25th BEREC International Roaming Benchmark Data Report

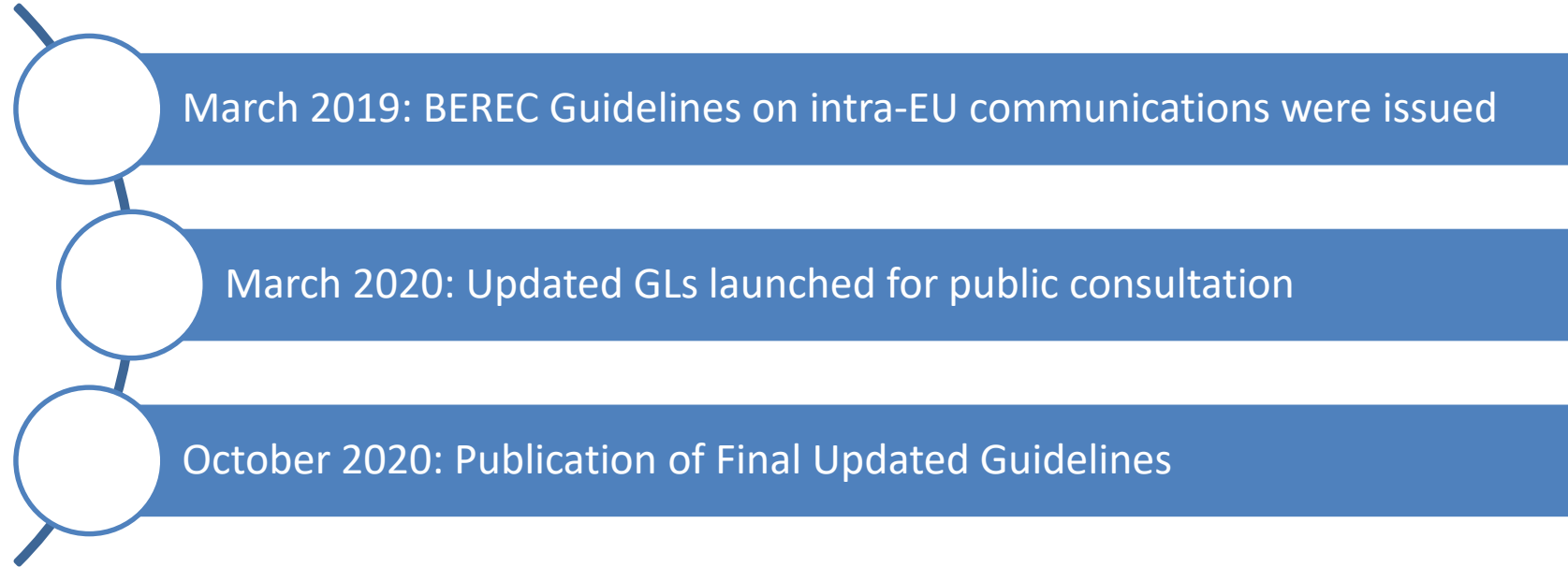
Roaming WG

Elisabeth Felber (RTR), Ioanna Choudalaki (EETT)

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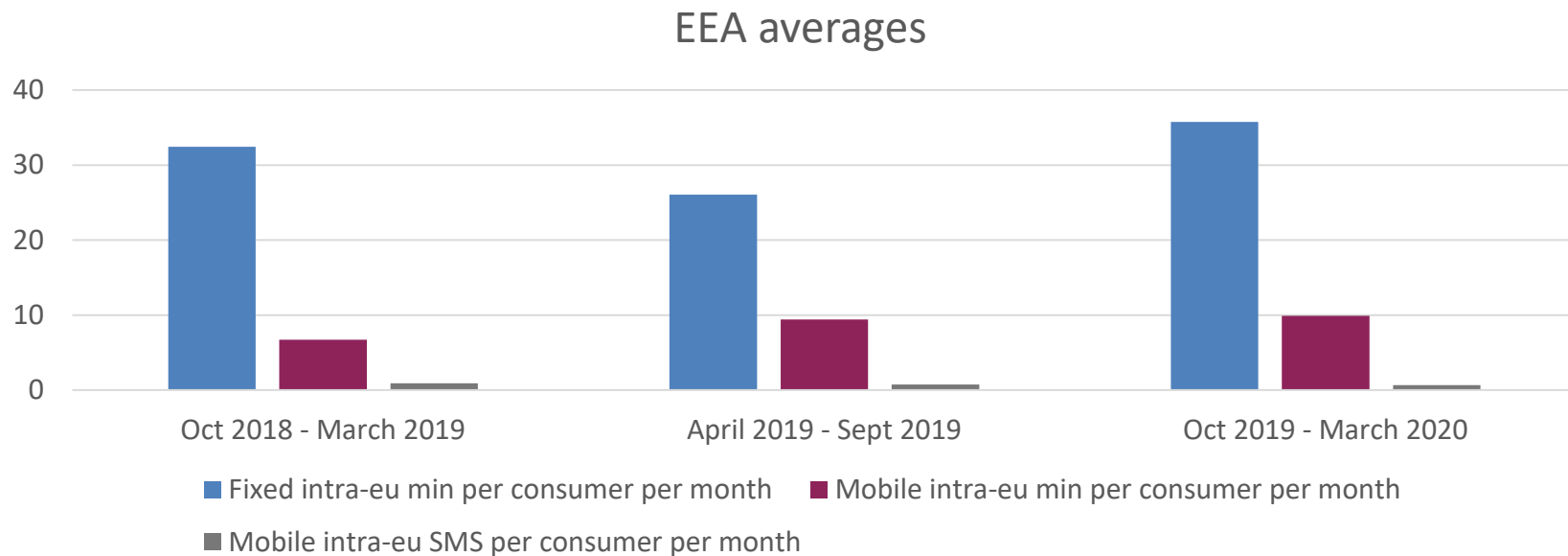
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## 6 contributions to the public consultation

- 
- Main changes:
1. Benchmark for sustainability procedures
  2. Clarifications on the scope
  3. Clarifications on alternative tariffs

## Main findings:

1) According to the data, the Regulation had little impact on average consumption for fixed call services and for SMS. Mobile call services' average consumption has increased.



2) Average prices are well below the price caps for regulated voice services (0.19 €/min)

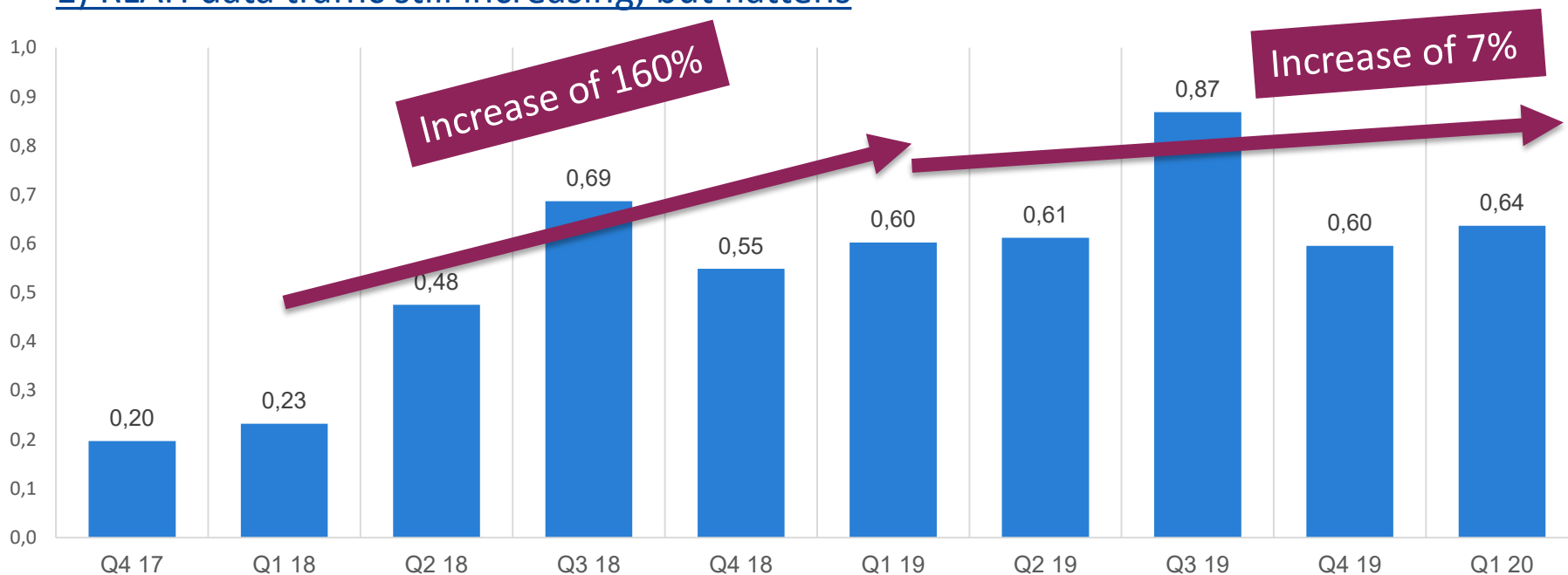
Mobile calls: average EEA retail price= 0.08 €/min

Fixed calls: average EEA retail price= 0.03 €/min



## Main findings:

### 1) RLAH data traffic still increasing, but flattens



### 2) Wholesale prices continue to decrease and are well below the caps

3) Covid-19 pandemic and travel restrictions seem to have slightly influenced Q1 2020 roaming traffic. Full effect of Covid-19 on consumption will be only seen in the next report

# BEREC's response to the Commission Consultation on the Access recommendations

Remedies Co-Chairs

Annegret Groebel (BNetzA), Sławomir Olszewski, (UKE)

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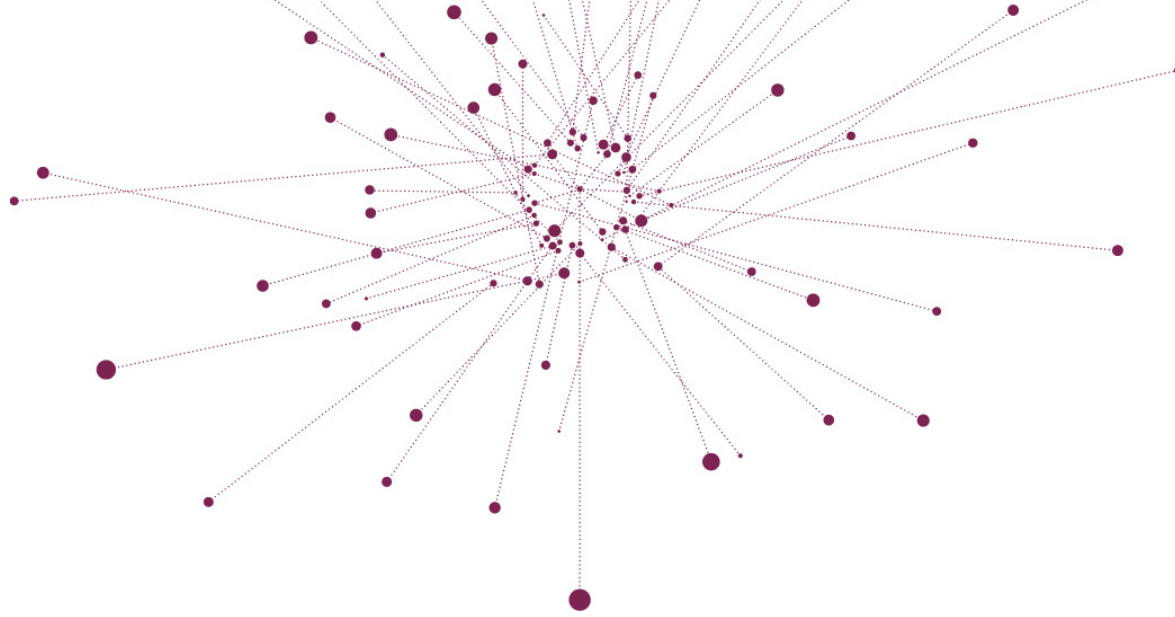
- **The Commission started on 16 July 2020 a Targeted consultation on the revision of the Commission's access recommendations:**
  - 2010 NGA Recommendation (2010/572/EU);
  - 2013 Non-discrimination obligations and costing methodologies (2013/466/EU)
- **Both access recommendations that are currently in force build on the 2009 Framework (Art. 9 – 13 AD) and pursue the goal of fostering the internal market as well as promoting investment in NGA as well as promoting effective competition and innovation. The 2013 NDCM Rec. shifts the focus more on investment in newly deployed NGA networks.**

- **Thus the main motivation of the review is to update the access recommendations** in light of the EECC as well as to update to the 2014 Rec. on relevant markets (2014/710/EU) currently under revision.
- **BEREC agrees with the update and streamlining the access rec.**, but considers it necessary to respect the limits of the EECC, leaving the margin of discretion provided for in the EECC to NRAs as well as not overlapping with BEREC Guidelines (or CPs) aiming already at ensuring a consistent application of the 2018 Framework by NRAs.

- **All recommendations must follow the provisions of the EECC, i.e. apply to all relevant markets susceptible to ex-ante regulation.**
- Moreover, the **EECC sets out that NRAs shall take into account the need to promote competition and long-term end-user interests** related to the deployment and take-up of next generation networks, and in particular of very high capacity networks. Thus, the scope of a future access recommendation comprises the deployment of *new and enhanced networks, in particular VHCN*, but is not limited to the latter.
- A future access **recommendation should be fully in line with the BEREC Guidelines on VHCN** acc. to Art. 82 EECC (BoR (20) 165).

- More generally, **BEREC urges the Commission to refer to existing BEREC guidance documents** in a new access recommendation.
- In the answers to the individual questions BEREC sets out in more detail which parts of the two recommendations may be transferred to a new access recommendation.
- Overall **BEREC cautions against too detailed recommendations**, given also that a number of provisions of the NDCM Rec. are already in the Directive (Art. 70 + Art. 74 EECC), the number of recommendations may be reduced (as they are becoming obsolete)

## Questions on the second part of the debrief



Thank you!

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