BoR (11) 19

Body of European Regulators for Electronic Communications

BEREC

Body of European Regulators for Electronic Communications

Annual Report 2010

May 2011

Report adopted by the Board of Regulators pursuant to Article 5.5 of Regulation No 1211/2009 of the European Parliament and of the Council

Contents

1 Introduction by the Chairman

Establishment

Following the publication of the Telecom Package on 18 December 2009, 2010 saw the establishment of the Body of European Regulators for Electronic Communications (BEREC) which comprises the national regulatory authorities (NRAs) for the electronic communications sector from the Member States of the European Union.

The establishment of BEREC is a significant development in the evolution of electronic communications sector throughout the EU. It will contribute to achieving the goal of a single market for European electronic communications through working to ensure the consistent application throughout the EU of the regulatory framework for electronic communications networks and services. The creation of BEREC gives national regulators throughout the European Union a formal role at the highest level in the EU to bring about change and reform to the benefit of industry and consumers.

In reviewing 2010, BEREC can reflect on a very successful year, both from an institutional and professional perspective, in the transition from the European Regulators Group (ERG) and in delivering on an ambitious work programme.

The NRAs convened on 28 January 2010 in the historic setting of the Palais d'Egmont in Brussels for the purpose of formally establishing BEREC, adopting Rules of Procedure, election of Chair and Vice-Chairs and the adoption of a draft work programme along with the initiation of steps to establish the BEREC Office. At the meeting, BEREC was honoured by the presence of Commissioners Reding and Kroes along with high-level representatives of the European Parliament and the Council Presidency.

Working with the Institutions

My task of chairing BEREC during its foundation year was greatly facilitated by assistance and support from Commissioner Kroes, the Spanish and Belgian Council Presidencies and the ITRE and IMCO Committees of the European Parliament. In addition, DG InfoSoc provided invaluable administrative support, particularly in respect of establishing the BEREC Office. Finally I would like to acknowledge the practical steps taken by the Latvian Government to ensure the early permanent establishment of the BEREC Office in Riga. The fact that in less than 12 months after the decision was taken to locate the BEREC Office in Riga, the seat agreement has been concluded, premises identified and refurbished and staff have permanently located in Riga is testimony to the early and constructive approach of the Latvian Government representatives to making that decision a reality.

Work Programme 2010

In devising the Work Programme, BEREC tailored its activities to the transition in the regulatory environment while developing and building on the work previously conducted by ERG. The revised framework brings new challenges for regulators, most of which will come into effect following the due date for transposition in May 2011. The ERG had, during its period of existence, a solid history of delivery in deepening co-operation among regulators and had produced a solid body of work which BEREC could use as a starting point.

The BEREC Work Programme 2010 was therefore organised in three separate but related strands:

- Harmonisation
- Emerging challenges
- Changes to the legal regulatory framework

Section 3 of this Report gives further details on the outcome to the Work programme. A particular milestone event was the BEREC Opinion on the draft NGA Recommendation. This was the first instance of the new powers and responsibilities of BEREC under the revised framework whereby the Commission is required to take the utmost account of BEREC opinions.

As BEREC Chair, I would like to thank all NRAs who participated in the deliberations of the various Expert Working Groups. The completion of the work programme and of other tasks and functions of BEREC depends on the preparatory work conducted by the Expert Working Groups. The positive role which BEREC plays, for the benefit of industry and end-users alike, derives from the collective knowledge and expertise of all NRAs and this is focussed within the various Expert Working Groups. I would also like to pay tribute to the Brussels based support staff who provided professional and administrative support to the work of the Expert Working Groups as well as providing invaluable assistance to the Chair during 2010.

As the inaugural Chair of BEREC, it is my honour to present the Annual Report on BEREC activities for the year 2010. I would also like to wish my successor, Mr Chris Fonteijn, every success in chairing BEREC and overseeing its further development during 2011.

John Doherty
BEREC Chair 2010

2 Overview

The Telecom Package adopted in November 2009 placed national regulatory authorities (NRAs) at the core of the revised regulatory framework. The package underlines and reinforces the role of NRAs in applying the framework at national level. Through the establishment of the Body of European Regulators for Electronic Communications (BEREC) NRAs have been empowered with a formal role in the consistent application of the telecom rules throughout the European Union.

BEREC consists of the NRAs for the electronic communications sector from the Member States of the European Union along with NRAs from candidate countries and EEA states and the European Commission as observers. Its activities are conducted through the Board of Regulators which is required to meet in Plenary session at least four times per year. The work of BEREC is organised into Expert Working Groups which prepare the various elements of the Work Programme for discussion and decision by the Board of Regulators at its Plenary meetings. In exceptional circumstances, decisions which cannot wait until a Plenary meeting are made by the Board of Regulators via electronic procedures.

In addition, the BEREC Office, which is a Community body, is charged *inter alia* with providing professional and administrative support services to BEREC. The BEREC Office consists of a Management Committee and Administrative Manager and staff. The Management Committee has the same membership as the Board of Regulators with the addition of the European Commission as a full member.

The inaugural meeting of BEREC was held on 28 January 2010 in Brussels for the purpose of formally establishing BEREC, adopting Rules of Procedure, election of Chair and Vice-Chairs and the adoption of a draft work programme along with the initiation of steps to establish the BEREC Office. Commissioners Reding and Kroes along with high-level representatives of the European Parliament and the Council Presidency attended this meeting.

During 2010, BEREC made significant progress in establishing the BEREC Office. At the end of May the decision to locate the BEREC Office in Riga was taken by the Member States. BEREC, with the assistance of DG INFSO and the active co-operation of the Latvian Government, quickly identified suitable premises and at the end of 2010, refurbishment works were underway with a view towards completion in May 2011. BEREC also moved quickly to recruit staff for the BEREC Office and, after an open competition, Mr Ando Rehemaa was selected for appointment as Administrative manager at the May Plenary meeting of BEREC. Recruitment of other staff of the Office continues.

The revised regulatory framework, and the new institutional arrangements giving BEREC a key role in the European regulatory landscape, is intended to provide the necessary tools that are appropriate for the evolving challenges facing both providers and users of electronic communications networks and services. NRAs had, through ERG, provided professional and evidence-based advice to the institutions during discussions on the package and therefore welcomed the innovations in the final package.

The main elements of the 2010 Work Programme of BEREC were a continuation of, or follow-up to, work which ERG had initiated. The ERG Work Programme had been prepared in anticipation of BEREC being established during 2010. This facilitated a high level of consistency and continuity in the work of BEREC.

The Work Programme was set out in three separate but related strands:

- Harmonisation
- Emerging Challenges
- Changes to the legal regulatory framework.

Over the course of 2010 BEREC made major progress in these three areas. The Board of Regulators published 37 documents, including ten consultations, while the Management Committee published 12 documents.

Where completion of certain projects was not possible (because, for example, of consideration of external input), these have been continued in 2011. In many cases, these delayed projects were completed for the first Plenary of 2011, which took place on the 24/25 February 2011.

Harmonisation

Considerable activity was undertaken by BEREC in relation to the issue of International Roaming. In addition to reporting on compliance with the provisions of the Regulation, BEREC provided formal advice to the Commission on the functioning and possible extension of the Regulation. BEREC assessed the state of competition for roaming services and this analysis suggests that there are structural problems, at both wholesale and retail level, which dampen competition and tend to support prices. Without a structural change, BEREC's view is that prices will tend to cluster around the price caps and any further material price reductions will only be achieved through regulatory intervention.

BEREC assessed a number of alternatives to the current regulation but did not consider any of them to be suitable replacement in current market conditions for price regulation.

BEREC also considered, based on the delta between wholesale and retail data roaming prices and the difference between domestic prices and roaming prices, that retail data roaming prices available to all European consumers are unlikely, over the next few years, to fall to levels considered reasonable by legislators without price regulation.

Next Generation Access is an area of significant importance and one in which BEREC is very active. During 2010, BEREC produced several important pieces of work on NGA, including a follow-up report to the 2007 ERG Common Position on NGA. This document included a practical snapshot of the current experience of product roll-out in member countries. BEREC also concluded a study on the merits of a move to a “Bill and Keep” based interconnection charging mechanism.

In May, BEREC provided its first Opinion under the new provisions of Article 19 of the Framework Directive, which requires the Commission to take full account of such Opinions. This Opinion on the draft NGA Recommendation noted that there were a number of areas that required amendment, (including references to cost orientation, pricing flexibility, risk assessment, geographic de-averaging of prices and geographic variations) but welcomed the explicit recognition that symmetric measures are an option to complement SMP regulation. The Commission subsequently modified its Recommendation, which was then adopted in September 2010.

In addition to these projects, BEREC also published several documents setting out current positions in member countries on the symmetry of termination rates (both fixed and mobile), and two reports on the current levels of mobile termination rates. The latter reports noted that MTRs continue to fall, with the weighted average reducing by 11.5% in the year to 1 July 2010, to a level of 6.36 euro cent per minute.

A factual overview of the regulatory accounting frameworks used across member countries, together with an assessment of the level of harmonisation achieved, was published in October.

Emerging challenges

Several challenges to the structure and operation of the telecoms markets, such as convergence and net neutrality, are emerging, and BEREC has considered many of these as a matter of priority.

On the topic of convergence, BEREC published a report on self-supply in the context of wholesale broadband market analysis, and a further report on the impact of bundled offers in retail and wholesale market definition. Since bundling has gained importance in many Member States over recent years, NRAs need to consider the implications of this development, particularly since the finding of a bundled market may also have implications regarding the implementation of the three-criteria test, or for the analysis of market power.

December 2010 saw the publication of a report considering developments in convergence services. Most converged services make use of elements such as spectrum, content or new end user equipment which either increase or reduce some entry barriers. This could result in a shift in the traditional competitive dynamics of the telecoms sector, possibly resulting in implications for regulation wider than ex-ante regulation.

During 2010, BEREC also continued the co-operation with the Radio Spectrum Policy Group (RSPG), which had been initiated with the ERG in 2008. This joint working group produced a report on the impact of technological and market evolution in the case of spectrum on market definitions in electronic communications.

BEREC published a report in June, which surveyed the current provision of Universal Service in BEREC countries. This report outlined the various national strategies aimed at encouraging the roll-out and take-up of broadband. Also on this topic, BEREC responded to the European Commission's consultation questionnaire on Universal Service principles in e-Communications.

The debate surrounding network neutrality widened and intensified during 2010. BEREC established an Expert Working Group to consider the issues and to inform BEREC members on the matter. In our response to the European Commission's consultation on the matter, we noted that few net neutrality incidents have come to the attention of NRAs to date and most of them have been generally solved without formal regulatory intervention. Since the new provisions provided in the revised regulatory framework will only come into effect when transposed by Member States, it is as yet too soon to make any definitive evaluation of their effectiveness. Although BEREC currently believes that it would therefore be premature to consider intervention at this time, the matter will be kept under review, and is included in the work programme for 2011.

Changes to the legal regulatory framework

BEREC made great strides in 2010 both in establishing the Office and in setting out procedures within which we will work. We set out the timelines and manner in which our public consultations will be held. For normal consultations, we believe that four weeks is a reasonable period of time to allow our stakeholders to provide input, but this can be extended if circumstances require it, to take account of holiday periods for example. We have also made significant progress on the appropriate procedures for the adoption of BEREC Opinions in the context of notifications under Articles 7 and 7a of the Framework Directive. These latter provisions will take effect in May 2011, following the transposition deadline.

BEREC believes that the ability of end-users to switch service providers is both a driver and indicator of competition. The revised framework requires that switching be completed within one working day. With this in mind, we published a set of best practices which will facilitate consumers when switching. The report noted that there are a number of obstacles that consumers face, including contractual issues and a lack of information. NRAs should provide guidance to ensure that service providers comply with all obligations relating to both national legislation and best practice principles. These include the minimisation of unnecessary switching costs, mis-selling or slamming and the provision of clear and accessible information to consumers during the entire process. This report also included several case studies, which set out a variety of valuable experiences in identifying best practices to facilitate switching.

3 Activities

3.1 Harmonisation

International Roaming

During 2010, BEREC continued to monitor the implementation of the Roaming Regulation[1]. In March 2010 BEREC published its overview of compliance with the amended requirements which came into effect on 1 July 2009. This found that there was full compliance by all operators with the revised retail voice caps. Nearly all operators implemented on time the requirement for per second billing but those who had not done so undertook to compensate affected consumers. A few operators had difficulties in providing their customers with the required tariff information and information on the availability of the emergency number 112 by the due date but have since done so. A small number of operators were slow in introducing the lower wholesale price cap which had been brought forward by two months from 30 August to 1 July 2009.

Also in March, BEREC published an overview on the availability on alternative retail voice and SMS roaming tariffs and on the retail data roaming tariffs offered by operators. The purpose of this report was to provide input to BEREC's advice to the Commission on the functioning of the Regulation.

In April and December, BEREC published the 5th and 6th data reports. These covered the periods April to December 2009 and January to June 2010 respectively and, along with data reports published by ERG, provide an overview of compliance with the Regulation and trends in the roaming market

In December, BEREC presented its formal advice to the Commission on the functioning and possible extension of the Roaming Regulation. BEREC, and its predecessor ERG, had made available to the Commission factual evidence on compliance with the Regulation, trends in roaming prices and volumes, availability of alternative retail roaming tariffs and data roaming tariffs, quality of roaming services and the incidence of inadvertent roaming. The formal advice reflected BEREC's analysis and assessment of the prospects for competition in roaming services, the effects of the regulation on the mobile market, roaming prices and underlying costs, the European Digital Agenda target on international roaming, trends in domestic prices and future regulatory options.

[1] Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile communications networks within the Community (OJ L 171, 29.6.2007, p. 32) as amended by Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 (OJL 167, 29.6.2009, p. 12)

BEREC assessed the state of competition for roaming services and the analysis suggests that there are structural problems, at both wholesale and at retail level which dampen competition and tend to support prices. The effects of the Regulation on the broad mobile market have been generally positive. The Regulation has enabled small network operators to obtain better deals when buying wholesale inbound roaming. BEREC also found no evidence to suggest that non-regulated roaming mobile prices increased as a result of the Regulation although it is accepted that empirical facts would be difficult to identify.

BEREC found it impossible to gauge what level market prices would be in the event that wholesale and retail roaming services were provided on an effectively competitive basis. Instead we compared the current price caps to costs which we estimated using conservative assumptions.

Table 1: Roaming costs and prices

All amounts expressed in Euro cent	**Estimated upper bound of cost (2012)**	**2011/12 price cap**
Wholesale voice	10 per minute	18 per minute
Retail calls made	15 per minute	35 per minute
Retail calls received	3 per minute	11 per minute
Wholesale SMS	3 per SMS	4 per SMS
Retail SMS	5 per SMS	11 per SMS
Wholesale data	15 per Mb	50 per Mb
Retail data	22 per Mb	Unregulated Q2 2010: 130.3 per Mb

The evidence from ERG/BEREC's monitoring of the last few years suggests, that without a structural change to the market, voice and SMS prices will tend to cluster around the price caps (if they remain in place) and that any movement towards the cost floor will be small. In BEREC's view, further material price reductions can therefore only be achieved by regulatory intervention.

The cost of data roaming has up to now been poorly understood. However, the evidence emerging from the latest generation of network cost models suggests that, at the wholesale level, costs are well below the current typical deals (which are themselves running at under half the level of the regulatory price cap). At the retail level, the BEREC analysis considered that there is an average mark up of over six hundred percent for off-net roaming, and over three hundred percent for on-net roaming, compared with a very small incremental cost.

BEREC commissioned a benchmark study on domestic price trends for comparative purposes. While not completely comparative this provides another benchmark against which to consider roaming prices.

TABLE 2: COMPARISON OF DOMESTIC AND ROAMING RETAIL RATES IN Q2 2009

	Outgoing calls (€c/min)	Incoming calls (€c/min)	SMS (€c/SMS)	Data (€c/Mb)
Lowest - Highest domestic average	3.2 - 17.4	NA	1.0 - 11.7	0.8 - 10.2
European domestic average	9.7	NA	4.4	4.8
European roaming average[2]	40.8 (39.6)	18.5 (16.8)	24.5[3] (10.6)	179.8 (139.4)

While BEREC assessed a number of alternatives to the current regulation in the Report, we did not consider any of these to be a suitable replacement for price regulation in current market conditions. We therefore recommended that the price caps be retained, both at wholesale and retail levels, and that the situation be reviewed again in 2014. We believed, based on the evidence of the delta between wholesale and retail data roaming prices and the difference between national and roaming data prices, that retail data roaming prices available to all European consumers are unlikely, over the next few years, to fall to levels considered reasonable by legislators without price regulation.

Next Generation Networks – Access

In March, BEREC published a report on "NGA: Implementation issues and wholesale products" as a follow-up to the 2007 ERG Common Position on Next Generation Access. The report looked at implementation issues related to the relevant wholesale products in an NGA environment and set out, where possible, best practice for these wholesale services, including associated aspects such as migration. Given that the 2007 ERG Common Position found that the concept of the "ladder of investment" was still likely to be valid in an NGA context, (albeit a more sophisticated ladder, with changes in the relative importance of the rungs and different dynamics because of a shift in the economic bottlenecks) this was taken as a starting point for the analytical framework for this document. The annex to the report set out practical experiences with the various different wholesale products across some countries. Because NGA roll-out is at different stages in member countries, the practical experiences were taken from those countries where roll-out had happened to a meaningful degree. The report also concluded that the best practice principles identified by the 2007 ERG Common Position were still valid and that they should be applied in a technologically neutral manner.

[2] Q2 2010 figures in parentheses
[3] Before SMS charges were subject to the price-cap introduced by the 2009 Regulation

Following on from work initiated by ERG including a public consultation held in the final quarter of 2009, BEREC published a Common Statement on NGN Future Charging Mechanisms in June 2010. This assessed the pros and cons of “Bill and Keep” and “Calling Party Network Pays”, and distinguished between level effects (resulting from lower termination rates) and system effects (resulting from a move from CPNP to BaK).

While the economic analysis (as set out in the Common Statement) suggests that BaK is the preferred option in the long run, the final conclusions of NRAs will depend on evidence and facts specific to that country, and particularly on an assessment of the system effects. The outcome of this assessment is likely to vary between Member States. In the event that an NRA chooses to move to a BaK based interconnection charging regime, it would need to carefully manage the transition process and take national circumstances, including legal issues, into account. To reflect these matters, the document was adopted as a Common Statement, rather than a Common Position.

In May BEREC provided its Opinion on the latest version of the draft Recommendation on Next Generation Access. This was the first BEREC Opinion provided under the new provisions of Article 19 of the Framework Directive under which the Commission is required to take the utmost account of BEREC opinions. The Commission modified its proposed Recommendation which was adopted in September.

BEREC shares the aim of the Commission to foster the development of the single market by enhancing legal certainty and promoting investment, competition and innovation in the market for broadband services, in particular in the transition to NGA networks. We also recognise and fully support the important role these networks can play in the further development of the economies of Europe and the benefits that they can bring to its citizens.

BEREC in particular welcomed the explicit recognition that symmetric measures, as foreseen in the EU regulatory framework, are an option to complement SMP regulation. BEREC also shares the view of the Commission that the ladder of investment principle should be maintained and applied in the remedies imposed. However, BEREC noted that there were several areas that required modification in this draft Recommendation, including references to cost orientation, pricing flexibility, risk assessment, geographic de-averaging of prices and geographic variations. BEREC also noted that the Recommendation should underscore the primacy of the market analysis procedure as enshrined in the Regulatory Framework.

Conformity with ERG Common Positions

In June, BEREC published the results of the monitoring exercise in respect of conformity with the ERG Common Position on symmetry of termination rates. This was previously assessed in 2008. Since then there has been some progress towards symmetry, particularly for mobile termination where most NRAs will have ended with existing asymmetries by end 2012. As follow up to this exercise, BEREC plans to review the ERG Common Position in the future, to assess its continuing relevance and if so whether amendment is required to better align it with market conditions.

Benchmarking Activities

BEREC has maintained the ERG initiative of publishing information on mobile termination rates. Two reports were published covering the situation at January and July. MTRs continue to fall with the weighted average reducing by 11.5% in the year to 1 July 2010 to a level of 6.39 cent per minute. The differential between the highest and lowest national averages also reduced significantly (43.5%) during the 12 months. To increase transparency, the BEREC reports also contain individual operator MTRs.

Regulatory Accounting

As in previous years, BEREC has continued the ERG practice of conducting an annual factual overview of the regulatory accounting frameworks used and an assessment of the level of harmonisation achieved by NRAs. This year's report was published in October and the data to June 2010 is compared, where possible, with data collected each year from 2006. The report layout was restructured to develop a deeper analysis that concentrates on the following four key wholesale markets: Wholesale Line Rental, Unbundled Access, Broadband Access and Leased Lines Terminating Segments.

The main findings of the report were:-

- The degree of harmonisation of methodologies remains high.
- For Unbundled Access, Broadband Access and Leased Lines Terminating Segments, the report found a clear preference for cost orientation, a trend towards using CCA and a fairly even distribution of LRIC and FDC accounting methods.
- Slightly different results were observed for Wholesale Line Rental, where retail minus is the most used price control method, HCA and CCA are used in the same proportion and FDC is clearly the preferred choice as accounting methodology.

3.2 Emerging Challenges

Convergence

In March, BEREC published a report on self-supply, as it pertains to wholesale broadband market analysis. The issue is relevant as one of the indicators when assessing market power is market share. The study found that most NRAs have addressed the issue of self-supply at both the market definition and analysis stages of the process. The report also indicated that the inclusion or exclusion of self supplied services has not to date affected the final outcome of the market analysis.

In December, BEREC also published a report on the impact of bundled offers in retail and wholesale market definition. Bundling of different electronic communications services has progressively gained importance in a number of Member States over recent years with 38% of households buying such services in 2009. The report set out some of the issues that NRAs could consider when analysing this situation. From a regulatory standpoint, the finding of a bundled market may also have implications regarding the implementation of the three criteria test, or for the analysis of market power.

The document considered the limitations of applying the SSNIP test (Small but Significant and Non-transitory Increase in Price test) to market definition in the context of bundles, as observed prices could be the result of the strategic behaviour of an operator with market power. In this context, other indicators may be useful to NRAs in the market definition process, such as the presence of customer-specific economies of scope and transaction cost savings when consumers purchase bundles.

Also in December, BEREC published a report which considered developments in convergence services. Most converged services make use of one or more of the following building blocks – spectrum, content or new equipment/devices. These can both reduce and increase some entry barriers. This may result in a shift in the competitive dynamics of the traditional electronics sector with regulatory implications for ensuring access broader than ex-ante regulation.

BEREC-RSPG Co-operation

Since 2008, the ERG had been jointly working with the Radio Spectrum Policy Group (RSPG). BEREC has continued this cooperation and in June, jointly with RSPG, published a report on the impact of technological and market evolution in the case of spectrum on market definitions in electronic communications. This followed 2 reports published in 2009 by ERG/RSPG on transitional spectrum issues and radio spectrum competition issues.

Future of Universal Service Obligation

As part of the on-going consideration of issues related to the future scope of Universal Service, BEREC published a report in June which surveyed the current provision of Universal Service in BEREC countries. The report also outlined different national strategies aimed at encouraging the roll-out and usage of broadband. The purpose of the study was to provide baseline information to inform future BEREC input to the debate on the future scope of USO. BEREC also responded to the European Commission’s consultation questionnaire on Universal Service principles in e-Communications.

Net Neutrality

During 2010, the debate on issues surrounding net neutrality intensified. BEREC had established an Expert Working Group to examine the issues and to inform BEREC's participation in the debate. BEREC provided a response to the European Commission's consultation on the topic and participated in the summit held jointly with the European Parliament in November. BEREC noted that there have been few net neutrality incidents to date, and that most of those which have come to the attention of NRAs have been generally solved without formal regulatory intervention. While the revised regulatory framework provides new powers and tools to Member States and NRAs to protect consumers, particularly in respect of transparency and minimum quality of service requirements, it is difficult to make a definitive evaluation of the effect of these regulatory changes as the provisions only come into effect when transposed by Member States. The response therefore concluded that it would be premature to consider further intervention at this time.

3.3 Changes to the legal regulatory framework

Transition from ERG to BEREC

Under the Regulation, BEREC has discretion on when to hold public consultations. In the interest of encouraging stakeholder input, BEREC set out its intended criteria on how this discretion will be exercised. However it is clear from the Regulation and the Directives that for some intended outputs consultation will always be held. On the duration of public consultations BEREC will normally afford 4 weeks but will extend this in specific circumstances including holiday periods, the number of consultations being issued at the same time, etc.

During 2010, BEREC also made progress on considering appropriate procedures for the adoption of BEREC opinions in Article 7/7a notifications.

Switching Providers

Following a public consultation, in October BEREC issued a document setting out best practices to facilitate consumers switching service providers. The ability of end-users to engage in switching is both a driver and an indicator of competition. In order for switching to be effective in delivering consumer benefit, two elements are necessary – informed end-users who have the necessary information and confidence to take advantage of competitive offers and a switching process which avoids undue effort on the part of the end-user, disruption to service or uncertainty. ERG had addressed the first element in March 2009 when it published a report on Transparency of Tariff Information[4]. The current report considered the second element and was planned in anticipation of new provisions contained in the Citizens' Rights Directive.

This report noted that there are several obstacles that consumers face when switching suppliers, including contractual issues and lack of consumer information. This report sets out the principles that NRAs should use when supporting a positive customer experience. The Report considered measures adopted by NRAs to facilitate switching and recommended the following - minimisation of unnecessary switching costs and barriers to switching; minimisation of instances of mis-selling/slamming; provision of accurate, clear and accessible information to consumers before, during and after the switching process; guidance by NRAs to ensure service providers comply with all obligations relating to national legislation and best practice principles; support competition in retail markets and cost efficiency of the switching process. The Report also contained several case studies which display a variety of valuable experiences in identifying best practices to facilitate switching.

[4] ERG (08) 59 Rev 2.

3.4 Work in Progress at end 2010

Other elements of the 2010 Work Programme were well advanced at year end and were considered at the first Plenary meeting held in 2011. These included:

- A report on Open Access, which considers the regulatory aspects of open access, in the context of the State Aid Rules and the rapid deployment of broadband networks in different contexts across Member States;
- NGA Country Study – An update of the current state of NGA developments in member countries;
- A report on ensuring equivalence in access and choice for disabled end-users;
- A joint report with RSPG addressing transitional issues in the Mobile Sector;
- A report on cross-border fraud or misuse issues which may arise under the revised provisions of the framework related to EU wide accessibility of numbers;
- A report on relevant market definition for business services;
- Guidance on the provisions relating to the remedy of Functional Separation under the revised provisions of the Access Directive.

4 Organisational issues

At the inaugural meeting of the Board of Regulators, the following were elected:

- John Doherty, ComReg, Chair 2010
- Chris Fonteijn, OPTA, Chair 2011, to act as Vice-Chair 2010
- Matthias Kurth, BNetzA, Vice-Chair 2010 (outgoing ERG Chair 2009)
- Reinaldo Rodriguez, CMT, Vice-Chair 2010

The Board of Regulators met on 5 occasions during 2010. Special thanks are due to the relevant NRAs and other Brussels based support staff who organised facilities and hosted those meetings.

The Contact Network met on 4 occasions in order to make the necessary preparations for the regular meetings of the Board of Regulators and the Management Committee. Again special thanks are due to the relevant NRAs who facilitated these meetings.

In order to carry out the Work Programme, the Board of Regulators decided to maintain the practice adopted previously by the ERG and allocated individual elements of the Work Programme to Expert Working Groups (EWG). The EWGs for 2010 were:-

- Benchmarking expert working group
- BEREC-RSPG cooperation expert working group
- Convergence and Economic Analysis expert working group
- Framework Implementation expert working group
- End-User expert working group
- International Roaming expert working group
- Net Neutrality expert working group
- Next Generation Networks expert working group
- Remedies Monitoring expert working group
- Regulatory Accounting expert working group
- Termination Rates expert working group

Participation by national experts in Expert Working Groups represents a significant commitment by NRAs to the work of BEREC. Because of the necessity to minimise travel, the number of Expert Working Group meetings is kept to the minimum necessary to ensure that the Work Programme is effectively carried out. In addition to meetings, EWGs conducted their activities electronically via conference calls and e-mail exchanges.

Expert Working Groups met on 56 occasions over a total of 64 days, with some meetings being held over two days. The availability of the facilities in Brussels facilitated the vast majority of these meetings with back-up meeting facilities provided by NRAs on 6 days when the IRG facilities were unavailable.

BEREC also held a number of public hearings in Brussels during the year to supplement public consultations as well as debriefings following each Plenary meeting. The facilities for these events were provided by the European Commission.

Annex 1: Plenary meetings

BEREC met in Plenary session on 5 occasions during 2010:

Inaugural Meeting

Date	Location	Agenda	Conclusions	
			Board of Regulators	Management Committee
28 Jan	Brussels			

Plenary Meetings

Date	Location	Agenda		Conclusions	
		Board of Regulators	Management Committee	Board of Regulators	Management Committee
25-26 Feb	Paris				
27-28 May	Helsinki				
30 Sept - 1 Oct	Amsterdam				
2-3 Dec	Bruges				

Annex 2: Documents published

WORK PROGRAMME

BoR (10) 15 Rev1 BEREC Work Programme 2010

BoR (10) 43 Rev 1 BEREC Work Programme 2011

MC (10) 39 BEREC-Office Work Programme 2011

BOARD OF REGULATORS DOCUMENTS

BoR (10) 03 Rules of Procedure Board of Regulators

BoR (10) 08 (and BoR (10) 08b Annex) BEREC Report on NGA wholesale products

BoR (10) 09 BEREC report on self supply

BoR (10) 12 BEREC Roaming compliance report

BoR (10) 13 BEREC report on alternative roaming tariffs

BoR (10) 20 BEREC International Roaming Report

BoR (10) 23 Decision on the establishment of BEREC Expert Working Groups

BoR (10) 24rev1 BEREC Common Statement on Next Generation Networks Future Charging Mechanisms / Long Term Termination issues

BoR (10) 25rev1 BEREC Opinion to the Draft Recommendation on regulated access to Next Generation Access Networks (NGA)

BoR (10) 26 Decision on the transparency and access to documents at the BEREC

BoR (10) 27 Rev1 BEREC procedures for public consultations held by BEREC

BoR (10) 28 BEREC – RSPG Report on Market Definitions

BoR (10) 30rev1 MTR Benchmark Snapshot (as of January 2010)

BoR (10) 31 BEREC Action Plan to achieve conformity with ERG Common Position on symmetry of termination rates

BoR (10) 33 BEREC Response to the European Commission's consultation on Universal Services principles in e-Communications

BoR (10) 34 Rev1 BEREC report on best practices to facilitate consumer switching

BoR (10) 35 BEREC Report on Universal Service

BoR (10) 42 BEREC Response to the European Commission's consultation on the open Internet and net neutrality in Europe

BoR (10) 45 MTR Benchmark snapshot (as of July 2010)

BoR (10) 48 BEREC Report Regulatory Accounting in Practice 2010

BoR (10) 50 International Roaming BEREC Benchmark Data Report for January 2010 – June 2010

BoR (10) 58 BEREC Report on International Mobile Roaming Regulation

BoR (10) 64 BEREC Report on bundled offers

BoR (10) 65 BEREC Report on convergent services

PUBLIC CONSULTATIONS

BoR (10) 11 BEREC report of the consultation on the ERG Report on the regulation of access products necessary to deliver business connectivity services – Consultation had been launched by ERG 15 Dec 2009 – 1 Feb 2010. Public Hearing held on 29 Jan 2010

BoR (10) 15 Draft BEREC Work Programme 2010 - Consultation 9 Feb – 2 Mar 2010

BoR (10) 24 b Consultation Report to the Common Statement “Next Generation Networks Future Charging mechanisms/Long term termination issues” – Consultation had been launched by ERG 14 Oct – 10 Dec 2009.

BoR (10) 27 Draft Procedures for public consultations - Consultation 4 June – 2 July 2010

BoR (10) 27 Rev1b BEREC Report on the consultation draft BEREC procedures for public consultations

BoR (10) 34 Draft Report on best practices to facilitate switching - Consultation 4 June – 2 July 2010

BoR (10) 34 Rev1b BEREC report of the consultation on the best practices to facilitate switching

BoR (10) 43 Draft Work Programme 2011 BEREC Board of Regulators - Consultation 8 Oct – 5Nov 2010. Public Hearing held on 3 Nov 2010

BoR (10) 43 Rev1b Consultation report on BEREC WP 2011

BoR (10) 44 Draft Guidance on functional separation under Art 13a and 13b of the Access Directive and national experiences and Annex 1 Functional separation in practice EU experiences - Consultation 11 Oct – 19 Nov 2010. Guidance completed in 2011

BoR (10) 46 Draft report on relevant market definition for business services - Consultation 11 Oct – 19 Nov 2010. Report completed in 2011

BoR (10) 47 Draft report on ensuring equivalence in access and choice for disabled end-users - Consultation 11 Oct – 26 Nov 2010. Public Hearing held on 19 Nov 2010. Report completed in 2011

BoR (10) 62 Draft BEREC report on cross-border issues under Art 28 USD - Consultation 9 Dec2010 – 13 Jan 2011. Report completed in 2011

MANAGEMENT COMMITTEE DOCUMENTS

MC (10) 02 Rules of Procedure Management Committee of the Office

MC (10) 22 Decision on middle management staff

MC (10) 23 Decision on the general implementing provisions on the procedure governing the engagement and the use of Temporary agents at the BEREC Office

MC (10) 24 Decision on the general implementing provisions on the procedures governing the engagement and the use of contract staff at the BEREC Office

MC (10) 25 Decision on the secondment to the BEREC Office of national experts and national experts in professional training

MC (10) 26 Decision concerning the appraisal for the administrative manager of the BEREC Office

MC (10) 27 Decision on the adoption of implementing rules to the staff regulations

MC (10) 28 Decision on the transparency and access to documents at the BEREC Office

MC (10) 44 Decision on the financial regulation applicable to the BEREC Office in conformity with the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Union

MC (10) 45 OLAF Anti-fraud inter-institutional agreement

MC (10) 46 Internal investigations anti-fraud OLAF

Annex 3: Membership of Board of Regulators and Management Committee

(M)embers and (O)bservers

	NRA	Board of Regulators	Management Committee
Austria	RTR	M	M
Belgium	BiPT	M	M
Bulgaria	CRC	M	M
Croatia	HAKOM	O	O
Cyprus	OCECPR	M	M
Czech Republic	CTU	M	M
Denmark	NiTA	M	M
Estonia	ECA	M	M
European Commission	-	O	M
Finland	Ficora	M	M
Former Yugoslav Republic of Macedonia	AEC	O	O
France	Arcep	M	M
Germany	BNetzA	M	M
Greece	EETT	M	M
Hungary	NMHH	M	M
Iceland	PTA	O	O
Ireland	ComReg	M	M
Italy	Agcom	M	M
Latvia	SPRK	M	M
Liechtenstein	Office for Communications	O	O
Lithuania	RRT	M	M
Luxembourg	ILR	M	M
Malta	MCA	M	M
Netherlands	OPTA	M	M
Norway	NPT	O	O
Poland	UKE	M	M
Portugal	Anacom	M	M
Romania	Ancom	M	M
Slovakia	TU SR	M	M
Slovenia	APEK	M	M
Spain	CMT	M	M
Sweden	PTS	M	M
Switzerland	BAKOM	O	O
Turkey	BTK	O	O
United Kingdom	Ofcom	M	M