



Bringing it all together

# BEREC Draft 2011 Work Programme

Comments by British Telecommunications PLC

## Introduction

BT thanks BEREC for the invitation to comment on its draft 2011 Work Programme. We welcome the Programme's general aims regarding harmonisation and development of competition to the benefit of businesses and citizen-consumers. As BEREC matures the Programme nevertheless needs to be made more detailed so that delivery can be clearly measured against plan.

## Business Communications Services project

As a provider of business communications services across the EU, BT can only emphasise the importance of the work on such services as envisaged in paragraph 3.5 of the Work Programme. Harmonisation of regulation represents an end-in-itself in no economic sector. The underlying aim must always be elimination of Single Market trade barriers and avoidance of distortions of competition. Against this background, BEREC needs to give high priority to the electronic communications services typically purchased by large corporate users since these are among the few that can be provided on a genuinely cross-border basis (provision is enabled both by investment in location-agnostic software platforms, and by wholesale purchase of location-specific access inputs). Business services are also an area where inadequate regulation in one Member State can directly distort competition across the EU (in many scenarios a dominant operator can significantly improve its chances of winning contracts for service provision in multiple Member States if it refuses non-discriminatory supply of relevant wholesale access inputs in its home Member State).

Prioritisation of the Business Communications Services Project is further justified by BEREC's ambitions to contribute to implementation of the European Digital Agenda. The seamless IP ecosystem that is envisaged by the Agenda will boost EU productivity and growth primarily by allowing effective Europe-wide operation of enterprise IT applications (supply chain management, enterprise resource planning, computer-aided design etc). But the best-efforts public internet is not sufficient to support this evolution. For communication between specified sites and individuals, corporate customers need IP data connectivity which is managed to guarantee higher levels of quality, reliability and security. Competitive provision of such services nevertheless remains frustrated by patchy availability of fit-for-purpose wholesale access inputs. Investment in the virtual infrastructure needed to provide these services is likewise discouraged. Thus, in the absence of effective collective action on this issue via BEREC, NRAs will be unable adequately to fulfil their new duties to "promote the ability of end-users to access and distribute information or run applications and services of their choice" (Article 8(4)g Framework Directive), and to "promote investment and innovation in new and enhanced infrastructures" (Article 8(5)d Framework Directive),.

## Complementary activities

Turning to the other areas where work is needed to underpin the Business Communications Services project, BT would draw attention to the following Work Programme headings:

**3.1.1 Monitoring conformity of remedies with Common Positions** In the absence of serious efforts to adapt national approaches, future Common Positions on regulation will be of purely academic interest. Peer group pressure clearly has a role to play in this context. BT therefore welcomes BEREC plans to continue and develop monitoring efforts undertaken by ERG.

**3.1.2 Systematic capture of NRA remedy proposals and Commission concerns** This is a sensible step but BEREC needs to ensure that NRA remedies are widely understood. There is therefore a need to publish the outcome of this work, and to set out a clear plan for further harmonisation initiatives where this shows there are significant disparities. Real and important differences in the effectiveness of remedies are often noted only in their fine detail or small print. Consequently any such work should record the detail of remedies rather than taking a high level summary view. Recording of the rationale behind differences is also necessary (this applies for all remedies, not just cost accounting as already suggested in the Work Programme).

**3.1.3 Commission investigation into the cost of non-Europe in telecommunications markets** We refer to the comments made above regarding the manner in which an efficient IP ecosystem will contribute to EU productivity and growth. Without competitive supply of the services needed to facilitate efficient cross-border collaboration between business sites in all sectors, Europe is missing a major opportunity to realise further benefits of the type normally associated with consolidation of the Single Market (development of knowledge based services, increased specialization, economies of scale, comparative advantage, etc).

**3.3.1 Regulatory accounting** BT supports BEREC's plans to analyse the reasons why NRAs choose one implementation approach rather than another. We would also emphasise the need for this work to encompass both accounting methodologies and their *transparency*. In many cases the current lack of transparency makes it impossible to verify whether obligations for the supply of wholesale inputs under non-discriminatory price conditions are being properly respected.

**3.3.2 Non-discrimination** Non-price discrimination is a particularly significant issue in the field of business services where Service Level Agreements play a large role in customer purchasing decisions. BEREC could consequently play a useful role by publishing NRA data on incumbents' performance against Key Performance Indicators. Evidence that the downstream arm of an incumbent is receiving service delivery, repairs, and notification of new products to the same timetable as other operators would be a valuable addition to this key topic. Where no data is published, this should be made clear as non-publication is inconsistent with the remedy.

**3.4 International roaming** BEREC needs to consider extension of this activity so that voice and data roaming are both included. Despite the ongoing shift towards use of mobiles for both corporate and consumer data services, data roaming rates are unreflective of any underlying costs and clearly need regulatory attention. It is equally obvious that BEREC must take a lead since national authorities cannot tackle this locally.

**3.6 Wholesale access originating to value added services** BT fully supports BEREC's initiative in this area.

**5.2 Functional separation** BT welcomes BEREC plans to prepare guidance that can be used by NRAs when considering the appropriateness of function separation. This work should reflect the fact that some current implementations fail to address the very market failures that functional separation is designed to resolve: for example, by not requiring equivalence of outputs at the wholesale level. The work need to be done promptly because if functional separation is adopted as a remedy it will be in the context of significant market failing: ie, in a situation that requires rapid resolution.

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