

## **Vodafone comments on BEREC draft work programme 2011**

Vodafone broadly welcomes BEREC's work programme for 2011. We limit ourselves to a few brief comments.

### **Article 7**

The interaction between parties during the Article 7 process has always been rather unclear, with the Commission often accepting meetings with affected parties without having any formal obligation to consult. We believe this has often been extremely helpful both for the interested parties and for the policymakers.

BEREC's enhanced advisory role within the Article 7 process means that we now need to understand how BEREC proposes to discharge its responsibilities in this area. Will BEREC or individual NRAs be prepared to receive representations from affected parties? How will this be done? Although not a part of the work programme as such, we urge BEREC to provide the industry with guidance on this point.

### **Copper unbundling: performance and pricing**

In our comments on the 2010 work programme, we urged BEREC to benchmark non-price performance indicators for the delivery of unbundled loops. We continue to think that this topic is important and that BEREC has a key role to play. BEREC will also need to focus on non-price issues associated with the delivery of unbundled fibre products. Benchmarking is easier if metrics are defined at an early stage, and BEREC should now begin to consider how it will benchmark wholesale fibre products.

We have explained to the Commission why we think the use of LRIC methodologies is inappropriate to the pricing of copper and passive assets such as ducts. LRIC is intended to send appropriate signals for those considering whether to replicate or rent an asset, and assumes that the owner of that asset will replace it at the end of its economic life. Neither assumption is appropriate in the case of copper and duct, neither of which will be replicated and both of which are repaired rather than ever being fully exhausted and replaced. In such circumstances the use of inappropriate pricing methodologies sends the wrong signals to owners and buyers of the assets, in this case

leading to excess returns on copper assets and a weakening of incentives to replace copper with fibre.

The Commission has previously reconsidered and then amended the pricing methodology for mobile termination rates (moving from LRIC+ to LRIC), and this is now beginning to be adopted by some NRAs. We believe the Commission and BEREC should similarly reconsider its approach to the pricing of copper and duct.

### **Barriers to switching**

We urged BEREC to consider barriers to switching more broadly in our comments on the 2010 programme. The past year has confirmed the need to think more broadly about non-network barriers to switching which users may now face. These include, for example, the lack of interoperability between mobile devices, operating systems and different app store environments. The ease with which users can switch not only between network providers but between upstream and downstream internet service providers will/should be an important feature of Europe's approach to net neutrality. This remains an area where more study by BEREC would be welcome.

### **Competition reviews under the RSPP**

The proposed Radio Spectrum Policy Programme requires NRAs to undertake a competition assessment before mobile spectrum is allocated or reallocated or before operators are allowed to refarm GSM spectrum to other purposes. This has proven a difficult and complex issue in many markets, leading to extensive delays and often inconsistent views as some NRAs require the reallocation of spectrum or other remedies whilst others do not. Many NRAs have also changed their views on the issues during the course of extensive consultations.

Since such competition reviews (which effectively replace the old Market 15 reviews, but without some of the safeguards and with a potentially different threshold for intervention) are likely to be widespread in the next period, BEREC could, with the Commission, usefully develop some further guidance on how NRAs intend to approach this task in a consistent manner. Vodafone has made separate comments to the Commission on the substance of the proposed RSPP and Article 5.2 in particular.

## **Other areas where BEREC's voice should be heard: broadband plans, child protection and privacy**

Although we recognise that NRAs will often not have primary responsibility for certain areas, we believe that there are a number of areas in which BEREC should begin to take a closer interest in the next period.

The most obvious of these are the broader issues related to 'broadband plans', where some of the regulatory powers wielded by NRAs have direct applicability. Yet the broadband agendas being pursued by the Commission and by Member State Governments also involve a range of issues which would, in our view, benefit from the expert input from BEREC even if some NRAs are not held directly responsible for them. These includes issues such as the application of public funds in the sector, the proper function of universal service obligations in light of new broadband plan objectives, and the steps necessary to transition from copper to fibre. BEREC is developing views on some of relevant areas (e.g. service provision for disabled users), but we believe that there is other work to be done in relation to broadband plans which would benefit from BEREC's expertise and careful use of evidence.

Similar comments apply to BEREC's involvement in current Commission initiatives on the protection of children online. Recent proposals include a wide variety of measures, including bill caps, which are more normally the preserve of NRAs (and in Vodafone's view should remain so). Europe is likely to develop a more proportionate approach to child protection if BEREC were to provide an informed voice in the debate.

Finally, we are conscious that privacy policy is an increasingly important feature of telecommunications competition and regulation. The Commission has commenced a significant review of the existing Data Protection Directive and BEREC should monitor the debate. It is increasingly clear to us that privacy regulation has competitive consequences for the European telecommunications sector, and that the trade off between user safeguards and a regime which allows European firms to build new online markets is a difficult and complex one to make. Again, we would have a better prospect of sensible

outcomes if BEREC were to lend its experience and expertise to the debate.

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