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BEREC
Mr. Chris Fonteijn, OPTA
Chair 2011
Mr. Georg Serentschy, RTR-GmbH
Chair 2012

Brussels, November 4, 2011

Subject: Draft Work Programme 2012 BEREC Board of Regulators

Dear Mr. Fonteijn,
Dear Mr. Serentschy,

Belgacom welcomes the opportunity to comment on BEREC's 2012 Work Programme. This consultation and the public hearing of end October are indeed instrumental to stay in close touch with the actual concerns of the key stakeholders in our industry and to take them into account when harmonizing the regulatory policies in Europe.

In the context of this consultation, we would like to bring to your attention one particular regulatory issue related to Next Generation Access and broadband competition that deserves more focus and attention in BEREC's 2012 Work Programme. We raise this point in addition to the contribution of ETNO, to which we refer for further comments on the Work Programme.

In Belgium, like in an increasing number of other European countries, CATV-based providers are important providers of NGA based services (very high speed broadband Internet, digital TV and telephony). Today nearly half of the broadband lines in Belgium are served via a Docsis 3.0 network. In the north of the country this has even resulted in a prevailing market position for the CATV network for retail broadband services. Despite this substantial market position, Belgacom remains largely confronted with an asymmetrical broadband regulation. As has been repeatedly argued and analysed, such regulatory policy is not the appropriate answer nor in view of a sustainable dynamic competition, nor in view of yielding a maximum consumer welfare.

Admittedly, in recent landmark decisions Belgian regulators have done an effort to address the competitive problems. CATV operators in Belgium are now required to provide a set of regulated wholesale services (both as regards TV and broadband), which can be considered as a first step towards a more balanced regulation. However we believe that the taken measures will not suffice to effectively level the playing field between CATV and DSL players.

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In order for regulation to really reckon for the effects on competition induced by the presence of both a CATV and a DSL infrastructure, the regulatory broadband analysis will need to truly reflect the economic reality and integrate CATV broadband services in the wholesale broadband markets analysis. We believe this is even more necessary in an NGA environment where CATV operators offer since several years very high speed services (up to 100 Mbps). The competitive market conditions with regard to these services cannot be addressed properly if CATV-based NGA remains out of the scope of the actual regulatory broadband analysis. It is striking in this context that cable companies in a recent communication call upon the European Commission to keep EU Broadband investment funding away from cable footprint¹, but at the same time continue to resist any regulatory scrutiny of their market position and power in the broadband markets. This should trigger regulators to address such call with utmost caution. It especially underlines the need for BEREC to take properly into account the various types of NGA networks based on an increasingly diverse set of architectures and technologies when updating its approach towards next generation access networks.

It should also inspire BEREC to facilitate the work of its member NRA's to properly address the market by further clarifying the position of CATV networks in the context of the relevant markets marked as susceptible to ex-ante regulation by the European Commission. As a revision of the EC Recommendation on relevant markets is expected in the near future we invite BEREC to make the reflection on this recommendation an explicit component of its 2012 Work Programme.

In sum, we encourage BEREC to benefit from the upcoming revision of EC Market Recommendation and the update of the Common Position on Bitstream and ULL to accurately address the unique market position of CATV networks. We hope this will increasingly comfort NRA's functioning in local circumstances with strong CATV-based NGA presence (like e.g. in Belgium) in their efforts to tailor the regulatory broadband analysis in line with market reality.

We remain at your disposal to continue the discussion and look forward to participating in the upcoming BEREC consultations throughout the next working year.

Sincerely yours,

¹ "Cable industry tells EU to keep broadband funding away", Telecom Paper, 19 October 2011