

## **BEREC Draft Work Programme 2012: ECTA's comments**

### **Executive Summary**

ECTA welcomes the opportunity to contribute to the formulation of BEREC's 2012 Work Programme, which already contains a very comprehensive and ambitious agenda.

2012 will provide a real opportunity and at the same time test for BEREC – as the first year when the new BEREC office is operational – to deliver greater harmonization, in particular on key implementation issues, and work towards the achievement of the EU's strategic broadband targets for 2020.

Our comments are aimed at further improving and finetuning the Draft Work Programme in order to ensure that removing the obstacles to the achievement of the Digital Agenda objectives and the single market are its prime focus.

We broadly agree with the core topics identified in the Draft Work Programme. We suggest, however, the prioritization of those issues that are most likely to deliver tangible results for the Digital Agenda and for which NRAs hold direct responsibility. The primary focus should be in our view on the following topics:

- **Guidance on costing methodologies**
- **Guidance on non-discrimination including functional separation**
- **NGA access & adoption of harmonized standards for key NGA wholesale access products**
- **International Roaming**
- **Net Neutrality.**

In addition to these top priority topics, BEREC is best placed to take ownership of the issue of pan-European business service provision and should continue prioritizing it. BEREC's first genuine cross-border harmonization objective should be the **creation of a single market for business communications**. In order to ensure the competitive provision of seamless cross-border communications services to pan-European businesses, BEREC should issue **guidance on the uniform treatment of the national regulated wholesale inputs required to serve business users EU-wide**.

ECTA fully supports and appreciates the ongoing and BEREC work on benchmarks. We suggest two further very important benchmark exercises in order to monitor harmonization in the fields of non-discrimination and standard NGA wholesale access products:

- **Core Key Performance Indicators (KPIs) to measure the implementation of non-discrimination** to be collected and published on a 6 monthly basis by BEREC;
- **Availability of key NGA wholesale access products** to be measured from the outset and after the adoption of harmonized standards by BEREC, to measure the availability of those standardized products.

We would also appreciate if BEREC started to examine the anticompetitive threats raised in the Internet/OTT environment, caused also by the lack of interoperability of IP-based services. This exercise may help the emergence of truly pan-European cross-border services.

## **Priorities**

We broadly agree with the core topics identified in the Draft Work Programme.

We believe that all the items deserve attention, and we hope that this will be possible with the increased resources from the BEREC Office. We suggest, however, the prioritization of those issues that are most likely to deliver tangible results for the Digital Agenda and for which NRAs hold direct responsibility.

We believe that work on the top two priorities of Vice President Kroes and the Commission for 2012 – **guidance on costing methodologies and non-discrimination – should be amongst the key priorities of BEREC** rather than ‘further topics’.

Both of these work items are key to achieving the 2020 targets for very high speed broadband coverage and take-up.

Setting wholesale prices correctly is vital for competition and efficient investment, which are essential preconditions to achieving retail prices at which there will be take-up. The methodologies identified for setting copper and fibre wholesale access prices will have a major impact on the incentives to invest in open and competitive fibre networks and on the transition from copper to fiber across Europe.

The vigorous application, monitoring and enforcement of the non-discrimination obligation are indispensable to ensuring high broadband take-up, since it has a direct impact on the consumer experience.

We **fully support Access to Next Generation Networks as a top priority** and suggest that under this heading as a separate project a **BEREC Common Position on harmonized standards for key NGA wholesale access products** and the introduction of a benchmarking exercise on the availability of these standardized key access products.

ECTA also agrees on the importance of continued BEREC input on International Roaming and Net Neutrality as high priority topics.

- **Cost methodologies/regulatory accounting**

There is an urgent need for **guidance on cost methodologies** to address excessive charges which are impeding competitive development in some markets, and to ensure appropriate treatment of copper and fibre before, during and after the migration process so as to ensure competition and incentivise efficient investment in fully open fibre networks.

- **Non-discrimination**

BEREC should work with the Commission on **guidance on non-discrimination including functional separation** which clearly identifies best practice on service provision and non-price terms. We also encourage **BEREC to create transparency** across Europe for all stakeholders including consumers and businesses by **collecting and publishing core KPIs** for service quality on a regular and EU-wide basis.

- **Harmonized standards for key NGA wholesale access products**

The requirement of consistent NGA wholesale access products across Europe would create legal, regulatory and market certainty for all players in the EU, SMP operators and their wholesale customers alike. The consistent availability of access products would simplify equipment requirements, boost competition and cross-border trade.

With the technical expertise of its members, BEREC would be best placed to create harmonised standards for key wholesale products needed for consumer and business services including virtual unbundling (VULA), residential and business-grade bitstream services.

ECTA is very keen to provide detailed input to this exercise.

### **Further topics**

- **Business services**

BEREC is best placed to take ownership of the issue of pan-European business service provision and should continue prioritizing it. BEREC's first genuine cross-border harmonization objective should be the **creation of a single market for business communications**. In order to ensure the competitive provision of seamless cross-border communications services to pan-European businesses, BEREC should issue **guidance on the uniform treatment of the national regulated wholesale inputs required to serve business users EU-wide**.

Europe's major corporations have specific needs that are fundamentally different from the needs of residential users.

First, many business customers operate out of multiple locations, across multiple countries. All these locations need to be connected and to be able to communicate with each other.

Second, in order to rationalise the management of their communication requirements and to minimise transactional costs, business users in the EU tend to procure their communication needs from a single provider able to provide the full range of services they need.

Third, business users regard communication services as a key production input performing mission-critical functions.

Accordingly, they demand highly reliable, scalable, consistent, customised services so that IT applications can work effectively across different sites. Whether in the financial services sector, ICT, logistic, e-commerce, manufacturing, petro-chemical or retail sector, all multinational business customers rely on cross-border communication services to increase efficiency, improve productivity, manage supply chains and compete on global markets.

At present, however, European markets for Business Service providers are fragmented by diverging regulatory environments in the Member States.

Through its survey of business users (primarily large multi-national companies) in January 2010, BEREC clearly confirmed that there was a problem with the provision of

services to high-end business customers in Europe. In particular, the survey found that less than half of the respondents had a choice of more than 2 credible suppliers (even less where companies sourced services from multiple suppliers) and that more than half of regulators had failed to ensure the availability of access products demanded by business users and providers across Europe (Ethernet leased lines and premium SLAs on wholesale inputs such as bitstream).

ECTA's business service provider members unanimously state that there is a retail market for the provision of high-end services to businesses which is cross-border in nature, and that, whilst the wholesale market is national due to the fragmentation in the ownership of essential infrastructure across Europe, they demand identical wholesale inputs in every country across Europe.

Whilst there is a clear access problem for multi-national business service providers, ECTA members believe that this issue is not only cross-border in nature. BEREC should also encourage NRAs to look more closely at their national markets for services to business clients where incumbents usually retain substantially higher market shares than for residential broadband – often more than 70 to 80%.

Therefore, we call on BEREC to deliver guidance on a harmonised approach by NRAs for this important market (worth more than €60bln pa according to Gartner and with an even greater impact on the European economy). This guidance should include EU-wide parameters for business-grade products and a common approach to market analyses and remedies relating to businesses including, but not limited to markets 5 (wholesale broadband access) and 6 (terminating segments of leased lines).

- **Review and update of BEREC Common Positions**

ECTA strongly supports the best practice documents issued by BEREC and the continuation, strengthening and, where necessary, updating of this guidance, preferably with a focus on the following:

- **Wholesale local access:** adjustment to reflect next generation access remedies (ie duct access and fibre unbundling), and availability of business-grade SLAs.
- **Wholesale broadband access:** adjustment to reflect next generation developments (ie that remedies should cover all applicable speeds within the relevant market where SMP has been found), and to reflect the need for differentiated consumer and business-focused remedies. In particular creation or replication of triple-play offers is necessary in the residential segment, whilst high grade low contention services are more relevant in the business segment. Aggregation points also differ for consumer and business due to the differing economies of scale.
- **Leased lines:** Current guidance is still relevant. However, it could be clarified that remedies should include all applicable speeds in the market where SMP has been found, and more detail could be given on the specifications of the Ethernet interface to facilitate a common approach across Europe.

- **Benchmarks**

ECTA fully supports the ongoing and planned BEREC work on benchmarks. We suggest two further very important benchmark exercises in order to monitor harmonization in the fields of non-discrimination and standard NGA wholesale access products:

- **Core Key Performance Indicators (KPIs) to measure the implementation of non-discrimination:** BEREC should identify a set of core KPIs to be collected across the EU by NRAs and published by BEREC on a regular basis (6 monthly) in order to create more transparency regarding the existence of a level playing field across Europe on non-price related conditions of competition and the level of compliance by SMP operators. Such a data collection exercise is also an important factor in adequately empowering consumers, since discriminatory practices at the wholesale level have a direct impact on the quality of service the consumer is receiving.
  
- **Availability of key NGA wholesale access products:** as most NRAs already regulate or are in the process of regulating NGA it would be very important to collect data on the availability, key characteristics and take-up of key NGA access products and to compare the evolution of markets in different countries from the outset.  
After BEREC has adopted a Common Position on harmonized standards for NGA wholesale access products, this benchmark should measure the availability of those standardized products across Europe.

ECTA is very keen to provide detailed input to BEREC on both suggested benchmarking exercises.

- o **Public consultations**

ECTA is supportive of the format in which the draft Work Programme describes the deliverables and deadlines under each heading. We suggest to further improve this format in particular from stakeholders' perspective to indicate whether a public consultation is planned for each deliverable and in which quarter of the year.