



BEREC Draft Work Programme 2012 – Virgin Media Consultation Response

Virgin Media welcomes the opportunity to respond to BEREC's consultation on its Draft Work Programme for 2012. We generally concur with the topics that BEREC identifies as significant and the plan for undertaking them. As such, in responding to this consultation we have chosen not to comment on those topics specifically (we fully intend, and look forward, to participating in the initiatives as and when they are advanced). Rather, we have set out a number of high level observations and principles which we believe to be of critical importance – and of which we would urge BEREC to take the utmost account.

Introduction

BEREC clearly has a key role to play in supporting the Commission in its efforts to achieve its objectives, as well as in assisting NRAs to carry out their duties – and the Work Programme will be a major facilitator of these tasks. It is critical therefore that the Work Programme is appropriately targeted and prioritised and that in the course of its compilation, BEREC takes sufficient account of the realities of the industry and of the views of stakeholders.

From a broader perspective, given in particular the ambitious targets of the Digital Agenda, and against the backdrop of the ongoing challenges and uncertainty within the economy, it is crucial that the regulatory environment is not only appropriate, proportionate and has consistency across the EU, but also that it is adaptive to national specificities. Again, BEREC's annual Work Programme is an important factor in this.

Fundamentally, we consider it vital for the BEREC Work Programme to be underpinned by a strategic purpose that is reflective of Commission objectives, the prevailing regulatory framework and market conditions. That purpose must preserve and build upon policy and regulatory successes on EU objectives that have been achieved to date. In this regard, we consider it particularly important that BEREC has as a principal objective the nurturing of the substantial private investments that have been made in the sector – and that given the proven benefits that such an approach delivers, it facilitates the realisation of the fullest potential of privately funded, infrastructure based competition.

General Approach to the Work Programme

As a general principle, we consider it critical that BEREC maintains a thorough level of regard for recognised regulatory best practice and established regulatory/policy approaches. This should, we consider, underpin not just the establishment, sequencing and relative prioritisation of the individual items within the Work Programme but, and

perhaps most importantly, the actual undertaking of them. In particular we believe it critical that regulatory rigour and due process is maintained in the face of pressure from politically oriented objectives.

By way of specific example, in the course of attempting to stimulate and accelerate investment in NGA networks, it is vital that 'knee jerk' or distortive regulatory approaches are not pursued that undermine existing investments and fail to take sufficient account of the longer term perspective. Inappropriate intervention will not lead to sustainable, innovative service provision nor, ultimately, the best outcome for consumers. While this is of course a topic that warrants its own specific consideration, we would as a general point encourage BEREC not to underestimate the role that demand side measures can play in this regard.

By the same token, it is important that BEREC promotes an appropriate balance between unwarranted and arbitrary deviation from the Framework or policy objectives by Member States and allowing for specific national circumstances to be taken into account. Clearly deviation from prescribed rules or guidelines which is overtly counter to set policy, or has damaging precedent effect for other Member States is undesirable and should be tempered. However, while consistency of application as between Member States is of course an important element in the regulatory environment, over-zealous application of a 'one size fits all' approach to regulation can be extremely damaging – and can undermine established national regulatory and policy approaches that have been proven to deliver positive outcomes. In particular, where strong, competitive market conditions exist within Member States, care must be taken not to jeopardise those for the sake of satisfying a rigid harmonisation objective.

Regulatory Preferences and Linkage to Wider Policy

As we set out above, we consider it vital that BEREC takes appropriate account of accepted best practice approaches to regulation and advances those to the greatest extent possible. In particular, we consider that a preference for privately funded, infrastructure based competition should be the default, 'first instance' approach of choice for both regulators and policy makers. Such a model has been proven to deliver the best outcomes for consumers – and we therefore believe that it should be advanced to the fullest extent possible.

We recognise, of course, that such a model is not feasible or appropriate in all circumstances. However deviation from this approach should occur only in circumstances where it has been categorically proven that there is no prospect of the market delivering such outcomes of its own accord and/or a proven market failure exists which requires an alternative approach.

History has shown that where there is competition between infrastructures, innovation prevails and counter investment perpetuates. By way of example we would remind BEREC of the role that Cable has played in driving both innovation and competition in the EU broadband markets, delivering benefits to end users and in contributing to the Digital Agenda targets.

In geographies where Cable operators exist, they demonstrably constitute a catalyst for investment and innovation by other, competing infrastructure providers. This is

particularly true of the UK, where Virgin Media has pioneered, and was the first operator to introduce, successive generations of innovative internet access products and services. These include unmetered internet packages, the evolution from dial-up to broadband facilities and the deployment of NGA services. In each case, competing providers – in particular the incumbent – have reacted to these innovations and have been spurred to invest in comparable products and services in order to remain competitive. There is tangible evidence of BT's investments having tracked those of Cable as the competitive landscape has evolved.

By the same token, Cable operators, within their network footprint areas, have already satisfied two of the Digital Agenda's broadband targets, with strong progress being made towards the third.

We consider, therefore, that regulatory focus should in the first instance be on preserving these market characteristics where they already exist and encouraging and incentivising further investment in infrastructure. In addition to fostering additional such investments, it is critical that any development of policy stimuli ensures that investments in infrastructure that have already been made or are underway remain sustainable and are not undermined.

On a related note, in the context of the ongoing objective of stimulating and accelerating investment in NGA networks, we would highlight the need for the increasing prevalence of convergent effects and other linkages to be taken into account. For example, decisions relating to investment in infrastructure can and will be affected by factors such as the regulatory approach to net neutrality. While we recognise, of course, that the preservation and enhancement of the end user experience is paramount, an overly interventionist, mis-targeted or premature regulatory approach to net neutrality could very well have disincentive effects for existing and prospective investors – a factor which is particularly pertinent given the rapid ongoing evolution of the internet ecosystem and the nascence of many of the markets of which it is comprised.

Concluding Remarks

We recognise the important role that BEREC fulfils in providing support, guidance and recommendations – and in both bringing together and acting as a moderator of NRAs. It is crucial therefore that the annual Work Programme contains the appropriate elements and is transacted in a co-ordinated and considered manner.

In both establishing and progressing the Work Programme, we would reiterate the need for BEREC to exercise pragmatism and to have the utmost regard for actual market realities. Where competitive environments are delivering benefits to consumers in individual Member States, and strong progress is being made towards the wider objectives of the Commission, those should not be jeopardised by an over-zealous or unnecessarily prescriptive regulatory approach. Moreover in nascent or rapidly evolving markets, care should be taken not to stymie innovation. We hope that BEREC will take full account of the points that we have made and promote the principles that we advocate to NRAs.

We look forward to participating in BEREC's forthcoming programme of work and would be happy to discuss any of the points that we have raised in this submission. Please do not hesitate to contact me should you wish to do so.

Andrew Wileman

Virgin Media, November 2011