

Speaking notes
Plenary Debrief Presentation
Brussels 6 October 2011

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

(Slide #1)

Good morning everybody.

Today I will present the highlights of the third BEREC Plenary in 2011 which was hosted by CMT in Barcelona on the 29th and 30th of September.

The slides of this presentation will be available on the BEREC website later today, along with the documents which the Plenary approved for publication.

I will start with the more procedural information on BEREC Office and the decisions taken in the Management Committee, followed by information from the Board of Regulator's meeting.

Slide #2 – Management Committee

In the course of the summer the last decisions have been made with relation to the autonomy of BEREC Office. You may know that BEREC Office fell under the responsibility of the European Commission until its autonomy. I am glad to be able to announce that the declaration of autonomy has been signed by the Commission mid September. One very important effect is that BEREC Office is from now on accountable for its own budget.

BEREC Office is almost fully staffed now. All staff positions previously approved by the MC have currently been employed. In addition to this, the Management Committee approved the proposed candidate for position of Programme Manager. Further BEREC Office seeks approval of one contractual agent for the position of Secretary in Programme Management. This brings the total staff to 20.

Further notification for 1 last position for a seconded national expert will be sent out to NRAs and Member States in the near future, to bring the total staff for 2011 to 21.

Besides autonomy, BEREC Office has actually moved now to its own office. Both events are reason for us to organise an official opening of BEREC-Office with a workshop in Riga on October 13th and 14th. I hope that many of you will take this opportunity to find out for yourselves that Riga is not as distant from Brussels as you might think.

Next generation networks

Slide #3 –Revision of the state aid guidelines

On next generation networks two documents have been discussed and approved. In the first place the board of regulators has approved BEREC's reaction to the questionnaire the commission set out on the revision of the state aid guidelines. The response is widely based on BEREC's earlier report on Open access, published in March 2011.

The Commission's 2009 Broadband Guidelines provide a comprehensive framework for the application of EU state aid rules in this strategic sector. The Guidelines are part of the European Digital Agenda and play an important role in achieving the ambitious European goals for high speed and very-high speed broadband development in Europe. According to the guidelines the Commission has to provide a revision before September 2012.

To this purpose, the Commission has put up a questionnaire on relevant issues. These issues include the technological and market development of very high speed broadband infrastructures, the best design of access conditions on subsidised next generation networks and the role of the national regulatory authorities in such projects.

The most important conclusion in BEREC's response to this questionnaire is that subsidised network architectures have to be constructed as future proof and as pro competitive as possible. Furthermore BEREC points at the

stagnant demand side for broadband take up. This is something of notable importance, which BEREC is looking at in a different work stream.

The distinction between basic broadband and NGA networks is considered to be very valuable. It allows addressing the different objectives that are pursued when subsidising basic broadband or NGA networks. Equally, BEREC's response supports that currently a modification of the present definition of NGA is not necessary and describes the issues that may arise in the future when considering the extension of the NGA definition on wireless technologies.

The existing classification of possible state aid areas depends on the existence of adequate private and competing infrastructures in place. Regarding this classification, the response acknowledges that the existing classification reflects the spirit of the guidelines.

The guidelines currently require full and effective access to the subsidised NGA networks. The Commission however seems to consider the adoption of a proportionality approach. The response acknowledges that there may be concerns regarding the potential impact of comprehensive access obligations. This is especially the case in areas where there is evidence of a long-term lack of competitive provision. However, the response equally acknowledges that a proportionality approach depends heavily on the expertise of the authority granting the State aid and on the control the Commission would keep in the process. One concern is that the incentive to preserve open networks may not be strong enough for local State Aid

Granting Authorities. In any event, it has to be ensured that access obligations can be prolonged accordingly after a period of 7 years.

As to the role of NRAs in the State aid process, NRAs will certainly have knowledge and experience of a range of aspects of the electronic communication market. However, the guidelines don't require a direct involvement of NRAs but only ask the member states to involve NRAs in setting the conditions for wholesale network access. Additionally, there are a number of barriers that might limit an involvement of NRAs, most importantly the lack of legal basis.

Slide #4 – Report on implementation of NGA recommendation

Another document approved by the board of regulators is the report on the implementation of the NGA recommendation. The report builds on the BEREC report on factual information and new issues of NGA roll out, published in February 2011 and the BEREC report on NGA implementation issues and wholesale products, published March 2010.

The NGA recommendation is a contribution to the harmonisation of the NGN regulation in Europe. The recommendation is still young. To date only a little more than 10 NRAs have notified decisions with regard to Markets 4 and 5. However, even if remedies have been notified it takes a while until new NGA wholesale products are implemented in the markets.

Since regulation of NGA networks is still in its early stages there is little experience on the effects of certain sets of remedies on investment incentives and competition. More specifically it is an issue whether either LLU unbundling and/or duct access will be a success or if a more active type of remedies is needed. Or maybe even a combination of both is necessary to maintain competition in an NGA environment.

Operators in different member states follow different NGA deployment strategies involving different degrees of the use of own infrastructure or focus on use of active or passive wholesale products. This has also been stated in previous BEREC reports and confirmed by the data collection performed for this report. BEREC's analysis is based on the principle of the ladder of investment. BEREC believes that regulatory certainty and consistency are crucial in order to foster a competitive environment for long-term investment in NGA. It ensures the roll-out and deployment of NGA across Europe while recognizing that Member States are in different stages of NGA roll-out and deployment.

The more general observations refer to the increased complexity of wholesale regulation in the face of NGA roll-out. They also refer to the increased variety of local conditions relating to density, the increased number of potential players at the wholesale level - including local fibre networks rolled out by local authorities - and utilities leading to more fragmented markets. Altogether these circumstances lead to the question whether local "monopolies" will emerge in the future and how regulators may then have to respond. In a next version of the report BEREC will

continue its work with an analysis of the effects of the different sets of remedies in order to formulate best practices.

A major contribution of the Recommendation is to enhance regulatory certainty and increase harmonization. In BEREC's view fulfilling the NGA Recommendation does not directly imply imposing all remedies in all member states. In line with the ladder of investment principle NRAs have implemented specific combinations of remedies in markets 4 and 5. These combinations are proportionate to remedy the competition problems identified in the analysis of their markets. BEREC was able to identify a number of preliminary conclusions regarding specific wholesale products and is now striving to come to definite best practices.

Slide #5 – Net neutrality

BEREC has taken up a number of activities on net neutrality in 2010 and 2011. Transparency was identified as one of the key issues for 2011 in line with BEREC's response to the Commission's consultation earlier this year. BEREC's work on the transparency guidelines is also closely linked to other BEREC work streams such as:

- Net neutrality and quality of service, defining how to introduce the new discretionary power to set minimum requirements.
- An economic analysis of the impact of operator's practices on competition and discrimination issues.
- IP interconnection.

The present report describes transparency as the first of several regulatory remedies to promote net neutrality. Important is that transparency enhances the end users' possibility to make informed choices among service offers. Thus it contributes to the new regulatory objective to promote the end users' ability to access and use content and applications of their choice. But this possibility also depends on effective competition resulting in available offers from several providers and easy switching between providers.

The report discusses how to interpret the new provisions in the Universal Service Directive of the revised electronic communications framework. To fully implement them, BEREC states that *accessibility, understandability, meaningfulness, comparability* and *accuracy* are relevant requirements to be fulfilled by a transparency policy. In line with the framework, *proportionality* is also a criterion to be taken into account. The report identifies two approaches to transparency: direct by providers and indirect by third parties. Though direct transparency is mandatory and indirect transparency is complementary, BEREC recommends to use a combination of both approaches, given the complexity of the net neutrality context. An important aspect is that BEREC adopts the same principles for both fixed and mobile networks.

Transparent information as recommended in this report consists of general information about the service, general limitations of the service and specific limitations of the service. This should include information on the bandwidth of the offer, and clear information about the actual speed. When it comes to

the general limitations of the offer, volume caps and bandwidth limitations should be clearly described, if applicable. Lastly, the specific limitations should include information about traffic management practices, distinguishing application agnostic measures from application specific measures.

The document further examines the ways to convey information, and the roles of the bodies involved, primarily ISPs, but also NRAs and third parties. Then, it analyses four useful methods to implement transparency in practice, which may be used stand-alone or in combination.

The first method includes a tiered approach to providing information, divided into basic and detailed information.

The second method includes visual representation of service features, using graphical symbols with some standardization to be defined.

Thirdly real-time information tools may be used. This will be studied further in the quality of service work stream.

The fourth method is the use of various levels of detail for different user groups, which implies the provision of detailed data to advanced users.

Whatever the tools and methods envisaged to implement transparency, BEREC has several recommendations. All key information should be gathered in one accessible place as far as possible. Further NRAs should

play a role in ensuring comparability. Lastly strong monitoring processes should be put in place to verify information.

In its last part, drawing on case studies in the electronic communications sector and other sectors, the documents discusses possible roles for NRAs and relevant initiatives at a European level. Stakeholders are invited to comment on the most useful actions that BEREC could undertake.

As a conclusion the guidelines put forward the recommendations that BEREC considers most central to achieve effective transparency:

- include all the categories of information necessary for end users to choose;
- promote thorough processes and tools to achieve *understandability*;
- involve all stakeholders, notably *via* empowering end users, to ensure *comparability*.

The draft guidelines are now subject to public consultation. The deadline for reactions is 2 November 2011. Reactions should be send to BEREC Office (BEREC@EC.Europe.EU).

Slide #6 – Benchmarking Reports

The Board of Regulators has approved two Benchmarking Reports. While a public version of the MTR internal report has been available since 2004, this will be the first SMS Benchmark snapshot report to be public.

SMS TR and MTR are provided and national averages (weighted by the number of subscribers of each relevant operator) are calculated. In the future, the weights on the SMS TR averages are expected to be calculated using volume specific data for each operator as well, provided good and reliable operator specific data is obtained.

It is clear that MTRs continue to decrease all across the EU. Only in the last year (July 2010 - July 2011) the decrease in MTRs was 25%. This led to an average of 3,9 Eurocents/minute all across the EU zone. In the period 2004 - 2011, the average annual rate of change in MTRs, for the EU zone, has been a decrease of 9,7% each year, for the last 8 years. This adds up to a total reduction in MTRs of 69% in eight years.

The collection of SMS – Termination Rates is new. The average wholesale price as of December 2010 was 3,33 cents per SMS. BEREC has also proposed to collect data on volumes of retail SMS. This will be done only on annual basis, while SMS - TR data shall be collected each semester with the same periodicity as MTR data are currently being collected.

Slide #7 – Cost accounting in practice

BEREC's board of regulators approved publication of its annual report on cost accounting methodologies. The present report provides an up-to date factual overview of the regulatory accounting frameworks used in Europe and an assessment of the level of harmonisation achieved by NRAs. The report is prepared annually and updates the previous versions published since 2005.

The data collected for this year's report are updated to June 2011. They have been compared, where possible, with data collected each year from 2006.

This year's report layout follows the restructuring done in 2010 in order to perform a deeper analysis that concentrates on the following four key wholesale markets: Wholesale Line Rental, Unbundled Access, Broadband Access and Leased Lines Terminating Segments. Moreover an analysis is given of the cost base and accounting methodologies used for fixed and mobile termination markets. For those markets it contains a comparison of the most "popular" combinations of cost base and costing methodologies, current cost accounting and LRIC.

The overall picture is relatively stable in comparison to last year. There are clear preferences for price control methods (cost orientation alone or in combination with price cap), cost base (current cost accounting – CCA) and accounting methodologies (mainly long run incremental costs with fully distributed costs preferred only in a few markets, mainly the retail markets). The degree of harmonisation of methodologies remains high. The implementation of the Termination Rates Recommendation of 2009 will likely reinforce in particular for MTRs the trend towards the usage of CCA/LRIC and the usage of bottom-up cost models.

For FTRs the trend towards CCA/LRIC is also likely to be reinforced. It is too early to see already the effects of the NGA Recommendation of 2010

on the choice of costing methodologies, but it seems that the usage of CCA/LRIC as the preferred combination for market 4 remains stable.

Good progress has been made in developing effective regulatory accounting frameworks. However, this is a complex and highly technical topic which requires regular maintenance and enhancement of the regulatory accounting framework as competition develops, technology improves and new regulatory challenges emerge.

In order to enrich the report, structural data influencing the civil engineering costs has been collected and analysed showing large differences in terms of topography, geology and geographies between countries.

Slide #8 – International roaming report

The Board of regulators discussed a draft report on international roaming, which is due to be published in early October following some final data verification.

The regular BEREC Benchmark Report on International Roaming provides information on the evolution of average wholesale and retail prices and volumes for voice, SMS and data roaming services. This Report covers the period 1 January 2011 – 30 June 2011, i.e. quarter 1 – quarter 2 2011. The Report also includes data from previous rounds of data collection conducted by BEREC and its predecessor, the European Regulators Group (ERG), to provide context for the current figures.

The broad picture is largely in line with previous Reports: average unregulated prices for voice calls made and SMS were higher than average Eurotariff and Euro-SMS prices while for calls received, the average unregulated price fell comfortably below the average Eurotariff in this Report; average wholesale and retail data roaming prices fell, with wholesale prices well below the regulated cap; however, a very significant retail margin persisted for off-net retail data roaming.

Slide #9 – BEREC 2012 work programme

The Board of Regulators has approved the 2012 work programme set up under the aegis of my Austrian colleague and chairperson of 2012, Georg Serentschy of RTR. The ambition for 2011 has been the start for the 2012 work programme. Since BEREC strives to work on a multi annual basis, the strands addressed in 2011, harmonisation, emerging challenges and the set up of BEREC form the core of the new work programme for 2012 as well. The relation with the European Digital Agenda is visible in a number of topics throughout the 2012 work programme.

The primary focus in 2012 will be on the development and better functioning of the internal market for electronic communications networks and services. Both for the benefit of the market and for the consumers.

Special attention will continue to be put on the theme of international roaming. This is a subject which has already been given much consideration in 2011. In 2012 the roaming regulation will be revised.

BEREC has given its input on several occasions during 2010 and 2011 already. In 2012 the work will continue with advice on the revised roaming regulation in its final stage.

A specific theme that will get extra attention will be the topic of consumer empowerment as an important factor for harmonisation. This will be reflected in many of BEREC's work streams. The success in NGA take up, net neutrality or international roaming, are all directly related to the position of the consumer. The position of the consumer shall improve towards a multitude of offers and the chance to compare the variety of products and services in the market.

As the rules for the Universal Service are presently under discussion in Europe's policy arena, BEREC will give specific advice concerning the scope of the announced obligation. What services should or should not be included and the demands related to these services is considered as an important topic for 2012.

Net neutrality will remain an important issue in 2012. Apart from the continuation of the work done in 2010 and 2011, BEREC will provide guidelines on transparency as well as on quality of service parameters. This work is carried out with specific attention towards the topic of consumer empowerment. Other work on net neutrality is aimed at the competition issues related to it and - more concrete - IP interconnection.

The work on NGA or more generally broadband, will be focussed on the take up of NGA by consumers and measures to support that. BEREC will also continue its report on the implementation of the NGA recommendation. Apart from an overview of the state of affairs, in the 2012 report the focus will also be on the analysis of existing differences between member states. I have already informed you on the approval of this year's report.

Other work in 2012 will be aimed at more specific topics on the Commission's agenda, such as the planned recommendation on non-discrimination, the recommendation on cost accounting and the work on the universal service obligation. BEREC has an advisory role in all these topics. A serious role, since the Commission will need to take the utmost account of BEREC's advice.

Work that is not specifically planned in the work programme, but may take up considerable resources of both BEREC and BEREC Office, is the role BEREC has in Article 7 procedures. Since the transposition of the new regulatory framework in May of this year, the Commission must take the utmost account of BEREC's opinion before issuing a final decision after serious doubts about notified draft measures by an NRA. So far there have been no such Phase 2 procedures under the new framework, but this may change in the course of 2012. BEREC needs to be ready to take this up.

It may be even more interesting though that BEREC also has a role in the so called Phase 1 of the article 7 procedure. At this moment we are working out the practical issues for picking up this role. Phase 1 will give BEREC

the opportunity to engage and give an opinion on notified decisions in an early stage. Taking up our role to review national decisions in Phase 1 will undoubtedly have a positive influence on harmonisation.

As always, BEREC has a broad view on issues, sometimes even on issues outside its formal remit. The way to address these issues is depending on BEREC's strategic choices. BEREC will thus have to create its own strategic agenda for the coming three to five years. In the development of a strategic agenda it is important to engage with stakeholders and assess their view on BEREC. We need to do this at an early stage, by listening well to the specific issues important to stakeholders. A paper setting out this strategy should be approved in the next Plenary meeting in Bucharest.

The work programme for 2012 is now up for consultation. The deadline for submission of input is set at 3 November 2011, close of business. Please send your reactions to BEREC Office (BEREC@EC.Europe.EU). Prior to the end of the consultation period, RTR will organise a public hearing. This hearing will be held the 21 October at 10:30 in the premises of the permanent representation of the Latvian government here in Brussels.

Slide #10 – Documents published

In this final slide I give you the documents which will be published on the BEREC website after the Plenary.