

## **BEREC MEDIUM TERM STRATEGY OUTLOOK**

**23 February 2012**

## 1. Background

BEREC's task is to promote the consistent application of the European Regulatory Framework and thereby contribute to the development of the internal market for electronic communications. In doing so, BEREC plays its part in the promotion of growth and innovation in the EU. BEREC can also provide considerable expertise and professional advice to the European institutions on policy initiatives and related debates in the electronic communications sector.

To do so, BEREC recognises that the development and implementation of medium term strategic goals will help to further enhance its effectiveness in this respect, providing the activities with overall strategic context and clear direction. Following public consultation, BEREC has agreed on the following strategic outlook for the next 3-5 years. This strategy outlook will be subject to regular review.

## 2. BEREC's mission

The role of BEREC is described in article 2 of the BEREC Regulation<sup>1</sup>:

*(a) develop and disseminate among NRAs regulatory best practice, such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework;*

*(b) on request, provide assistance to NRAs on regulatory issues;*

*(c) deliver opinions on the draft decisions, recommendations and guidelines of the Commission, referred to in this Regulation, the Framework Directive and the Specific Directives;*

*(d) issue reports and provide advice, upon a reasoned request of the Commission or on its own initiative, and deliver opinions to the European Parliament and the Council, upon a reasoned request or on its own initiative, on any matter regarding electronic communications within its competence;*

*(e) on request, assist the European Parliament, the Council, the Commission and the NRAs in relations, discussions and exchanges with third parties; and assist the Commission and NRAs in the dissemination of regulatory best practices to third parties.*

The members of BEREC are committed to deliver high quality results with respect to these tasks. The EU institutions and stakeholders also recognise BEREC's central role in ensuring greater regulatory consistency across Europe, and contributing to the Digital Agenda more widely.

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<sup>1</sup> Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009

### 3. Results that matter, on topics that matter

In the medium term BEREC's main focus will continue to be its contribution to the realisation of the internal market. It will do so in particular by:

- a. Adopting common regulatory approaches and best practices in areas where differences impede the internal market, and monitoring conformity with those approaches thereafter.
- b. Issuing robust and respected opinions on Article 7 cases.<sup>2</sup>
- c. Advising the EU institutions, upon request and on its own initiative, on draft legislation and regulation.

BEREC will deliver results that matter, making a difference to EU citizens and stakeholders. This is why BEREC's work is deliberately aligned with the policy priorities of EU institutions in electronic communication markets. BEREC's strategic outlook therefore supports the goals of the Commission's Digital Agenda, in light of the regulatory objectives enshrined in the Framework Directive.

The electronic communications sector is intrinsically dynamic and BEREC is aware of the difficulties to predict future developments based on past experiences. However, the founding principles of the European Regulatory Framework, in place since 2002 – economic market analysis, technological neutrality, alignment of regulation with competition law – provide a robust framework for analysis. This has enabled NRAs individually and as a group to adapt regulation as necessary to the sector's rapid evolutions.

Based on its experience and knowledge and taking into account the views expressed by stakeholders during the consultation, BEREC considers that the following technology, market and consumer developments will have major consequences for the future regulation of the sector.

Firstly, communication services are increasingly reliant on ***wireless and IP technologies, and are rapidly converging with media services.***

Electronic communications services have a major impact on society, innovation and the overall competitiveness of economies. Over the past years, we have seen increased convergence of traditionally separate communications networks (PSTN/GSM, broadcast). Today most networks can and are used to transport a wide range of different services. In this context, mobility and increased bandwidth are fundamental drivers for the development of new services. While voice, SMS and e-mail continue as traditional means to communicate, chats and social media are becoming more fashionable. Consumers are using their mobile devices (e.g., smart phones and tablets) to access a wide range of new services and applications, from commerce to entertainment and personal communications. As a result, data traffic in mobile networks is increasing

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<sup>2</sup> Article 7 and article 7a of the amended Framework Directive describe the process for the adoption by an NRA of a market analysis decision. That NRA has to notify its draft decision to the Commission and to BEREC. Both BEREC and the Commission can then provide the NRA with advice within one month time. Within this timeframe, the Commission may also raise serious doubts regarding the draft NRA's decision. In such a case, BEREC has to provide an opinion on the case within 6 weeks and the Commission has to adopt a decision on the NRA's draft measure within 2 months, taking into utmost account BEREC advice.

dramatically, while SMS traffic is decreasing. We also see a decline of fixed voice minutes and a rise of mobile voice minutes.

These changes are having an impact on business models, with traditional telecom industry players now providing media services, and content providers and Over-The-Top players challenging conventional business models in the telecom sector.

Secondly, it is important, therefore, for BEREC to ***maintain a strong focus on the protection and empowerment of consumers***, including business consumers, and we welcome the strengthening of consumer rights in the 2009 Regulatory Framework.

Consumers are already benefiting significantly from enhanced competition and technological progress and currently enjoy a wide range of choice of communications services across the EU. There are however also some risks associated with such developments, for example in relation to the provision of information, internet security and privacy. There is also an on-going need to protect vulnerable consumers (e.g., those with disabilities) over and above what a competitive market alone may deliver.

Consumers' expectations must be taken into account as early as possible (for example to inform the level of anticipated demand for very high broadband services), while the complexity of converged services requires reinforcement of users' capacity to understand and make the best use of the services. This requires supporting the promotion of competition, with consumer initiatives (e.g., on transparency, quality of service and switching) that will for example help consumers to optimally choose between different offers and derive the most value out of electronic communication services.

Thirdly, Europe is not isolated. BEREC recognises the global nature of these developments and the need for a ***global approach*** to promote the interests of EU citizens.

More and more technological and business models are driven by global developments. In order to discuss these developments, the impacts for consumers's choice and regulation, BEREC is increasing its co-operation with other regulatory authorities (e.g. FCC) as well as regional regulatory networks (e.g. EMERG, Regulatel and the Eastern Partnership). Similarly BEREC aims to co-operate with other European organizations and regulatory platforms in related sectors, such as ENISA (security), RSPG (spectrum), EPRA (content), and ERG-Post, as well as other international institutions dealing with communications matters (e.g. OECD and ITU).

Against the background of the aforementioned developments in infrastructure, services and consumer trends, BEREC will strategically focus on the following main themes for the next 3-5 years.

#### **1. Infrastructure: boosting the roll-out of next generation networks**

BEREC will promote both sustainable and efficient investment and competition in high speed broadband infrastructure and services. Setting out a regulatory framework which provides the right incentives for investment in new (fixed and mobile) high-speed networks that will in turn support innovation in content-rich internet services, is part of this challenge. It also includes addressing where necessary the territorial digital divide and facilitating access to radio spectrum. BEREC will develop a coherent view on the impact of next generation networks (fixed and mobile) on current

regulatory approaches and co-operate effectively with the Commission in this area. BEREC will update common positions on access remedies, in particular in respect of NGA, striking the correct balance between promoting competition, innovation and investment. BEREC will also address issues related to new business models in a convergent IP environment. In these areas, ensuring access to end users will be the focal point for BEREC.

## **2. Consumers: boosting empowerment and protection**

As set out above, regulation to promote competition in itself cannot always ensure that end users profit optimally from all possibilities. BEREC recognises that the new regulatory framework shows an increased emphasis on the protection of consumers, including business consumers, and the reinforcement of related provisions (including for users with disabilities). BEREC will continue to prioritise consumer issues, such as transparency and quality of service, ease of switching, affordability and accessibility which are at the same time an outcome of and a pre-condition for a competitive market. Within this context, BEREC will contribute effectively to ongoing policy debates, in particular on net neutrality, quality of service, and universal service, providing robust and timely analyses and expert advice on market practices and regulatory options. BEREC will continue to closely and carefully monitor net neutrality developments and consider whether and under what conditions further action may be required. BEREC – in cooperation with other bodies – will also contribute as appropriate to ensure the protection of end users against privacy breaches and internet security issues.

## **3. Services: boosting the internal market**

BEREC will continue to make a strong contribution to the development of competitive cross border services and to promoting the internal market, for example through further work on international roaming and on special rate services. BEREC will look, as appropriate, at ways to further remove barriers to the provision of electronic communications services, and to strengthen enforcement mechanisms, including cross-border.

The three items that are mentioned above are at the core of BEREC's work programme for the next 3-5 years. BEREC will continue to work on common concepts and statistics, in particular the elaboration of better methodologies to ensure comparability of data to contribute usefully to policy debates on sector developments. Based on this, BEREC will monitor developments, perform and disseminate analyses and briefings on key proposals, participate in public debates, and provide reports in response to requests by the EU Institutions or on its own initiative. BEREC will not restrict itself just to those three areas of work, but they will have priority as they are critical if BEREC is to perform its duties successfully. BEREC will review this strategy outlook regularly and will make amendments as circumstances require.

## **4. Quality: the level of ambition**

Working on the right topics, BEREC needs to ensure that the results are effective, timely and of the highest possible quality. This is needed to meet the level of regulatory predictability and consistency that BEREC is expected to deliver by the Regulatory Framework. The level of ambition is thus defined as follows:

1. **Common Positions** clearly identifying best practices: *such positions leave no room for unexplained divergent approaches by individual NRAs that form a barrier to the internal market, while permitting necessary flexibility to take full account of national circumstances. BEREC members will exercise due transparency by explaining these national circumstances. BEREC will also monitor compliance with the Common Positions.*
2. **Guidelines** that recognise greater scope for different approaches: *BEREC will define guidelines, which are somewhat more flexible towards differences in regulatory approaches.*
3. Sharing of **best practices**, information and experiences between NRAs: *BEREC will share information and experiences in order to raise further the quality and consistency of the individual NRAs decisions.*
4. **Monitoring and benchmarking** reports: *BEREC will continue to monitor market developments and publish reports on these, in order to provide NRAs as well as policymakers with sound factual input for their decision making. BEREC will publish each monitor with an analysis of the figures, indicating any trends that may be visible.*
5. **Article 77a procedures:** BEREC's role in assessing the market analysis decisions of individual NRAs on the basis of Article 7/7a of the Framework Directive is far-reaching but essential to the development of the internal market. BEREC and its members are responsible for promoting regulatory harmonisation and ensuring that approaches to national market regulation across Europe are harmonised to the extent possible. BEREC has the expertise and means to provide meaningful and valuable assessments of its members decisions, with a view to enhancing the internal market

An important guarantee of the quality of those outputs will be the application of the regulatory principles of economic analysis and technological neutrality. In addition, BEREC will closely interact with citizens, industry stakeholders and EU institutions. BEREC will, in particular, maintain a regular dialogue with the European Commission both at a working level and at an executive level, and anticipates ad-hoc requests for work.

BEREC will also pro-actively identify critical EU policy priorities and offer advice (e.g., to the European Parliament and the Council). In addition to the seat of the BEREC Office in Riga, BEREC has identified the need for a presence in Brussels for practical reasons and in order to ensure its effective interaction with the EU Institutions and other stakeholders

## 5. Efficiency

BEREC is a body, composed of 27 NRAs all of whom operate under heavy budget cuts. This puts a constraint on the available capacity to meet all the ambitions set out in this paper. This is why it is important to efficiently use the means and resources available to BEREC. BEREC has at its disposal the expertise of 27+ NRAs – which according to the Framework Directive have to be equipped with sufficient human and financial resources – and the capacity of a fully equipped Office. By agreeing on this medium term strategy outlook BEREC aims to contribute effectively to the development and better functioning of the European internal market for electronic communications and the goals of the Digital Agenda for Europe. .