

**BEREC Report
on the Public Consultation of the BEREC Draft
Work Programme 2013**

27 November 2012

1. Introduction

The draft BEREC Work Programme 2013 (hereinafter referred to as “WP-2013”) was discussed and approved for public consultation at the BEREC Board of Regulators meeting in Limassol, Cyprus on 27 September 2012. In accordance with Article 5 of the BEREC Regulation, the BEREC Work Programme is subject to consultation. The public consultation ran from 28 September to 26 October 2012 with a public hearing held on 15 October. Fourteen (14) contributions from the following stakeholders have been received in response to the consultation.

1. Cable Europe
2. ECTA
3. ETNO
4. FCS - Federation of Communication Services (FCS)
5. FTTH Council Europe (FTTH Europe)
6. GSMA Europe (GSMA)
7. International Telecommunications Users Group (INTUG)
8. PLAY
9. Telekom Austria Group’s (TAG)
10. Tele2 Group (Tele2)
11. The Number
12. Vodafone
13. Voice on the Net Coalition Europe (‘VON’)
14. Wind Telecomunicazioni S.p.A. (Wind)

One contribution has been received from a private EU citizen.

Specific contributions are summarized per paragraph of the Work Programme [draft as submitted to the public consultations] to which they refer. New items proposed by stakeholders are summarised at the end of this report.

Comments received during the public hearing but not submitted as contributions to the public consultation are also included in the present report but in a more succinct and informal manner. The names of the stakeholders who have made such comments are not identified.

2. Specific contributions per paragraph of the draft WP-2013

A. Background (section 2)

All contributors recognise the important role played by BEREC and therefore welcome the opportunity to comment its draft WP-2013.

Cable Europe supports BEREC in its task to assist the Commission and NRAs in their efforts to achieve the goals set in the Digital Agenda.

ETNO believes that BEREC's annual work programme should be focused on a set of core relevant issues. Considering the dense and ambitious WP-2013, ETNO encourages BEREC to prioritize and streamline the working streams identified. Therefore, ETNO welcomes the proposed mid-year review point, in order to keep work priorities in line with market dynamics. Finally, ETNO stresses the need for a close and timely cooperation between BEREC and the European Commission in order to ensure the stability and clarity of regulatory guidance at EU level.

The GSMA suggests prioritizing the WP-2013 items that are most likely to contribute to the Digital Agenda targets. Regarding the implementation of the WP-2013, GSMA draws the attention to the importance of BEREC EWGs' work, which should be matched by increased responsiveness and transparency towards stakeholders (i.e. enhancing and extending direct exchanges between EWGs and industry).

INTUG also recognises the relevance of BEREC's activities in Article 7/7a Phase II cases and supports the intention to review the work programme at midyear to adapt priorities as necessary in the light of developments.

Tele2 encourages BEREC to guarantee an effective participation to its public consultation, ensuring that consultation periods last at least six weeks.

During the public hearing, three stakeholders expressed the same view, that consultation periods should be extended.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the provisions of the WP-2013.

BEREC would like to reiterate its commitment to promoting regulatory stability and clarity, to contributing towards the digital agenda objectives, and to being responsive and transparent towards stakeholders.

Finally, BEREC would like to note that it takes note of the request for increasing consultation periods. However, BEREC encourages stakeholders to raise it also in the appropriate framework, as the scope of the present consultation is different.

B. Thematic structure (section 3)

Cable Europe supports BEREC's proposed WP-2013 focusing on infrastructure, consumers and services. Regarding infrastructure, Cable Europe supports BEREC's efforts to promote sustainable and efficient investment and competition in high speed broadband infrastructure and services in order to meet the Digital Agenda broadband target. Cable Europe highlights the importance – in terms of correct competition and investment incentives - of a technologically neutral approach, not restricting the focus on a single or a main technology.

Cable Europe also reminds that competition between independent infrastructures is the most beneficial for investment and ultimately end-users.

ECTA agrees with the general approach of the draft Work Programme for 2013 and with its fourfold thematic structure. Nevertheless, ECTA is concerned at a potential shift in the WP-2013 emphasis from the supply side to the demand side, underlying the lack of an explicit headline theme entitled 'promotion of competition'. In particular ECTA welcomes BEREC's work on boosting the roll-out of next generation networks, as long as it includes a firm commitment to the promotion of competition and the recognition of the important role that challenger investors play in stimulating a rollout response from dominant operators.

ETNO supports the four themes mentioned in the draft BEREC work programme and considers them to be appropriate horizontal layers for the work items listed.

In this context, ETNO welcomes the commitment of BEREC to the Digital Agenda goals and the improvement of incentives for NGA roll-out, underlining that BEREC should primarily focus on creating incentives for private investment in high-speed broadband networks.

The FTTH Council finds the thematic approach in the draft BEREC work programme useful and clear in highlighting BEREC's priorities for the year ahead. The Council is pleased with the emphasis being placed on NGA issues both as an implementation issue and on broadband as a future issue. The FTTH Council believes that accelerating NGA and specifically FTTH deployments and ensuring competitive outcomes should continue to be the top priority for NRAs.

The GSMA welcomes BEREC's aim to support the promotion of both sustainable and efficient investment and competition in high speed broadband infrastructure and services.

INTUG agrees that infrastructure, customers (preferred to the term consumers, which tends to imply mass market users) and services represent a reasonable classification of themes.

INTUG further suggests that investment in infrastructure must in itself be efficient and effective. In INTUG's view there are two main risks that could hinder the promotion of an environment of service competition: firstly if returns available to SMP operators from legacy copper-based networks are unjustifiably high; secondly if the transparent non-discriminatory access to wholesale services and unbundled local loops is curtailed.

TAG urges BEREC to focus its activities on creating a stable regulatory framework, in order to better tackle the increasing pressure on revenues and the decreasing investment capacity, without imposing new costly regulatory burdens concerning consumer protection.

Tele2 in general supports the overall themes outlined in the WP-2013 having however some specific comments on different sections. Tele2 welcomes that BEREC supports the promotion of both sustainable and efficient investment and competition in high speed broadband and services.

VON regrets that many identified work streams do not have any expected deliverables and that only one fourth of the foreseen deliverables will be subject to public consultation.

A general implicit comment underlying some stakeholders' contributions concerns the collocation of the opinions on anticipated draft Commission Recommendations on a) non-discrimination and b) on Relevant Markets. Those stakeholders' analysis and comments linked those items with theme A (boosting the roll-out of NGN) rather than theme C (boosting the internal market).

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the provisions of the WP-2013.

Concerning ECTA's comments on a shift from supply to demand side, BEREC would like to note that from the 26 activities and outputs listed in the WP-2013 (section 3 of the draft submitted to consultation) 24 concern the supply side. BEREC would like to further note that both themes A and C (and to some degree theme B as well) are actually about fostering competition.

BEREC appreciates the comment of VON on the number of deliverables and consultations. In this respect BEREC notes that the total number of deliverables does not deviate substantially from the previous years and actually lead to a rather dense work programme, as several stakeholders acknowledge. Concerning public consultations, BEREC notes that, in accordance to the BEREC Regulation, when appropriate, public consultations are always planned.

C. Boosting the roll-out of Next Generation Networks (section 4)

Common Positions on wholesale products (4.1)

ECTA strongly supports the monitoring exercise of the CPs on WLA, WBA, WLL in order to give NRAs a clear constraint on their effective implementation.

ETNO is concerned at BEREC draft revised Common Positions on Best Practices for Markets 4, 5 and 6, and their forthcoming monitoring application, since according to ETNO, those CPs contain a number of best practices recommendations leading to a disproportionate imposition of obligations in national markets, giving disincentive to efficient investments and not taking into account the European Commission's current policy as presented by Commissioner Kroes. Therefore, ETNO urges BEREC to finalise the CPs and their monitoring after the adoption of Commission guidance on remedies.

FCS welcomes the BEREC work on the development and update of its CPs on WLA, WBA, WLL and encourages BEREC to extend the scope of its activities including also the wholesale market for mobile calls. Finally, FCS asks for a greater attention and recognition at the role and the importance of resellers and resale-based competition in terms of innovation and consumers' benefits.

INTUG welcomes this BEREC working stream and stresses the essential correlation between competition in wholesale access products and the development of service competition on one side and investment in online business processes on the other.

Tele2 welcomes that BEREC aims at ensuing more harmonization in the application of BEREC's common positions in the area of wholesale products.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

On ETNO's comment, BEREC notes that this mostly relates to the substance of the draft revised Common Positions. BEREC appreciates the views of ETNO which undoubtedly have been submitted and, if so, have been appropriately dealt with in the context of the corresponding public consultation, which took place between 27 September and 18 October 2012.

On FCS's comment, BEREC expresses its appreciation to the role of virtual operators and notes that the framework for deciding on regulatory interventions is clear and based on the principles of competition law.

Costing principles in the emerging NGA environment (4.2)

In order to provide a concrete base for defining the correct incentives to be given to market actors, ECTA proposes to BEREC to include in this working stream a benchmarking report aimed at assessing the different factors affecting the roll-out of NGA investments and quantifying the investments made in NGA.

ETNO welcomes BEREC's work on costing methodologies in the emerging NGA environment, in order to ensure full cost recovery of access networks where cost-orientation is applied. However, considering the recent European Commission statement on price flexibility for NGA wholesale products, ETNO suggests BEREC to focus its work on guaranteeing price stability for current generation networks, thus supporting efficient investment in and migration to NGA platforms.

The FTTH Council welcomes the proposed opinion on the forthcoming Costing Recommendation but believes that there should be room for a public consultation. Moreover, in order to timely inform and support market decisions, FTTH Council urges BEREC to also immediately react to the European Commission policy initiative without waiting for its specific Recommendations. Finally, the stakeholder believes that BEREC should cover an important role in cost reduction measures for FTTH deployment.

INTUG is concerned at the negative impact of allowing copper networks to be priced on the base of fibre networks' investments. Moreover, the stakeholder stresses that the regulation should ensure an optimal converged IP environment priced in a way that gives reasonable returns for providers, whilst promoting an environment of service competition.

Tele2 welcomes this activity and encourages BEREC to timely develop guidelines on the implementation on the Commission Recommendation.

Vodafone, recognising BEREC's commitment to align its work program with Digital Agenda priorities, urges BEREC to endorse the new policy direction outlined by the European Commission on how to provide the necessary incentives to the deployment of NGA networks.

Wind invites BEREC to include a benchmark study across EU 27 countries on actual investments made for access products on NGA in Europe, in order to evaluate the magnitude of difference between the actualized investments and the assumed ones in cost-orientation models, used to justify wholesale access prices.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

BEREC takes note of ECTA's suggestion for a benchmarking report on NGA investments in the EU Member States. Such study would constitute a policy rather than a regulatory instrument and should therefore be left to the discretion of the European Commission. In this direction it is noted that with the Digital Scorecard the Commission is already building up a data base which may facilitate such a benchmarking exercise.

On the request for a public consultation, BEREC notes that it interprets requests by the Commission or other EU Institutions for an opinion, as actually calling for its independent, expert opinion that does not reflect the views of stakeholders. This view is reinforced by the fact that the Commission possesses all the necessary mechanisms to invite the views of stakeholders. Therefore BEREC does not consider appropriate to conduct public consultations on such opinions.

Emerging challenges in Next Generation Networks (4.3)

NGN and IP interconnection (4.3-a)

Cable Europe points out the inefficiency in the cost-distribution system between content providers and network operators, which however should not lead to further regulation or inclusion of a market for connectivity in the Recommendation on Relevant Markets, as commercial agreements between the players will likely result in new charging systems.

ETNO is concerned at certain aspect of the economic analysis underlying the draft BEREC report on IP interconnection. ETNO encourages BEREC to assess and define its regulatory role with regard to the "level playing field" issue more generally, especially with regard to OTT internet players. In this context ETNO takes good note that BEREC intends to consider the consequences of decisions taken at the World Conference on International Telecommunications about IP interconnection and the distribution of revenues across the value chain between Telcos and OTT players.

The GSMA asks BEREC to fully consider in its work the need to provide regulatory incentives to private investments, taking into account the impact of new business models on consumer choice and on the possibility for all value-chain actors to fairly contribute to the sector investments.

INTUG believes that BEREC should focus on regulators' capacity to protect customers from network interconnection cross-border barriers to trade. Moreover, it is of the opinion that Bill and Keep and Calling Party Pays as mechanisms for addressing unbalanced charging in mobile, e.g. with Termination Rates, is worthy of BEREC attention.

Tele2 considers premature at this stage the introduction of any recommendation or position which alters the current free way of conducting business and setting up new business models. However Tele2 encourages BEREC to monitor this area - jointly with competition authorities - in order to prevent situations which would distort competition.

VON calls for BEREC attention to vertical integration process and the consequent risk of new monopolistic bottleneck at termination level, potentially leading to excessive IP termination rates. However, in the light of BEREC previous analysis about IP-interconnect mechanisms indicating that no market failure is present, VON suggests that BEREC re-allocated those resources to a working stream aimed at tackling traffic management discriminatory behaviours.

Vodafone broadly supports draft BEREC report on IP interconnection and its conclusions and agrees that no regulatory intervention is necessary at this stage. According to the stakeholder, a simple monitoring exercise of market developments and ITR is sufficient at the moment.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream and indicative of how controversial the issue of IP interconnection is.

BEREC does not interpret any of the comments above as requesting modifications to the proposed WP-2013.

BEREC notes its intention to address, in the framework of the present work stream, the issue of interconnection between telecom operators and OTT or other players in the ICT value chain. At this stage BEREC mostly focuses towards establishing a solid understanding of the issues at hand also in relation to the tools made available by the current regulatory framework. Depending on the outcomes of this exchange, BEREC will consider the option of extending such work and whether some form of guidance would be of merit.

Effective regulation in an NGA environment (4.3-b)

ECTA welcomes BEREC's statement concerning the promotion of effective competition and efficient investment for the benefit of the European citizens as the best way to facilitate NGA transition. In this regard, ECTA calls upon BEREC to deliver a Common Position on the key issue of creating conditions for effective and sustainable competition in an NGA environment, specifically elaborating on the NGA networks architecture and technology. Finally, considering the infrastructure based competition as an important driver for new investment, ECTA suggests BEREC to include "the equivalence of opportunity" for entrant investors as theme in its WP-2013.

ETNO shares BEREC's observation on an increasing variety of local market conditions across MSs and suggests an increased application of geographically differentiated markets/ remedies in SMP regulation and of symmetric regulation. ETNO encourages BEREC to include formal deliverables on this point in cooperation with the European Commission.

FCS welcomes BEREC's understanding of the growing development of 'local monopolies' and points out cases of competition distortion on a localised basis. The stakeholder suggests BEREC to include some deliverable documents in this regard.

Vodafone considers that vectoring is a key technological development which could potentially lead to a re-monopolisation of the broadband access market, and urges BEREC to deeply analyse this issue as soon as possible with the aim of developing a common position that ensures that vectoring will not lead to re-monopolisation. Moreover, Vodafone believes that

BEREC should focus on the introduction of effective and harmonised non-discrimination measures (e.g. Equivalence of Inputs and more effective ex-ante margin squeeze tests).

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

On ECTA's request for a Common Position on the issue of creation conditions for effective and sustainable competition, BEREC notes that the subject is too broad, essentially referring to the overall mission of the NRAs. Therefore it cannot be addressed in a Common Position.

On the other hand BEREC takes note of ECTA's request to address "the equivalence of opportunity" for entrant investors, though not as a separate work stream but within the work stream focusing on costing principles and non discrimination (section 4.2 of the WP 2013).

BEREC also notes Vodafone's comment with respect to vectoring. This is a topic already included in the present work stream. BEREC expects that, as a result of such work, it will be possible to assess whether any action is needed with respect to vectoring. At this point however, it would be premature to commit to a Common Position on it.

Geographic Markets Segmentation (4.4)

Cable Europe cautions that identification of sub-national markets has the potential to create more complications. On the other hand it considers that the geographic segmentation of remedies could represent the more efficient regulatory approach to address locally differentiated market conditions, as long as the regulator is able to timely react to changes in market dynamics and conditions.

ECTA urges BEREC to exercise caution in revising the CP on geographic segmentation, and comments about the treatment of indirect constraints (from retail markets), as approached in a recent market 5 case.

ETNO supports in principle a more in-depth analysis on the geographic segmentation of markets and remedies, noting that BEREC and several of its Member NRAs have taken a clearer and more appropriate view on the importance of indirect constraints in market definition and remedy differentiation. In this regard, ETNO encourages BEREC to develop its views further.

The FTTH Council strongly welcomes the proposed update to the common position on geographic markets and notes that geographic aspects can be critical to the cost function and thereby, to deployment of FTTH networks.

INTUG highlights that subnational regulation may create difficulties for business users whose sites may be located in a mixture of regulated and unregulated areas.

Vodafone believes that BEREC should wait for the upcoming Recommendation on Relevant Markets before updating the common position on geographic segmentation.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream and indicative of how controversial the issue of Geographic Market Segmentation is.

BEREC appreciates the concerns of INTUG regarding subnational regulation but notes that geographic market segmentation is endorsed by the European Framework. Therefore it cannot be excluded as an approach in market analysis. Nevertheless, BEREC encourages INTUG to defend its position during the public consultation that is planned in the framework of the present work stream.

BEREC also appreciates Vodafone's suggestion to wait for the upcoming Recommendation on Relevant Markets, but clarifies that as this work stream progresses the EWG involved will become aware of the main principles that will drive this Recommendation and can decide, if there would be scope for such delay.

Facilitating access to radio spectrum (4.5)

ECTA, the GSMA and Tele2 also support BEREC's cooperation with RSPG in the area of facilitating access to radio spectrum and encourage BEREC to be more transparent about this progress.

ECTA suggests a deliverable of a study on best practices of spectrum allocation in Member States to be included in the 2013 Work Programme. They envisage a comprehensive approach to the concept of spectrum sharing, in particular addressing competition aspects of spectrum sharing solutions and an exchange of views with the RSPG with regard to this issue.

FCS recommends BEREC to develop its input into discussions on facilitating access to radio spectrum with a view to creating CPs which recognises the desirability of reserving a set amount of spectrum in each MS to safeguard the current and future operating needs of MS's critical national infrastructure and emergency services.

PLAY is of the opinion that BEREC should provide a clearer guidance on radio spectrum issues, filling the gaps in the European policy. For this reason, PLAY encourages BEREC to include deliverable outputs in its 2013 WP-2013, in particular BEREC to carry out a study on spectrum distribution and practices of spectrum allocation in the EU member States.

PLAY also invites BEREC to discuss spectrum sharing practices with RSPG.

VON would encourage BEREC to work on the full and preferably harmonised utilisation of radio spectrum in the Member States and across Europe, and stresses the importance of the principles of technological, network and service neutrality.

VON also considers that BEREC should examine the increasing opportunities for unlicensed devices and innovative spectrum access models, making a maximum of spectrum available for broadband Internet access and to identify tools for improving the effective and efficient use of spectrum and the transparency of spectrum allocation and utilisation.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream and indicative of the importance of radio spectrum to the functioning of the electronic communications sector.

BEREC would like to reiterate its commitment to be as transparent as possible not only in this work stream but on the entirety of its works.

BEREC will consider the topic of competition implications in spectrum trading as well as the possibility of conducting a study on spectrum allocation practices. However, BEREC notes that the selection of topics is not under its exclusive control, as the agreement of the RSPG is also required.

BEREC also appreciates and takes note of the suggestion to consider the means for enhancing the utilization of spectrum, e.g. through unlicensed devices, innovative spectrum access models and utilization of rarely used bands. However, BEREC clarifies that is predominantly a policy issue, and in general outside the remit of regulators.

BEREC would like to further remind that spectrum issues are mainly under the competence of the RSPG and that many of its members actually do not have competences on spectrum.

D. Consumer empowerment and protection (section 5)

This Theme of the draft WP-2013 is welcomed by ECTA, FTTH Council Europe, INTUG and TAG. They focus on Transparency and QoS in the context of net neutrality.

TAG urges BEREC to take into consideration that operators already face substantial and costly national obligations, and to avoid coming up with new burdens.

Wind suggests that BEREC could seek to extend its competences in consumer protection as well as in the cloud context. For the former Wind suggests that BEREC could take advantage of the competences of its members.

Wind also invites BEREC to look closer at data security issues and cooperate with national data security regulators, in order to ensure that relevant obligations are reasonable and proportionate.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive of the work proposed under the specific theme.

BEREC appreciates the obligations of telecom operators and takes note of the request to avoid unduly coming up with new burdens.

BEREC would further like to clarify that data security and applications, such as cloud computing, in general do not fall under the remit of its members. Nevertheless BEREC takes note of the suggestions to look at such issues.

Net Neutrality (5.1)

Cable Europe expresses the view that differentiating products is beneficial for consumers, providing a fair distribution of costs for them and increasing overall economic surplus. Also, traffic management has positive effects when the market is competitive, as it increases network efficiency, minimising the resources needed to provide the service and assuring the best deal to end-users.

Cable Europe believes that, in order to promote an open Internet, policy makers and regulators should prioritise and encourage infrastructure based competition.

ETNO expresses the view that the heavy focus of BEREC on net neutrality issues in its 2013 work programme is unwarranted and risks inconsistent guidance emerging at EU level, and suggests that all BEREC actions should be timely coordinated with the European Commission's intended Recommendation on certain aspects of net neutrality under the EU framework.

INTUG stresses the importance of a consistent definition and classification of applications and complete transparency before, during and after traffic management procedures, including failure scenarios.

BEREC Response

BEREC would like to thank for the above comments, which are indicative of how sensitive the topic of Net Neutrality is. BEREC does not interpret the above comments as requests for modifications in the WP-2013.

Opinion on the European Commission Recommendation on Net Neutrality (5.1-a)

TAG urges BEREC to ensure a coherent and consistent approach to net neutrality with the European Commission, particularly related to the announced EC recommendations.

VON welcomes BEREC's support to the European Commission regarding this issue. In this context, VON urges BEREC to specifically stress that competition, transparency and switching alone are insufficient to preserve an open Internet. Thus further guidance is needed.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

BEREC does not interpret the above comments as requests for modifications in the WP-2013, with one exception: VON's request for further guidance in relation to the European Commission Recommendation on Net Neutrality. BEREC takes note of this request. However, such decision cannot be taken prior to the adoption of the recommendation.

Monitoring Quality of Service (QoS) - Practices and Platforms (5.1-b)

ECTA urges BEREC to consider launching a public consultation in the light of the planned “Report on platforms for measuring the Quality of Broadband Access Services” and would welcome a clarification on a “common opt-in platform” (5(1) b last sentence).

The FTTH Council believes that the QoS deliverable would benefit from a public consultation.

Tele2 invites BEREC to take into account, when considering the monitoring of QoS, the specificities of the mobile infrastructure and delivery of services over mobile networks and to consult with stakeholders before it considers a common platform for measurement comparison.

Vodafone supports the idea of NRA’s best practice sharing for both fixed and mobile QoS and also supports the idea of a common platform as long as it improves comparability, quality of results and costs. The stakeholder asks BEREC to build on the already existing work regarding QoS (i.e. ETSI’s and NGMN Alliance’s). Finally, Vodafone points out that all the initiatives concerning QoS should be implemented in close cooperation with the industry representatives.

VON underlines that discussion on QoS measurements methodology should be conducted with a multi-stakeholder input. It proposes BEREC to establish a technical advisory group.

Furthermore, VON believes that if measurement tools are put in place, these need to be open and transparent.

Wind asks BEREC to consider the introduction of a public consultation on the planned “Report on platforms for measuring the Quality of Broadband Access Services”.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

BEREC does not interpret the above comments as requests for modifications in the WP-2013, with one exception, the widely expressed view in favour of an open dialogue, by means of a public consultation. BEREC takes into account this request and will incorporate it in the WP-2013.

Study on consumers’ incentives and market forces driving Net Neutrality developments (5.1-c)

ECTA invites BEREC to involve stakeholders in the development of questions to be included in the survey.

Vodafone agrees that the whole value chain should be analysed (including market power/behaviour of large CAPs and key mobile manufacturers/operating systems providers).

VON welcomes this initiative and expresses the willingness to support it in every possible way. VON considers that such a study should undergo a formal consultation procedure.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

BEREC takes note of the widely expressed view in favour of an open dialogue, by means of a public consultation and takes it into consideration. Such public consultation will be foreseen for 2014.

Transparency guidelines follow up: Further specifications (5.1-d)

ECTA stresses that a regulated reference offer for Internet Access Services could produce a standardisation in the products (according to the reference offer) and modify incentives to product innovation. Such a reference offer could have strong distortive effects on market demand, supply and on competitive conditions.

The GSMA welcomes BEREC's involvement in this matter, but expresses concerns about potential misalignments between different work streams on this topic. Thus, the stakeholder invites BEREC EWGs to enhance the horizontal internal collaboration on one side and with the European Commission on the other.

Furthermore, the GSMA expresses concerns on a potential future proposal for a "reference offer for internet access service", as its relation to the anticipated Commission Recommendation on transparency aspects is not clear.

Vodafone underlines the need for greater transparency in both fixed and mobile broadband and supports most of the initiatives proposed by BEREC in its report on transparency that was published last year. The stakeholder suggests BEREC to avoid too detailed and prescriptive measures and to focus on the principles. Finally, Vodafone points out that all the initiatives concerning transparency should be implemented in close cooperation with the industry representatives.

VON considers that the BEREC's work so far on transparency has shown constant progress. However, VON calls upon caution about a 'reference offer' approach for Internet access, as this could lead to unwanted effects concerning the end-users sovereignty. VON agrees with such a user-centric non-discriminatory approach and considers that BEREC should set necessary principles and safeguards measures to deliver such a result.

Tele2 believes that the principle "one-size does not fit all" applies also to transparency and that BEREC should rather focus on defining a high level list of criteria to be adopted in national transparency codes of conduct.

BEREC Response

BEREC notes and appreciates the above comments and the concerns expressed. Taking such comments into account and following the relevant recommendation of the Net Neutrality EWG, BEREC will not proceed with the drafting of more detailed specification on the transparency guidelines. Instead, this work stream will focus on internal exchanges at expert level on the implementation of the transparency guidelines.

Preparation of second round of the Traffic Management Investigation (TMI) (5.1-e)

A number of stakeholders (GSMA, TAG, Tele2 and ETNO) do not see a clear reason for BEREC to undergo a second round of traffic management investigations. They ask for further clarification on the objective and the value of such a repeated exercise, particularly considering that no acute problems were identified in the first round and given that the exercise implied considerable resource constraints for BEREC.

However, other stakeholders (ECTA, VON) welcome such second round investigation.

ECTA believes that BEREC should consult stakeholders including operators on the draft questionnaire in order to take full advantage of the expertise of all stakeholders involved.

Tele2 welcomes BEREC's position about an open internet, nevertheless it emphasises the need for BEREC to consider carefully the impact of its positions on private infrastructure investment on one side and on competition dynamics among actors of different levels in the value-chain on the other.

Vodafone supports any data gathering exercise in this area, as it believes that many of the objections to traffic management are based on misconceptions. They are of the opinion that more empirical data would help to develop objective views on traffic management.

VON applauds a second round of TMI taking place. It believes however that this exercise should be open for consultation as regards the used methodology on one side, but also the availability of the questionnaire on the other. VON also considers important that questionnaires are made available and answers are not made confidential. VON is of the opinion that data should be shared, where appropriate, with external research centres, consumer associations, so that data is scrutinised much more thoroughly.

VON encourages BEREC to focus its attention on discriminatory practices that have commercial motivations. Moreover, VON asks BEREC to draw its attention to some of the collateral 'damage' deriving from cross-border blocking and filtering practices.

BEREC Response

BEREC has looked carefully into the various comments on this work stream. BEREC believes that the different and often conflicting views about the conclusions of the first round and the scope of a second round clearly confirm the need to repeating this exercise.

BEREC observes the various comments and views on the conclusions of the first round of the TMI but does not consider appropriate to respond to such comments or views, since this is outside the scope of the present consultation. This should not be construed as endorsement of any views presented here on the conclusions of the first round of TMI.

On the request for a public consultation on the investigation methodology and questionnaire BEREC notes that such consultation would essentially imply asking the market players what kind of questions they are willing to accept.

Also, BEREC would like to inform all stakeholders that, respecting business confidentiality, any data collected in the framework of such an investigation cannot be made available to any third parties, with the exception of the European Commission.

Universal Service (5.2)

ECTA and one more stakeholder call upon BEREC to consider a study on best practices for calculating the net cost of the Universal Service Obligation (USO), in order to promote a necessary harmonisation at the EU level.

INTUG acknowledges the need to review certain Universal Service provisions, but believes that State Aid guidelines may be sufficient to avoid unjustified subsidies to operators and to ensure adequate geographical coverage for Internet Access.

Tele2 underlines that the area of switching is not touched upon in BEREC WP-2013 and that the switching obligations under the USO Directive (USD) have been implemented in a non-harmonized manner across the EU. Therefore, Tele 2 asks BEREC to develop guidelines in order to ensure a more consistent implementation of the switching obligations under the USD.

Vodafone believes that BEREC should define a common methodology to calculate the net costs of USO (or not oppose any activity by the Commission in this area).

BEREC Response

BEREC has looked carefully into the various comments received and believes that they clearly indicate the sensitivity of the issues relating to the Universal Service.

BEREC takes note of the comments made, particularly in relation to the calculation of the net costs of USO but believes that any relevant action should be considered only after the completion of the dialogue on the USD and once a relevant recommendation becomes available. BEREC would also like to draw attention to a significant parameter, on how the relevant competence are organised at national level in each Member State.

With regard to switching issues, BEREC underlines the report on best practices to facilitate consumer switching, published in October 2010 (BOR_10_34_Rev1).

Supporting end users with disabilities (5.3)

Vodafone agrees that at this stage delivery of further formal documents is not necessary.

VON supports holding of workshops to identify appropriate actions for end-users with disabilities in order to ensure equivalence of access and choice. Moreover, the Stakeholder points out that any such measures should be technology-neutral and non-voluntary measures should only apply to Publicly Available Telephone Services (PATS) services.

BEREC Response

BEREC would like to thank for the above comments, supporting the specific work stream.

BEREC notes that indeed at this stage it intends to look at the practices employed in the various MSs and has no intention of making any recommendations.

E. Services: Boosting the internal market (section 6)

International Roaming (6.1)

Follow-up on the implementation of the decoupling obligation (6.1-a)

GSMA Europe and Tele 2 support BEREC's conclusion that - given the framework of the Regulation - the single IMSI combined with the "basic version" of the LBO is the best choice. Moreover, the above stakeholders focus on the implementation in terms of costs, challenges, timeframe, and technical details and give the opinion that they could only be successful if they build on sector standards. They welcome BEREC's intention to adopt further guidelines on the decoupling and call for a fully transparent approach. However, GSMA Europe considers inappropriate (too late) the timeframe for public consultation proposed in the WP "P1 2013".

INTUG welcomes the latest Roaming Regulation, as a step forward, but asks for long term plans, for the complete elimination of "roaming" as a concept, not least in order to facilitate machine-to-machine applications across national borders.

Vodafone believes that BEREC should not define further guidelines on the implementation of the decoupling obligations to avoid delays.

In the public hearing, one stakeholder invited BEREC to consider the debate between single-IMSI and double-IMSI.

BEREC Response

BEREC has looked carefully into the various comments received and believes that they clearly indicate how sensitive the issues surrounding international roaming and the implementation of the Roaming Regulation are.

BEREC notes the requests for expediting work or even aborting the development of guidelines. However, apart from their importance to the market, developing these guidelines is an obligation of BEREC under the new Roaming Regulation. BEREC also notes that, given the subtle technical issues involved, expediting the adoption of the guidelines appears hardly feasible.

Monitoring of compliance to the Roaming Regulation (6.1-b)

TAG asks BEREC to initiate an objective and impartial study aiming at analysing the complexity and the timely feasibility of the implementation of the Roaming III Regulation.

BEREC Response

BEREC takes note of the above request, which indicates that market players continue to be concerned about the technical details of the implementation of the Roaming III Regulation.

BEREC has already commented on the complexity and feasibility of the various proposed technical solutions.

Special Rate Services (SRS) (6.2)

The Number suggests concrete outcomes to be considered by BEREC as a follow-up to the 2011 SRS Report. The first concerns the need to ensure intervene when necessary in an efficient manner. This can be served by identifying triggers that should lead to the automatic intervention of NRAs. The second concerns the SMP analysis and regulation for SRS. In this direction, the stakeholder suggests analysing the possible addition of the mobile/fixed origination market to SRS to the Relevant Market Recommendation, and underlines the need of a framework for a full market analysis.

Vodafone agrees with the proposed approach and suggests that further formal work is not necessary at this stage.

Wind supports the BEREC decision to exchange relevant experiences and discuss the practices followed by different NRAs.

In the public hearing, one stakeholder expressed the view that there are problems in the SRS market and asked BEREC to seek a solution and to deliver more concrete results.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

BEREC would like to remind that the various legal options to address SRS related issues is extensively addressed in the BEREC Report on Special Rate Services, BoR (12) 55. Therefore, BEREC considers more appropriate focusing on how various NRAs address SRS, without necessarily producing a formal deliverable. This choice is also supported by stakeholders.

BEREC takes note of the request to consider adding the origination market to SRS to the Recommendation on Relevant Markets. This comment is relevant to the work on the Recommendation on Relevant Markets (section 6.7).

Authorization regime for cross-border providers (6.3)

ECTA welcomes BEREC's proposed work on the authorisation regime for cross-border providers but requests BEREC to reach a conclusion on this issue, even if the conclusion would be that legal and administrative barriers are mainly situated outside the narrow scope of electronic communications legislation or NRA mandates.

Furthermore ECTA suggests that the foremost cross-border harmonization objective should be the creation of a single market for business communications and the harmonisation of regulated wholesale inputs for pan-European business users.

INTUG urges BEREC's actions aimed at promoting cross-border services.

Vodafone supports the role of BEREC as a facilitator in this issue, pointing out that the current system based on national processes is a barrier to cross-border services.

In the public hearing, one stakeholder invited BEREC to deliver a document with clear guidelines and recommendations.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the intention of BEREC to promote cross border services.

BEREC takes note of the requests on formal deliverables and for addressing the single market for business grade communications. BEREC will address these points in the course of the specific work, but producing any formal deliverables will require a prior thorough understanding about the merits of such outputs.

Quality and consistency of regulatory decisions (6.4)

The FTTH Council sees BEREC's work in the Article 7 process as critical to ensuring the implementation of regulatory best practice across the EU. Since the timelines involved in this process are very short, pre-identified best practice will be important to guiding decisions. The FTTH Council suggests that potential tie-ins with the opinions on the costing and non-discrimination Recommendations could form part of this best-practice identification.

INTUG believes that this task should deserve the highest priority as one of BEREC's most important roles.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to its work on Article 7/7a Phase II cases.

Machine-to-Machine (M2M) services (6.5)

The GSMA welcomes the proposed work and expresses its eagerness to contribute to an open discussion on potential regulatory barriers. However, it considers that the main challenges are commercial, therefore does not see a need for new regulation.

INTUG also expresses a strong interest in the development of M2M market and supports the proposed work. In INTUG's view, the main issues are spectrum harmonisation, the elimination of roaming and preventing the vendor switching process from becoming unduly complex, risky or expensive.

Vodafone believes that there is no need for specific national regulation of M2M and urges BEREC to confirm that rules defined for person-to-person services are not unjustifiably applied to M2M services.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

BEREC would like to reiterate that work at this stage mainly focuses in identifying and understanding the main issues or barriers, if any, relating to this market. So, at this stage there is no consideration of taking any regulatory measures.

Benchmarking (6.6)

ECTA and Wind highlight a lack of data related to copper networks across the EU and invites BEREC to include traditional services previously monitored by the old Implementation Report, for example the cross analysis on copper access lines (irrespective if they are used for broadband or not).

TAG urges BEREC to improve its approach to data retrieval for prices at wholesale level, taking into account that contractual structures for wholesale services are complex, and, if looked at the essential commercial effects of these contracts, the findings on the degree of competition in these markets would be completely different.

Vodafone invites BEREC to benchmark ULL and bitstream prices.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

In response to the comment by ECTA and Wind, BEREC would like to note that it is not aware of any indicators that were measured in the Annual Implementation Report but have been dropped in the Digital Agenda Scorecard, although there have been indicators that have become obsolete and have been therefore abandoned. BEREC will give consideration to this request, if it becomes more specific.

In response to the comment by TAG, BEREC would like to note that the role of benchmarking is to collect and present market data, rather than drawing conclusions on them. The responsibility to decide whether a relevant market is competitive or not, remains with the National Regulators.

Finally BEREC takes note of the request to also benchmark ULL and bitstream prices. However, BEREC would like to remind that ULL prices are already benchmarked in the Digital Agenda Scorecard. The possibility of benchmarking bitstream prices has been considered in the past, in cooperation with the European Commission, but has been abandoned as the diversity of bitstream services and related options did allow the effective comparison of prices.

Benchmarking on MTR, FTR, SMS (6.6-a)

INTUG welcomes the intention to benchmark Mobile and Fixed Termination Rates, since their current high levels place the European Union Single Market in a disadvantageous situation in comparison to other world markets.

BEREC Response

BEREC would like to thank for the above comment, supporting the specific work stream.

Revenue indicators in relation to bundled services (6.6-b)

Vodafone supports this work, as bundled offers are becoming the most common way of marketing communications services.

BEREC Response

BEREC would like to thank for the above comment, supporting the specific work stream.

Regulatory Accounting in practice report (6.6-c)

No comments received.

Implementation of the Termination Rates Recommendation (6.6-d)

ECTA suggests BEREC to undertake an EU benchmark report in this subject matter, including a cost/benefits analysis of the impacts of the recommendation on the operator economics (MVNOs included).

Vodafone invites BEREC to work on Fixed Termination Rates and to ensure that the principles of the Recommendation are applied consistently to MTRs as well as FTRs.

BEREC Response

BEREC appreciates these comments, clearly reflecting the subtleties of the provisions of the Termination Rates Recommendation.

BEREC notes the request for a study on the impact of the recommendation. Such a study could be considered as a future work item, taking into account the dense and ambitious work programme for 2013, as well as the current resource constraints.

Concerning the application of the recommendation, BEREC would like to clarify that relevant information is already collected in the framework of the benchmarking work on MTR and FTR. BEREC further notes that these benchmarks are already being modified to allow obtaining information in line with the TR Recommendation. Further considerations in this direction could be considered, if deemed necessary.

BEREC will also consider, if there are important outstanding issues that may warrant further consideration, and in such case will proceed to address them.

Engagements with EU Institutions in the implementation of the European Framework (6.7)

Non-Discrimination (6.7-a, removed from the revised WP 2013)

Cable Europe supports BEREC's activities in its key role of advisor to the European Commission, the Council and the Parliament on draft decisions, recommendations and guidelines.

ECTA and WIND propose BEREC to include in its Work Programme 2013 a study on implementation of Equivalence of Input (EoI) among the EU 27 countries, which could also include a comparison of other non-discrimination enforcement practices currently in place in Europe.

FTTH Council sees the non-discrimination opinion important and therefore suggests it to be a subject to a public consultation to get stakeholder views.

Tele2 believes that BEREC should focus on the anticipated draft Commission Recommendation on non-discrimination, meaning that BEREC shall develop guidelines on the application of the Recommendation. It underlines that the non-discrimination Recommendation should be technology neutral, covering current and future wholesale products on different types of fixed infrastructure.

Vodafone suggests BEREC to further work on the effective and harmonised application of the Equality of Inputs principles that the European Commission is planning to propose in its upcoming Recommendation.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work.

Prior to any other comment, BEREC notes that its work on non-discrimination is integrated with the work on costing principles in the emerging NGA environment (section 4.2), as a result of the Commission decision to combine the two relevant recommendations in one. This affects the organisation of the WP 2013 but not the substance of the work.

On the request for a public consultation, the relevant comment in section 4.2 applies.

On the suggestion to undertake a study on the implementation of EoI or other non-discrimination enforcement practices in the EU Member States, BEREC will take this into account as part of its work-stream to develop an appropriate methodology for the application of the revised CPs (see point above).

Recommendation on Relevant Markets (6.7-b, 6.7-a in the revised WP 2013)

The Number and Wind consider that BEREC's Opinion on the anticipated draft Commission revised Recommendation on Relevant Markets should undergo a public consultation.

FTTH Council believes that BEREC should schedule most of its activities around the Recommendation on Relevant Markets. In particular, the stakeholder suggests BEREC to focus on how to deal with fixed network evolution in different market circumstances.

INTUG sees this work as an opportunity to acknowledge the distinct needs of business users and cross border markets.

Vodafone invites BEREC to define a specific market for high capacity mobile backhauling.

Wind also asks BEREC to examine the need and regulatory implications of levelling the playing field between OTT and network operators. In the stakeholder's view this calls for a modified operational structure in market analysis, for example through a new relevant market for data termination.

BEREC Response

BEREC would like to thank for the above comments, which are in general supportive to the specific work stream.

BEREC takes note of various suggestions concerning the inclusion of additional relevant markets in the Recommendation. Obviously BEREC cannot preconceive the conclusions that it will reach and the recommendations that it will make. BEREC would therefore recommend that such views are also presented in a relevant public consultation that will be organized by the Commission.

On the request to have a public consultation on its opinion, BEREC notes that the Commission already intends to have a public consultation of its own.

F. Other internal and external activities (section 7)

Framework implementation – institutional aspects (7.1)

No comments received

BEREC Evaluation (7.2)

No comments received

BEREC Rules of Procedures (7.3)

No comments received

Stakeholder engagement (7.4)

TAG, GSMA Europe, INTUG, ETNO welcome BEREC strategic dialogue with the Chief Executive Officers of European operators. Some of the stakeholders also suggest extending the dialogue at a more operative level, with BEREC's Expert Working Groups.

Some of them invited BEREC to expand the scope of the dialogue, including additional stakeholder segments.

BEREC Response

BEREC would like to thank for the above comment, supporting the specific work stream and its intention to build on and expand the dialogue initiated in 2012.

Relations with third parties and international co-operation (7.5)

No comments received

3. Additional work items and horizontal issues

ECTA encourages BEREC to add some further working streams to its WP-2013, regarding:

- *Self-regulation best practices.* - ECTA believes that BEREC could include in its work programme a section on best practices with respect to effective self-regulation and the role that NRAs can play to encourage the adoption of industry codes of practice.
- *Regulating for Quality.* - Since SMP operators might have an incentive to sub-grade wholesale products quality, ECTA urges BEREC to investigate the quality aspects of wholesale products through a benchmark study across Europe. Furthermore, ECTA suggests BEREC to develop a Common position including a harmonised set of necessary quality conditions into regulated Reference Offers for wholesale access products (i.e. the development of SLAs for each regulated service) and associated monetary sanctions.

FCS urges BEREC to develop guidelines on how NRAs should approach the regulation of oligopolies.

FTTH Council believes that BEREC should consider elaborating an assessment of the current state of competition in the EU countries. FTTH proposes this working stream after 15 years from the liberalization in order to assess which regulatory models have worked better.

Vodafone suggests BEREC different additional working streams, concerning:

- *VoIP and Messaging over IP.* – Vodafone proposes BEREC to review the 2007 ERG Common Position on VoIP to take into account technological and market developments, possibly focusing on redefining categories of VoIP providers; clarifying that VoIP providers are electronic communications providers and analysing the impact of messaging over IP.

- *Mobile backhauling.* - Vodafone urges BEREC to focus on the requirements for fixed incumbents to provide fibre backhauling on a regulated and non-discriminatory basis and on the commitments for quick authorisations or self-certification for microwave links. It proposes BEREC to deliver a Common Position.

VON proposes a new specific item - Numbering - to be added in the BEREC WP-2013, taking into account the Recommendations by CEPT, ECC and the Working Group on Numbering and Networks (WG NaN). VON invites BEREC to ensure and enforce the harmonisation of the variable eligibility and usage conditions for allocation of numbering resources and should undertake a profound review of the national numbering plans to truly make it technology neutral.

In addition to that, VON believes that the usage of numbering resources should be rethought on a EU level, as nomadism has become an integral part of today's way of life.

One private citizen suggests BEREC to develop some further working stream and activities. First he suggests BEREC to register its activities with the EU Transparency Register, in order to ensure a sufficient and necessary level of transparency. In addition, the citizen proposes that the NRAs should take measures concerning the transparency of undertakings' ownership data and that they should set-out anti-corruption arrangements (such as public register of interests, policies for gifts, cooling off periods and so on) and to share this information amongst BEREC in order to develop and disseminate best practices.

BEREC Response

BEREC would like to thank for the above constructive proposals and would like to provide the following comments on them.

- BEREC notes the proposal on self regulation best practices. Taking into account the dense and ambitious work programme for 2013, including the anticipated volume of Article 7/7a Phase II cases, as well as the current resource constraints, this could be considered as a future work item.
- BEREC also notes the proposal to investigate the quality aspects of wholesale products, which addresses an issue closely linked to non discrimination. Such proposal should therefore be considered after the anticipated relevant Commission Recommendation becomes available.
- On the regulation of oligopolies, BEREC would ask for a proposal that is more concrete and more aligned with the scope and provisions of the current Regulatory Framework, in order to be able to give it due consideration.
- BEREC notes the proposal for assessing the current state of competition in the EU countries. In BEREC's view, this is already addressed to a large extent by the European Commission's Digital Agenda Scorecard.
- BEREC notes and appreciates the proposal to review the 2007 ERG Common Position on VoIP. Taking into account the dense and ambitious work programme for 2013, including the anticipated volume of Article 7/7a Phase II cases, as well as the current resource constraints, this could be considered in the upcoming work programme review.

- On the mobile backhauling, BEREC notes that this is a typical case of high capacity wholesale leased lines and should therefore be subject to the relevant remedies.
- BEREC notes the proposal to work on numbering and considers that an overall rethinking of numbering to address market developments (technologies, business practices, and usage patterns) should be the first step in such process. Taking into account the dense and ambitious work programme for 2013, including the anticipated volume of Article 7/7a Phase II cases, as well as the current resource constraints, this could be considered in the upcoming work programme review.
- Finally, on the suggestions concerning anti-corruption arrangements and transparency of undertakings' ownership data, BEREC notes that these are outside its remit.