

Work Programme 2013

BEREC Board of Regulators

7 December 2012

1. Introduction

The revised BEREC Work Programme 2013 (WP 2013), as set out below, aims to build on BEREC's (and its predecessor ERG's) achievements in previous years and to respond to the important regulatory challenges ahead, as they stem both from the market developments as well as from the important policy objectives which are set out in the Digital Agenda 2020.

The draft BEREC WP 2013 is also consistent with BEREC's medium term Strategy document, which BEREC adopted in February 2012 following a public consultation.

The draft BEREC WP 2013 was discussed and agreed at the 12th BEREC Board of Regulators meeting in Cyprus on 27-28 September. In accordance with the practice of previous years and 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 an oral hearing to be held on 15 October. The role of this public consultation is to increase transparency and to provide us with valuable feedback from stakeholders.

Fifteen responses were received, from a variety of stakeholders. These stakeholders included network operators, service providers, industry and user representative bodies, as well as private citizens. Submissions received are available on the BEREC website, unless they were marked as confidential.

Most stakeholders appreciate the proposed thematic structure, focusing on next generation infrastructure, consumers, and the internal market. They appreciate BEREC's role to promote the consistent application of the European Regulatory Framework and its commitment and support to the Digital Agenda 2020 objectives. Some of them emphasised the importance of BEREC's involvement in Article 7/7a Phase II cases. In several responses, the wish was expressed for increased dialogue between BEREC and stakeholders, mainly in the form of public consultations but also by continuing the relevant initiative, initiated in 2012. All stakeholders provided valuable feedback in the topics identified by BEREC and the work streams described in the draft WP-2013. Such comments are outlined in a separate Summary Consultation Report.

The revised WP 2013 is set for adoption at the meeting of the Board of Regulators to be held on 6th and 7th December 2011 in Malta.

Dr. Georg Serentschy, RTR-GmbH

Chair 2012

Dr. Leonidas Kanellos, EETT

Chair 2013

2. Background

2013 marks the third year since BEREC commenced its activities (January 2010). In this period, BEREC assumed its full range of powers (transposition date of 26 May 2011) and the BEREC Office acquired autonomy. BEREC, having recognised that the development and implementation of medium term strategic goals will help it to further enhance its effectiveness, providing its activities with overall strategic context and clear direction, also adopted its Medium Term Strategy¹ in February 2012.

In its Medium Term Strategy, BEREC underlines its role to promote the consistent application of the European Regulatory Framework and thereby contribute to the development of the internal market for electronic communications. It also notes its readiness to provide considerable expertise and professional advice to the European institutions on policy initiatives and related debates in the electronic communications sector. Finally, it expresses its commitment and support to the Digital Agenda 2020 objectives, in light of the regulatory objectives enshrined in the Framework Directive. These principles form the foundation of the present work programme.

In addition to the specific work streams set out herein, BEREC anticipates a high volume of Article 7/7a Phase II cases which need to be addressed, delivering the relevant opinions as a high priority to meet strict deadlines. It also anticipates that the European Commission, the European Council and/or the European Parliament may make ad hoc requests for advice, pursuant to the provisions of the BEREC Regulation². In all these cases, BEREC not only is committed to respond but is also determined to live up to expectations, both in terms of the timeliness and quality of its responses. In this light, BEREC may need to reassess its priorities, in order to be able to effectively respond to such tasks. In any event, BEREC intends to review its work programme mid-way through the year, in order to ensure that work progresses smoothly and without delays, that projects remain appropriately prioritised and resourced, and that any new issues are properly addressed.

The implementation of the 2013 work programme, as for previous years, will be undertaken by Expert Working Groups (EWGs), which are made of experts from the NRAs who participate in BEREC as members or observers. Each EWG is essentially a drafting team, which addresses a number of topics, analysing the relevant issues and preparing reports for discussion and adoption by the Board of Regulators (BoR).

Important to the success of the 2013 BEREC Work Programme (WP) is the contribution of the BEREC Office, which has been appropriately staffed and operating as a fully autonomous Community body, since October 2011. Under the guidance of the Administrative Manager, the BEREC Office has gradually become capable of supporting both BEREC and the EWGs, progressively taking over an increasing volume of supportive work, thus enhancing the efficient use of resources. This practice will continue in 2013, seeking to further augment the engagement of the Office in the BEREC WP, as is also reflected in the BEREC Office WP for 2013.

¹ BoR(12)09 BEREC Medium Term Strategy Outlook.

² Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

3. Thematic structure

The tasks of BEREC are to promote the consistent application of the European Regulatory Framework, thereby contributing to the development of the internal market for electronic communications, as well as to promote competition and the interest of citizens. In doing so, BEREC plays its part in the promotion of growth and innovation in the EU, particularly at a time where Europe is facing an economic crisis that has had an impact on the telecoms sector. BEREC can also provide considerable expertise and professional advice to the European institutions on policy initiatives and related debates in the electronic communications sector.

In its Medium-Term Strategy, and in line with the European Commission's Digital Agenda for Europe, BEREC identified three main themes for work, respectively focusing on infrastructure (boosting the roll-out of next generation networks), consumers (consumer empowerment and protection) and services (boosting the internal market). Activities outside the three priority areas are classified under a fourth theme (other internal or external activities).

Theme A: Boosting the roll-out of next generation networks

BEREC will support the promotion of both sustainable and efficient investment and competition in high speed broadband infrastructure and services.

In this direction, the WP will focus in promoting regulatory approaches and practices, which enhance competition and provide the right incentives for investment in new (fixed and mobile) high-speed networks. It will also focus on developing a coherent view on the impact that Next Generation Access (NGA) networks have on regulatory approaches and in addressing issues related to new business models in a convergent IP environment. Finally, BEREC will continue working closely with Radio Spectrum Policy Group (RSPG), towards facilitating access to radio spectrum.

Activities and outputs:

1. Methodology for monitoring the application of the BEREC Common Positions (CPs) on wholesale local access (WLA), wholesale broadband access (WBA) and wholesale leased lines (WLL).
2. Opinion on the anticipated draft Commission Recommendation addressing combined (a) non discrimination and (b) costing principles for key access products.
3. Guidelines on the implementation of the Commission Recommendation addressing combined (a) non discrimination and (b) costing principles for key access products (if deemed necessary, after publication of the Recommendation).
4. Exchange of views on emerging challenges in NGNs, particularly with respect (a) to IP Interconnection and (b) effective regulation in an NGN/ NGA environment.
5. Revised CP on Geographic Aspects of Market Analysis.
6. Exchange of views on facilitating access to radio spectrum, in cooperation with RSPG.

Theme B: Consumer empowerment and protection

Theme B focuses on the consumer, recognising the increased emphasis of the regulatory framework on the protection of consumers and acknowledging that the promotion of competition in itself cannot always ensure that end users profit optimally from all possibilities.

In this direction, the WP will continue contributing to the policy debate on net neutrality (NN), while closely monitoring relevant developments and addressing issues such as transparency and quality of service. It will also seek to contribute to the Universal Service debate, providing expert advice, and to reinforce consumer protection provisions, particularly concerning users with disabilities.

Activities and outputs:

1. Opinion on the anticipated draft Commission Recommendation on NN.
2. Report on platforms for measuring the Quality of Broadband Access Services.
3. Report on consumers' incentives and market forces driving Net Neutrality developments.
4. Methodology and questionnaire for the second round of Traffic Management Investigation.
5. Opinion on the anticipated draft Commission Recommendation on certain elements of the Universal Service Directive.
6. Exchange of experience and views on practices for supporting users with disabilities, with the possible participation by invitation of external stakeholders.

It should further be noted that several of the BEREC activities, which do not focus specifically on consumers, are expected to have a significant benefit on them. The most characteristic examples are the work streams on International Roaming (theme C) and on facilitating access to the radio spectrum (theme A).

Theme C: 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. Important elements in this direction are to contribute to the successful implementation of the Roaming Regulation, to promote quality and consistency of regulatory decisions and to engage with EU Institutions in the implementation of the European Regulatory Framework. BEREC will further seek to facilitate cross border services and to address interconnection issues in the provision of Special Rate Services.

Activities and outputs:

1. Updated guidelines on the Roaming Regulation III
2. Guidelines on the implementation of the Roaming decoupling obligation.
3. Report on the progress and challenges in the implementation of the Roaming decoupling obligation (to be completed in 2014).
4. Benchmark Reports (two), in view of the Roaming Regulation.
5. BEREC International Roaming compliance report

6. Report on transparency and comparability of different tariffs, following the Roaming Regulation.
7. Exchange of experience on call origination in to the provision of Special Rates Services (SRS).
8. Exchange of views on measures to reduce the administrative burden for cross-border providers.
9. Opinions on Article 7/7a Phase II cases.
10. Consideration of issues on machine to machine services.
11. Benchmarks (two) on Mobile Termination Rates (MTRs), Fixed Termination Rates (FTRs) and Short Messaging Services (SMSs).
12. Consideration of outstanding issues and challenges on the implementation of the Commission Recommendation on Termination Rates
13. Exchange of views on the imputation of revenue indicators in relation to bundled services.
14. Regulatory Accounting in practice report.
15. Opinion on the anticipated draft Commission revised Recommendation on Relevant Markets.

Theme D: Other internal and external activities

This theme covers all activities that do not fall under the three priority areas, whether such activities are internal or external.

Activities and outputs:

1. Exchange of views on institutional aspects in the transposition of the current framework.
2. Follow up to the evaluation of BEREC and the BEREC Office.
3. Amended BEREC Rules of Procedures.
4. Strategic dialogue with stakeholder.
5. Exchanges with other regulatory bodies policy makers and international organisations.

4. Boosting the roll out of Next Generation Networks

4.1 Common Positions on wholesale products

In 2012 BEREC is reviewing and amending its CPs on WLA, WBA and WLL. An important objective of this work is to ensure that the CPs take into account significant technological developments in the electronic communications sector, including those introduced by the emergence of NGA networks. In this respect the revised CPs aspire to promote regulatory practices that encourage investments in new infrastructures, while safeguarding competition. The next, important step in this process concerns monitoring the application of the revised CPs. Given that market analysis is performed every 2-3 years, BEREC considers that such

monitoring exercise should be undertaken in 2014 (at the earliest), so as to ensure that as many NRAs as possible had the opportunity to take on board the relevant recommendations.

In 2013, BEREC will pave the way for such monitoring exercise, developing the appropriate methodology.

Deliverables

Methodology for monitoring the application of the BEREC CPs on WLA, WBA, WLL	
Adoption in P4/ 2013	Public consultation to be decided in P3/ 2013

4.2 Costing and non-discrimination principles in the emerging NGA environment

Access to wholesale products in an NGN/NGA environment is a major challenge for regulators who need to send the right signals to all market players, those seeking to deploy new infrastructures and those seeking access to them, as well as to the financial markets, which are asked to invest in such projects. This task becomes even more difficult, as the emergence of NGA networks change the market conditions and introduce increased complexity and uncertainty (see also section 4.3).

The European Commission, recognising the important role that non-discriminatory access to and the costing of wholesale products can play in encouraging or discouraging migration to the new NGA networks, publicly consulted on both subjects separately and also commissioned an external study.

BEREC responded to both aforementioned public consultations. It is closely following all relevant developments and is ready to actively contribute, seeking to ensure that any costing and non-discrimination principles adopted by the Commission and their implementation by the NRAs will contribute to the desired goals of enhancing competition and encouraging investments and innovation.

The current plan of the European Commission, following the consultations and the 12 July broadband policy statement, is to publish a combined a Recommendation addressing both (a) non discrimination and (b) the costing of key wholesale access products, therefore creating a package aspiring to encourage investment in new infrastructures.

BEREC, adhering to its mandate to safeguard competition as well as to its commitment to support the objectives of the Digital Agenda 2020, will follow the development of the said draft Recommendation and provide an opinion on it.

Furthermore, when such Recommendation is adopted, BEREC will consider developing guidelines on its implementation. The final decision, including the timetable and scope, will be taken once the Recommendation is published.

Deliverables

Opinion on the anticipated draft Commission Recommendation addressing combined (a) non
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discrimination and (b) costing methodologies for key wholesale access products.

Adoption expected by early 2013, depending on Commission timing

No public consultation

4.3 Emerging challenges in Next Generation Networks

(a) NGN and IP interconnection

ERG/BEREC worked quite extensively on IP interconnection and charging mechanisms in the context of the transition from Public Switch Telephony Networks towards NGN³, including the recent BEREC Report “An assessment of IP-interconnection in the context of Net Neutrality”⁴ consulted over the summer 2012. The separation of network and application layers of the best effort internet gave rise to a level of competition and innovation at the level of Over the Top (OTT) providers in today’s Internet unprecedented before.

Peering and transit interconnection arrangements developed without any significant regulatory intervention, mostly due to the competitiveness of the transit market on IP backbones. This is also reflected in the fact that wholesale Internet connectivity is not included in the Commission’s Recommendation on Relevant Markets, as it is deemed to function well without regulation. However, whilst revising the list of Relevant Markets the Commission may look at a market for connectivity with a view to the market positions of players along the value chain.

The debate on new business models in a convergent IP environment takes place in the wider context of ongoing debates between stakeholders on charging mechanisms used for IP-interconnection and the distribution of revenues across the value chain between Telcos and OTT players. These issues are also discussed in the context of the revision of the International Telecommunication Regulations (ITRs) at the World Conference on International Telecommunications (WCIT) at the end of 2012. Some market parties advocate a reversion of the billing scheme to “Calling Party Network Pays” which may however lead to market power of the eyeball networks and raise questions with regard to a need for regulation. BEREC will consider the consequences following from the decisions taken at the WCIT.

This debate will be served through an internal exchange of views, which will take place at the EWG level and, at a subsequent stage, at the level of the Board of Regulators.

Formal deliverables are not planned at this stage.

(b) Effective regulation in an NGA environment

In the light of the Digital Agenda and national NGA roll-out plan, the effective regulation of NGA networks remains one of the key challenges of regulators.

In 2012 BEREC proceeded with the update of CPs, based on best practices that take into account the wholesale products and the ladder of investment principles, as they become

³ ERG (07) 09 ERG Report on IP interconnection – ERG (08) 26 ERG Common Statement on IP-IC NGN Core.

⁴ BoR(12)33.

applicable in an NGA environment. They are based on the current list of markets, which is subject to revision in 2013, as well as on the provisions of the NGA Recommendation.⁵

While continuing to apply the aforementioned best practices, this process identified a number of general issues and trends across Member States (MSs) that need further reflection.

We see an increasing variety of local market conditions across MSs with regard to an increased number and type of actors as well as technologies used. NGA network roll-out implies increased economies of density, raising the question of infrastructure competition versus service competition.

This leads to the question whether local “monopolies” are likely to emerge and how regulators may respond. Possible answers may lead to either more geographically differentiated markets/ remedies in SMP regulation or increased application of symmetric regulation. In addition, obligations under State Aid access and consistency with them have to be taken into account.

More specifically, BEREC needs to look at the implications of vectoring for regulation which is one of the more recent strategy announcements of SMP operators in some MSs.

BEREC remains convinced that following the fundamental principles of the regulatory framework, namely promoting effective competition and efficient investment for the benefit of the European citizens, is the best way to facilitate the transition towards NGA.

This debate will be served through an internal exchange of views, which will take place at the EWG level and, at a subsequent stage, at the level of the Board of Regulators.

Formal deliverables are not planned at this stage.

4.4 Geographic Markets Segmentation

Geographic segmentation becomes more important as markets and infrastructures develop in an increasingly fragmented fashion. Several factors contribute to this, such as the increasingly active role of local players (utilities, local authorities etc.), the changing business models and incentives that may give rise to the utilisation of different technologies (e.g. fibre, wireless etc., depending on population density) etc. This is particularly interlinked with the emergence of NGN networks, as discussed in section 4.3.

In 2008, ERG published a CP which mainly addressed the geographical segmentation of relevant markets in Market 5 for copper networks⁶. Since then, the European Commission has developed further the criteria to analyse this issue in several cases, interlinking in some of them the possibility of differentiating markets with the inclusion of indirect constraints.

In this light, the need arises to review the ERG CP in order to include the new elements for the analysis that the different precedents have provided. Furthermore, as BEREC has to deal with the assessment of geographical markets in different Phase II cases, this analysis would ensure consistency in BEREC’s comments in new cases that are likely to appear in the future due to the evolution of competition in national markets.

⁵ 2010/572/EU Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA).

⁶ ERG(08)20 Common Position on Geographic Aspects of Market Analysis.

As geographical segmentation is very much related to the inclusion of indirect constraints in the relevant market, the CP would be in line with the documents already produced on this topic and the discussions that will rise in the context of the Recommendation. In addition, the evolution to fibre networks would need to be considered, although with more caution, as we lack experience in this case.

It should finally be noted that the current CP does not deal with the geographical segmentation of remedies, although it discusses potential circumstances where such approach could be more justified, i.e. due to unstable thresholds.

Deliverables

Revised CP on Geographic Aspects of Market Analysis	
Adoption in P1/ 2014	Public consultation after P3/ 2013

4.5 Facilitating access to radio spectrum

The effective utilisation of the radio spectrum is of key importance to the development of the broadband market, the functioning of competition (as it enables the deployment of alternative infrastructures) and the achievement of the Digital Agenda 2020 objectives, particularly with respect to broadband coverage.

In 2013, BEREC and RSPG will continue their co-operation in this direction, by means of one or two joint, internal workshops, with emphasis on issues relating to facilitating access to and promoting the effective use of the radio spectrum.

A formal deliverable is not envisaged.

5. Consumer empowerment and protection

5.1 Net Neutrality

In 2012, BEREC has addressed a number of issues relating to Net Neutrality, notably:

- an investigation, carried out jointly with the European Commission, into traffic management and other practices resulting in restrictions to the open Internet in Europe⁷;
- quality of service (QoS) guidelines⁸,
- a report on differentiation practices and related competition issues⁹,
- a report on IP Interconnection¹⁰.

⁷ BoR(12)30 BEREC findings on traffic management practices in Europe

⁸ BoR(12)32 BEREC Draft Guidelines for Quality of Service

⁹ BoR(12)31 BEREC Draft Report Differentiation practices and related competition issues in the scope of Net Neutrality

¹⁰ BoR(12)33 BEREC Draft Report Assessment of IP-interconnection in the context of net neutrality.

This work follows the earlier adoption of the Transparency Guidelines¹¹ and a QoS framework report¹², both published in December 2011.

BEREC is committed to the open Internet and will continue its work on NN, closely monitoring market evolution, seeking to ensure that NRAs are able to respond effectively to any related developments and contributing its experience to any policy making initiatives. To this extent, the work on NNy during 2013 will include the following activities:

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

It is expected that the European Commission will issue a draft Recommendation on NN, addressing traffic management, transparency, switching, IP interconnection etc.. BEREC will seek to contribute to such Recommendation, providing its expertise during the drafting stage as well as submitting an Opinion on the draft Recommendation (to be prepared in early 2013).

Such work will build on the experience gained and the results achieved over the previous two years.

Deliverables

Opinion on anticipated draft Commission Recommendation on Net Neutrality.	
Adoption probably in P2/ 2013, depending on Commission schedule	No public consultation

(b) Monitoring Quality of Service - Practices and Platforms

The BEREC Framework and Guidelines on Quality of Service in the scope of Net Neutrality¹¹ has pointed out that monitoring of Internet access services is needed in order to perform a detailed assessment of degradation of service. In this context, NRA experts are eager to share their experiences in the current measurements of quality of IP-based electronic communications services and improve their respective analysis of the different options for Internet quality measurements. Such exchange of experiences would help build a common knowledge and appreciation of QoS monitoring. In addition BEREC will also examine the possibility and the pros and cons of establishing a common opt-in platform, whereby NRAs could coordinate, compare or complement national measurements, addressing among others pros and cons, technical constraints and cost elements.

Deliverables

Report on platforms for measuring the Quality of Broadband Access Services	
Adoption in P2/2014	Public consultation after P4/ 2013

¹¹ BoR(11)67 BEREC Guidelines on Transparency in the scope of Net Neutrality: best practices and recommended approaches.

¹² BoR(11)57 A framework for Quality of Service in the scope of Net Neutrality.

(c) Study on consumers' incentives and market forces driving Net Neutrality developments

In 2012 BEREC continued its work on net neutrality identifying, on the one hand, potential market failures and, on the other, establishing a common understanding of the regulatory tools within the regulatory framework. The "Report on differentiation practices and related competition issues in the scope of net neutrality"¹³ provided a theoretical framework to understand the incentives, and assess the potential impact, of operators' measures. This report also identified conditions under which market forces could deter operators from adopting discriminatory practices that could potentially harm consumers, either in the short or long term.

At the same time, the Traffic Management Investigation¹⁴ gathered information on ISPs' practices in Europe. According to the data gathered, the situation differed greatly from one MS to another. However, no precise information is available regarding the reasons for such diverse policies or how they are perceived by users.

In order to better assess this situation, regulators need a more thorough understanding of:

- the various interactions between networks and applications along the value chain. These impact how incentives are materialized into measures (e.g. traffic management) in practice; and
- the concrete impact of such measures in the context of specific market dynamics – particularly how consumers will take them into account, notably for switching provider.

Considering both aspects, BEREC believes further work is necessary to gather additional empirical data on the behaviour of all players in the chain, notably end users (e.g. their understanding of net neutrality related information, the impact of direct commercial relations with Content Application Providers (CAPs)), operators, CAPs, equipment suppliers etc.

In this context, BEREC will seek to identify the best methodological approaches to gather the required evidence, including the option of arranging and outsourcing a consumer survey but also considering any publicly available information (e.g. surveys available for purchase, studies from the Commission, etc.). An overview of the above should be presented in mid 2013 to the Board of Regulators which will decide on the next steps of the data collection process. The results of this fact finding exercise, which may potentially cover various levels of the value chain, will be presented in an analytical report planned for 2014.

In a longer term, this project may also provide useful insight to BEREC's analysis of the evolving relationships between CAPs and telecom operators.

Deliverables

Report on consumers' incentives and market forces driving Net Neutrality developments	
Adoption anticipated for 2014	Public consultation anticipated for 2014

¹³ BoR(12)31 BEREC Draft Report Differentiation practices and related competition issues in the scope of Net Neutrality.

¹⁴ BoR(12)30 BEREC findings on traffic management practices in Europe.

(d) Transparency guidelines follow up: Further specifications

BEREC has repeatedly characterised transparency as a corner stone and a prerequisite to NN. By 2013, the BEREC Guidelines on Transparency in the scope of Net Neutrality¹⁵ will have been in force for one year. The 2012 follow-up task on transparency (planned for P4 2012) will have provided some insights regarding market developments, and underlined best practices and other outstanding issues. This should enable BEREC to assess to what extent the recommendations in the guidelines have been successfully implemented.

The present work item would also leverage on the conceptual architecture specified in the BEREC guidelines on QoS in the scope of NN, and could furthermore strengthen the overarching approach to net neutrality developed by BEREC.

Its objective will be served by internal exchanges at expert level. Producing more detailed specifications on the transparency guidelines has been considered but deemed unnecessary at this point of time. This conclusion has been shared by the EWG as well as by the majority of stakeholders, during the public consultation.

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

In 2012, BEREC (jointly with the Commission) carried out, an extended investigation on traffic management practices employed by fixed and mobile operators¹⁶. The investigation was based on a questionnaire which was addressed to European operators and BEREC received more than 400 responses.

This was the first analysis of its kind and BEREC sees substantial value in repeating it. Depending on further developments on net neutrality at European level (including the Commission's upcoming Recommendation), an appropriate timing for this may be mid 2014. In this context, in 2013 BEREC will consider how to set up the relevant questionnaires, leveraging the experience it gained from the previous exercise.

Deliverables

Methodology and questionnaire for the second round of the TMI	
Adoption is provisionally planned for P4/ 2013	No public consultation

5.2 Universal Service

Over the past year the Commission had a continuous discussion on the potential clarification of certain provisions contained in the Universal Service Directive (USD). BEREC contributed to this process through the submission of an opinion¹⁷.

¹⁵ BoR(11)67 BEREC Guidelines on Transparency in the scope of Net Neutrality: best practices and recommended approaches.

¹⁶ BoR(12)30 BEREC findings on traffic management practices in Europe.

¹⁷ BoR(12)25 BEREC Input and Opinion on Universal Service.

BEREC is ready to further contribute to this process. With the understanding that a draft Commission Recommendation on certain elements of the Universal Service Directive is under preparation, BEREC will proceed to provide an opinion, once such draft becomes available and provided that the time permits.

Deliverables

Opinion on anticipated draft Commission Recommendation on certain elements of the USD	
Adoption around P1/ 2013, depending on Commission schedule	No public consultation

5.3 Supporting end users with disabilities

Article 23a of the USD¹⁸ calls for appropriate actions, to support end-users with disabilities and ensure equivalence of access and choice. BEREC will address this issue in workshops, including NRA experts and with the possible participation by invitation of external stakeholders.

Currently, such activity is not expected to lead to a formal deliverable

6. Boosting the internal market

6.1 International Roaming

The recently adopted Roaming Regulation of 13/6/2012¹⁹ introduced a number of new provisions in the operation of the roaming market. Among them is the further reduction of price caps, the imposition on retail price caps for data roaming services, the extension of the requirement to inform consumers on roaming prices (even when travelling outside the EU), the extension of cut-off limits for retail data roaming services (even when travelling outside the EU and if technically feasible) and the provision of measures to prevent inadvertent roaming.

The Regulation also introduces structural measures, seeking to promote competition, notably the requirement to offer wholesale access to Mobile Virtual Network Operators (MVNOs) and the decoupling of roaming services, i.e. separating the provision of roaming from domestic mobile services (from 1/7/2014). BEREC will follow up and provide support to the implementation of the structural measures and will monitor the overall compliance with the Regulation.

¹⁸ Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

¹⁹ Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union.

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

BEREC performed an analysis of the technical solutions for the decoupling of roaming services²⁰ and drafted guidelines on the wholesale roaming access obligation²¹ publicly consulting on them during the second half of 2012. While BEREC adopted (and published) the guidelines on Article 3 of the Roaming Regulation (wholesale roaming access) at the Cyprus Plenary, the Commission's implementing act on Article 5 of the Regulation (structural measures) is due in December 2012. BEREC already delivered its opinion on the Commission's draft implementing act, in line with the outcome of the public consultation.

According to preamble 38 of the Roaming Regulation, BEREC is allowed, taking into account the Roaming Regulation and the implementing acts adopted pursuant hereto, to provide on its own initiative specific technical guidance on the separate sale of regulated retail roaming services or on other matters covered by this Regulation.

BEREC is ready to work closely with the Commission and the market towards the effective and successful implementation of the adopted technical solution by developing appropriate guidelines.

In 2013, BEREC will also start work on assessing the progress towards the implementation of the selected decoupling options and addressing the main challenges in this respect, including standardisation issues (e.g. of IT interfaces). If needed, BEREC will also consider the option of commissioning a study on the detailed analysis of the technical issues related to decoupling. BEREC envisages to complete this work in 2014.

Deliverables

Guidelines for the implementation of the Roaming decoupling obligation	
Adoption by e-clearance, July 2013	Public consultation by P2/ 2013
Report on the progress in the implementation of the Roaming decoupling obligation	
Adoption in P3/ 2013	No public consultation

(b) Monitoring of compliance to the Roaming Regulation

According to Article 19 of the Roaming Regulation, in 2013 BEREC will repeat its business as usual, semi-annual benchmark of roaming prices and the level of competition. In 2013, this exercise will be adapted to be consistent with the review of International Roaming prices and the level of competition to be undertaken in 2016.

²⁰ BoR(12)68 Roaming Regulation – Choice of decoupling method: a consultation to assist BEREC in preparing advice to the Commission on its forthcoming Implementing Act.

²¹ BoR(12)67 Consultation on the BEREC Guidelines on the application of Article 3 of the Roaming Regulation - Wholesale Roaming Obligation.

A separate, annual benchmark will focus on the collection of information, concerning the transparency and comparability of different tariffs offered by operators to their customers, consistent with the provisions of Roaming Regulation III.

Also, BEREC will produce a report on the level of compliance with the new Roaming Regulation. The report will address issues such as the implementation of the euro-data tariff, the reduction of prices for the euro-voice and euro-SMS tariffs, and the publication of the reference offer according to Art 3.

As part of this work stream, BEREC will proceed to review the guidelines adopted by ERG on the implementation of the 2nd Roaming Regulation²² and will update them, so as to ensure that they complement the new Roaming Regulation III.

Deliverables

Updated guidelines on the Roaming Regulation III	
Adoption in P1/ 2013	No public consultation
Benchmark Reports, in view of the Roaming Regulation.	
Adoption in P2/ 2013 & P4/ 2013	No public consultation
BEREC International Roaming compliance report	
Adoption in P3/ 2013	No public consultation
Report on transparency and comparability of different tariffs, following the Roaming Regulation	
Adoption in P4/ 2013	No public consultation

6.2 Special Rate Services

In 2011, BEREC addressed issues relating to the interconnection for the provision of Special Rate Services (SRS), examining the different tools that NRAs have at their disposal to address such issues. In 2013, BEREC will focus on the exchange of relevant experiences by NRAs. The intention is to discuss the practices followed by different NRAs, including their strengths and limitations. A formal deliverable is not envisaged.

6.3 Authorization regime for cross-border providers

In 2011, BEREC analysed the legal and administrative restrictions to the pan-European provision of electronic communications services. This initial analysis centred on the business segment; however the conclusions drawn could be extended to all cross-border providers.

²² ERG (09) 24 International Roaming Regulation ERG Guidelines.

Building on the “BEREC Report on the impact of administrative requirements on the provision of transnational business electronic communications services”²³, this work stream will focus on the exchange of views at expert level on potential operational arrangements, with a view to easing the activity of pan-European providers of electronic communications networks and services, thus reducing some barriers to the completion of Single Market.

The EWG will particularly focus on the organizational aspects related to national authorisation regimes that might be improved, without implying any intervention on current national legal systems, and will also investigate a possible role for BEREC as facilitator for cross-border authorization procedures.

At this stage a formal deliverable is not envisaged.

6.4 Quality and consistency of regulatory decisions

BEREC will continue to promote the quality and consistency of regulatory decisions. In 2013, such work will mainly focus in addressing Article 7/7a Phase II cases, by delivering relevant opinions and seeking to ensure the consistent application of the European Framework.

6.5 Machine-to-Machine (M2M) services

Machine-to-Machine (M2M) is a very rapidly developing market. Conservative predictions raise the number of M2M devices to more than 1 billion by 2020. M2M services are already under consideration by ETSI and CEPT. The Electronic Communications Committee (ECC) of CEPT, in its report Numbering and Addressing in Machine to Machine Communications²⁴ recognised the high potential number of M2M applications, their impact on national numbering plans and the potential role that IPv6 addressing might play in a long term.

BEREC will look at this market, mainly to examine if there are any regulatory barriers or other bottlenecks (e.g. with respect to authorisation, numbering etc.) which could potentially hinder its development. BEREC will also seek to assess the opportunities which may arise, as well as complementarities with other segments, e.g. Internet applications and the use of the IPv6.

Other issues that could be addressed may include the impact of M2M services on other areas (e.g. end-user complaints and information requests), development of new consumer applications and services, SLAs for enterprise M2M connectivity, data privacy and security issues.

This work stream is currently intended to focus on expert workshops, with the participation of external stakeholders.

At this stage a formal deliverable is not envisaged.

²³ BoR(11)56.

²⁴ ECC Report 153, see <http://www.cept.org/ecc>

6.6 Benchmarking

(a) Benchmarking on MTR, FTR, SMS.

In 2013, BEREC will continue producing benchmarks on mobile and fixed termination rates as well as on SMS. Such benchmarks have reached a sufficient level of maturity and have proved invaluable for monitoring harmonisation but also in the regulatory process. BEREC will cooperate closely with the Commission and international organisations, seeking on one hand to achieve the widest possible utilisation of such benchmarks and on the other hand to examine the prospect for extending such exercise to cover additional topics.

Deliverables

Benchmarks on FTR, MTR, SMS	
Adoption in P2/ 2013 & P4/ 2013	No public consultation

(b) Revenue indicators in relation to bundled services

The increased presence of bundled services introduces challenges to the calculation of market or service specific revenue based indicators, as it requires the allocation of revenues from bundles into the individual services. BEREC considers it is important to start an internal discussion on the imputation approaches followed in various countries, with the scope to share the relevant experience. A formal deliverable is not envisaged at this stage.

(c) Regulatory Accounting in practice report

BEREC will repeat this annual exercise, which is consistently repeated over the past years. Its intention is to assess the level of harmonisation on regulatory accounting across the EU and to identify differences among MSs, which may arise from different implementations of the same regulatory accounting approach. In 2013 the emphasis will continue to be on the consistency of the regulatory accounting for key access products. BEREC will continue to broaden the scope of the report, with the inclusion of additional services or technologies (e.g. fibre), but will also seek to increase the detail and the depth of analysis of the methods covered.

Deliverables

Regulatory Accounting in Practice Report	
Adoption in P3/ 2013	No public consultation

(d) Implementation of the Termination Rates Recommendation

The end of 2012 marks the deadline, set by the Commission Recommendation on Termination Rates, for the transition of MTRs and FTRs to reach symmetry and cost orientation, in line with the recommended LRIC methodology. In 2013, BEREC will have a final look at this issue, to review the approaches followed by the different NRAs vis-à-vis the application of the recommended methodology or the use of benchmarks. The purpose is either to conclude or to

identify any important challenges that may need further elaboration, in relation to the implementation of the Recommendation. Formal deliverables are not envisaged at this stage. The EWG will report to the Board of Regulators, presenting their proposals for the next steps.

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

In 2013 BEREC will continue working closely with the European Commission, the Council and the European Parliament, to provide advice and opinions on draft decisions, recommendations and guidelines of the Commission, as well as on any matter regarding electronic communications within its competence.

In the course of the year, several issues may arise in this framework. At this point, BEREC is already planning to address the following subject.

(a) Recommendation on Relevant Markets

As the Commission has announced, a revised recommendation on Relevant Markets is under preparation and anticipated to be adopted in the first quarter of 2014. BEREC will closely follow the process, cooperate with the Commission Services and provide an opinion under Article 16 of the Framework Directive. In this process, BEREC will also consider relevant issues, such as bundled services, asymmetric substitution, etc. that NRAs have identified as being particularly prominent for the market review process.

Deliverables

Opinion on the anticipated draft Commission revised Recommendation on Relevant Markets	
Adoption expected in P4/ 2013, depending on Commission timing	No public consultation

7. Other internal and external activities

7.1 Framework implementation – institutional aspects

As the transposition of the current framework is practically complete, BEREC will organise an internal dialogue for the exchange of experiences and views on the institutional aspects in the implementation of the recently transposed European Framework on electronic communications. At this stage a deliverable is not envisaged.

7.2 BEREC Evaluation

In 2012, the Commission initiated an evaluation study for BEREC and the Office, in accordance to the provisions of Article 25 of the BEREC Regulation²⁵.

BEREC supports this process and will continue to co-operate with the Commission. BEREC is also ready to address any recommendations which will result from such evaluation.

A deliverable is not envisaged at this point but BEREC is ready to prepare and submit an opinion to the draft Commission Evaluation, if needed.

7.3 BEREC Rules of Procedures

Three years after their adoption, BEREC will review the current Rules of Procedure of the Board of Regulators²⁶, with a view to assessing whether they continue to be fit for purpose.

This work will be closely linked with any the follow up from the BEREC evaluation, as the evaluation itself could lead to a number of relevant recommendations.

Nevertheless, BEREC has already identified areas for potential improvement, including:

- The refinement of the current internal practices implemented by BEREC, when addressing Article 7/7a Phase II cases, seeking to enhance BEREC's effectiveness.
- The establishment of procedures which facilitate the provision of assistance by BEREC upon request from NRAs, pursuant to Article 2 b) of the BEREC Regulation.

Also, the outcomes of the evaluation of BEREC and the BEREC Office will have to be considered when introducing any amendment to the current RoP.

Deliverables

Amended BEREC Rules of Procedures	
Adoption in P4/ 2013	No public consultation

7.4 Stakeholder engagement

BEREC will continue the strategic dialogue with the Chief Executive Officers of European operators, which it started during 2012. The scope of this on-going dialogue is to ensure that BEREC remains close to the market, acquiring an in depth and current understanding of developments and challenges, so as to effectively adapt its strategy to such developments.

In 2013, BEREC will seek to expand such initiative, by also involving end user representatives and other relevant stakeholders.

²⁵ Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

²⁶ BoR(11)23.

7.5 Relations with third parties and international co-operation

In 2013 BEREC will continue to pursue its contacts with Regulatory Authorities, regional regulatory networks (such as EMERG, Regutel, Eastern Partnership etc.) and other international institutions dealing with communications matters (such as OECD and ITU). In the same framework, BEREC will also pursue contacts and working relations with institutions addressing different aspects of the electronic communications sector, such as RSPG (see also section 4.5) and ENISA.

Plan of Deliverables for 2013

Output per work stream	Plan by Plenary			
	P1	P2	P3	P4
Boosting the roll-out of next generation networks				
Methodology for monitoring the application of the BEREC CPs on WLA, WBA, WLL				D
Opinion on the anticipated draft Commission Recommendation addressing combined (a) non discrimination and (b) costing methodologies for key wholesale access products.	D			
Revised CP on Geographic Aspects of Market Analysis			C	
Consumer empowerment and protection				
Opinion on the anticipated draft Commission Recommendation on Net Neutrality.		D		
Report on platforms for measuring the Quality of Broadband Access Services				C
Methodology and questionnaire for the second round of the TMI				D
Opinion on anticipated draft Commission Recommendation on certain elements of the USD		D		
Article 28(2) Universal Service Directive: A harmonised BEREC process (carried over from Work Programme 2012)	F			
Boosting the internal market				
Updated guidelines on the Roaming Regulation III	D			
Guidelines on the implementation of the Roaming decoupling obligation		C	F (*)	
Benchmark Reports (two), in view of the Roaming Regulation		D		D
BEREC International Roaming compliance report			D	
Report on transparency and comparability of different tariffs, following the Roaming Regulation				D
Benchmarks (two) on MTR, FTR and SMS		D		D
Regulatory Accounting in practice report			D	
Opinion on the anticipated draft Commission revised Recommendation on Relevant markets				D
Other internal and external activities				
Amended BEREC Rules of Procedures				D
Legend	P1	P2	P3	P4
D Documents for adoption, without consultation	2	4	2	7
C Documents for public consultation	0	1	1	1
F Documents for adoption, after consultation, including consultation report	1	0	0	0

(*) By e-clearance in July 2013.

Glossary

BEREC	Body of European Regulators for Electronic Communications
CAP	Content Application Providers
Common Positions	Mutual agreed point of view
EMERG	Euro-Mediterranean Regulators' Network: A cooperation between telecommunications regulators of the Mediterranean area
ENISA	European Network and Information Security Agency
ERG	European Regulators Group
EWG	Expert Working Group
FTR / MTR	Fixed Termination Rates / Mobile Termination Rates
Market Analysis	The process that Regulators have to follow, in order to conclude if regulatory measures should be applied to a specific market
NGA / NGN	Next Generation Access / Next Generation Networks
NRA	National Regulatory Authority
OTT players	Over The Top players: Market players, who focus in the control and distribution of content, without any affiliation to the network.
PSTN	The Public Switched Telephone Network
Regulatel	Cooperation of Latin American Regulatory Authorities
RSPG	Radio Spectrum Policy Group
SMP	Significant Market Power
WLA	Wholesale Local Access
WBA	Wholesale Broadband Access
WLL	Wholesale Leased Lines