

**BEREC report on the public consultation of the  
BEREC draft work programme 2014**

November 2013

## 1. Introduction

The draft BEREC Work Programme 2014 (WP-2014) was discussed and approved for public consultation at the BEREC Board of Regulators meeting in Riga, Latvia, on 26 September 2013. In accordance with Article 5 of the BEREC Regulation, the BEREC Work Programme is subject to consultation. The public consultation was open from 1 October to 25 October 2013 with a public hearing held on 17 October. Twenty-four contributions from the following stakeholders have been received in response to the consultation.

1. Association of Ambulance Chief Executives (AACE)
2. BEUC
3. Bouygues Telecom
4. British Association of Public Safety Communications Officials (BAPCO)
5. Cable Europe
6. Creativity Software Ltd
7. EAFM
8. ECTA
9. European Emergency Number Association - EENA112
10. Emergency Response Centre Administration (Finland)
11. ETNO
12. FTTH Council Europe (FTTH Europe)
13. Intelligence for Environment & Security – IES Solutions
14. International Telecommunications Users Group (INTUG)
15. JCS Operational Consulting Ltd
16. 112 MURCIA
17. National Protection and Rescue Directorate
18. PosteMobile
19. Telenor Group
20. Thales Alenia Space
21. The Number Group
22. Voice on the Net Coalition Europe (VON)
23. One stakeholder – *confidential submission*
24. One stakeholder – *confidential submission*

Specific contributions are summarised 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. BEREC has noted many requests for adding further works to the work programme and regret not being able to take some of them on board owing to the already heavy work load.

## **2. Specific contributions per paragraph of the draft WP-2014**

### **A. Background (section 2)**

All contributors welcomed the opportunity to comment on the BEREC draft WP-2014.

While some stakeholders appreciate BEREC's involvement so far in the achievement of the Digital Agenda goals (Cable Europe), others stress the need for BEREC to take an active stance in the on-going debate on the Commission proposal on the European Single Market for electronic communications and in guiding national regulatory authorities (NRAs) in the implementation of the final legislative measure (EAFM, PosteMobile and Telenor).

A number of stakeholders (ECTA, EAFM, Telenor and PosteMobile) recognise the important role BEREC plays in the development of the internal market for electronic communications by encouraging harmonisation and consistent application of the EU Regulatory Framework.

In this context, ECTA and PosteMobile particularly appreciate BEREC's efforts to promote competition and innovation, while BEUC praises BEREC for a significant number of consumer protection and consumer enhancement initiatives.

In addition, ECTA applauds BEREC's involvement in the Article 7/7a reviews, which shows, among other things, that a system of 'checks and balances' is a necessary and beneficial feature of the EU framework.

On a more specific note, BEUC invites BEREC and its members to cooperate with other public authorities, in order to properly approach digital economy regulatory issues falling under a patchwork of different sector-specific regulatory frameworks (such as telecoms, competition, data or consumer protection).

FTTH Council on the other hand, advises BEREC to maintain a certain amount of flexibility in the work programme in order to properly tackle the single market proposal.

Bouygues Telecom advises BEREC to allow NRAs only a limited number of information requests, in proportion to the availability of human resources to smaller operators.

Last but not least, several stakeholders remind BEREC about the importance of increasing the openness and transparency of BEREC's working methods. This could be achieved through increased stakeholder involvement, longer consultation periods, clear roadmaps linked to BEREC deliverables and information on the mandates and members of BEREC expert working groups (EWGs). Moreover, BEREC is encouraged to undertake public consultations on all main

deliverables foreseen in the WP-2014 and organise more frequent public hearings and public workshops, involving all value-chain actors.

#### ***BEREC Response***

*BEREC would like to thank for the above comments, which are in general supportive of the provisions in the Work Programme 2014.*

*BEREC would like to reiterate its commitment to promoting transparency and visibility on its work and work methods. Engaging with stakeholders is a key priority for BEREC and an inherent task to fulfil the objectives.*

### **B. BEREC work in 2014 – key areas (section 3)**

**Infrastructure: boosting the roll-out of next-generation networks (Theme A)**

**Consumers: boosting empowerment and protection (Theme B)**

**Services: boosting the internal market (Theme C)**

**Horizontal and quality aspects (Theme D)**

No comments received on the WP-2014 structure and definition of key areas.

### **C. Digital single market (section 4)**

#### **Legislative proposals (4.1)**

ETNO is of the view that BEREC should have previously discussed with the sector its positions expressed about the EC proposal for a Regulation on a European Single Market for electronic communications. Such a discussion could have clarified some of the assumptions underlying BEREC's position. ETNO does not subscribe, for example, to BEREC's view that the proposed provisions 'conflict with the fundamental purposes of the current regulatory framework to promote competition' or 'trigger market consolidation'.

Moreover, ETNO notes with surprise that BEREC fails to tackle a major inconsistency of the Commission legislative proposal on a Regulation on a European Single Market with the current framework, namely the regulation of a competitive retail service for intra-EU international calls. ETNO, therefore, urges BEREC to raise with the Commission the disproportionate nature of such proposal in a market found to be competitive by both the Commission and most NRAs.

Cable Europe welcomes BEREC's work on the Commission's proposal for a Regulation on a European Single Market for electronic communications. Cable Europe shares the Commission's high-level objectives for this proposal but questions some practicalities of its implementation together with the existing regulatory package. Cable Europe shares BEREC's views on avoiding

overly intrusive regulation that would hinder innovation and advises it to focus on more proportionate means to achieve the proposed harmonisation objectives.

ECTA and PosteMobile welcome BEREC's timely contributions to the policy debate on the draft Single Market Regulation. Indeed, one of BEREC's key roles and tasks is to provide advice to the EU institutions, drawing on the expertise of NRAs in an independent, impartial and transparent manner. Moreover, ECTA agrees that, in particular, such EC proposals as the single authorisation and the harmonisation of key access products could be tackled through BEREC work streams dedicated to resolving issues related to the implementation and transposition of the EU regulatory framework.

EAFM endorses BEREC's intention to continue its own thinking on the policy issues raised by the Commission's legislative proposal for a Regulation on a Single Market for electronic communications. EAFM and PosteMobile strongly support BEREC's concerns about the detrimental consequences of the EC legislative proposal for mobile virtual network operators (MVNOs).

#### ***BEREC Response***

*BEREC would like to thank for the above comments, which are in general supportive of the provisions in the Work Programme 2014.*

*The Commission proposal for a Regulation of the European single market for electronic communications and to achieve a Connected Continent is important for stakeholders as is for BEREC. BEREC will continue to contribute to the development of the proposal and is interested to hear from its stakeholders.*

*BEREC takes on board the comment from ECTA that in particular such EC proposals as the single authorisation and the harmonisation of key access products could be tackled through BEREC work streams dedicated to resolving issues related to the implementation and transposition of the EU regulatory framework. BEREC is prepared to work on any implementation necessary and will closely monitor the progress of the legislative process and make any adjustments to the work programme as may become necessary.*

#### **Recommendation on Relevant Markets (4.2)**

PosteMobile, ECTA and another stakeholder welcome BEREC's upcoming opinion on the review of the Recommendation on Relevant Markets Susceptible to ex-ante Regulation.

Cable Europe highlights the need for consistency between the EC Connected Continent initiative and the revised Recommendation on Relevant Markets. In addition, in Cable Europe's view the tendency towards effective competition supports the idea that only a limited number of markets are susceptible to ex-ante regulation, with the majority of markets being subject to ex-post competition rules.

A number of stakeholders assess some outcomes of the study recently published by the European Commission on the review of the Recommendation on Relevant Markets<sup>1</sup> and, against this background, derive some policy implications for BEREC. In particular:

PosteMobile urges BEREC to assess the state of MVNOs in Europe and, in particular, to analyse access prices, hosting migration, wholesale short message service (SMS) pricing and wholesale data services.

VON is of the opinion that, when assessing the impact of convergence and the relationship between Internet service providers (ISPs) and over-the-top (OTT) players, BEREC should take into consideration the findings of the recent study.

The Number invites BEREC to monitor and encourage regulators' actions when the three-criteria test is fulfilled; moreover, it expresses the opinion that the mobile/fixed origination market for special rate services (SRS) should be included in the list of relevant markets.

According to ECTA and another stakeholder, markets 1 and 2 still warrant ex-ante regulation. As pointed out by these stakeholders, end users rely on retail services which are built upon wholesale inputs currently mandated in those markets (namely Wholesale Line Rental, Carrier Selection and Carrier Pre-selection) and that wholesale inputs are relevant for the provision of services to business customers. Finally, ECTA points out that, by prematurely withdrawing markets from the list of those susceptible to ex-ante regulation, the EU would be signalling a move away from promoting market entry.

In addition, one stakeholder comments that the possible introduction of a new specific market for Over The Top (OTT) players – for example a market for data termination – would require an examination of the regulatory implications and a modified operational structure.

BEUC believes it crucial that – when working on the revision of the Recommendation on Relevant Markets, in particular on the assessment of the impact of convergence and the relationship between telecom operators and OTT providers – BEREC feed in the work it has been doing on net neutrality issues to ensure that the new recommendation does not impair, but strengthens and protects an open best-efforts Internet in Europe.

Finally, VON, The Number, ECTA and another stakeholder believe that BEREC's Opinion on the Recommendation on Relevant Markets should undergo a formal consultation procedure.

### ***BEREC Response***

*BEREC would like to thank for the above comments, which are in general supportive of the provisions in the Work Programme 2014.*

*The upcoming Commission Recommendation on Relevant Markets is, as pointed out by Cable Europe, an important element of the Commission's overall package to complete the single market for telecoms and BEREC will in due course provide its Opinion on the draft when published. 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*

---

<sup>1</sup> See ECORYS, IDATE & ICRI. (2013, 18 September). Future Electronic Communications Markets Subject to Ex-ante Regulation – Final Report. Retrieved from [http://ec.europa.eu/information\\_society/newsroom/cf/dae/document.cfm?action=display&doc\\_id=3148](http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?action=display&doc_id=3148).

*that the Commission possesses all the necessary mechanisms to invite the views of stakeholders. Therefore BEREC does not consider it appropriate to conduct public consultations on such opinions.*

#### **D. Boosting the roll-out of next-generation networks (section 5)**

ETNO encourages BEREC to focus its work in 2014 primarily on better incentivising private investment in high-speed broadband networks. In this respect, ETNO is concerned that BEREC's approach on key regulatory topics does not, on balance, favour investment in high-speed networks in Europe.

FTTH Council welcomes the WP-2014's emphasis on network development.

ECTA and Bouygues Telecom fully support the focus of the 2014-WP on 'promoting regulatory approaches and practices, which enhance competition and provide the right incentives for investment in new (fixed and mobile) high speed networks.'

Moreover, Bouygues Telecom suggests including in the WP-2014 a work stream on phasing out copper access, as the stakeholder judges it to be decisive for the emergence of an all-fibre environment.

BEUC urges BEREC to ensure that the new telecoms framework in Europe continues to foster competition to the benefit of consumers. Consequently, according to BEUC, BEREC should strongly protect pro-competitive principles within the various on-going initiatives, namely the revision of the Recommendation on Relevant Markets and the implementation of the Recommendation on Non-discrimination and Costing Methodologies.

Cable Europe supports BEREC's efforts to promote sustainable and efficient investment and competition in high-speed broadband infrastructure and services.

#### ***BEREC Response***

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

*BEREC is committed to promoting competition and believes that, as pointed out above, both the upcoming Recommendation on Relevant Markets as well as the Commission Recommendation on non-discrimination and costing methodologies will be important in this regard.*

#### **Common Positions on wholesale products – monitor implementation of the BEREC revised Common Positions (5.1)**

ETNO is of the opinion that the draft WP-2014 recognises a possible tension between the recently adopted Commission Recommendation on Non-discrimination and Costing Methodologies and the BEREC Common Positions (CPs) on remedies in markets 4, 5 and 6. In this regard, ETNO calls upon BEREC to revise its CPs, in particular in order to reflect the option of lifting price regulation for next-generation access (NGA) wholesale products in the presence of effective non-discrimination and infrastructure competition.

One stakeholder welcomes BEREC's work on fostering the roll-out of the emerging NGA environment; however, considering the risk that the current regulation proposal could imply a shift in the competitive framework, the stakeholder invites BEREC to open these work streams widely to input from stakeholders.

***BEREC Response***

*BEREC would like to thank for the above comments. BEREC would like to note that its revised CPs for best practice remedies in Markets 4 and 5 would not impede NRAs from lifting price regulation should they decide that is the appropriate and proportionate response.*

**Implementation of the Recommendation on Non-discrimination and Costing Methodologies (5.2): understanding the challenges in implementing equivalence of input (EOI); what has been done so far, what has worked and what else could be done? (5.2–a); Monitoring of the impact of the Recommendation (5.2–b)**

Cable Europe strongly welcomes BEREC's monitoring exercises upon the correct implementation of the European Commission's recommendation, because – according to the stakeholder – it provides proper investment incentives for both incumbents and alternative operators.

In order to assess the impact of the recommendation, one stakeholder invites BEREC to deliver an EU benchmark report including four years' time series data on actual investments made for access products on NGA, the cost methodologies applied, wholesale services, copper prices, architectural/technical solutions implemented on NGA, operators which rolled out fibre or other Broadband accesses (e.g. WiMax, LTE, Cable, etc.) and the market share of network operators other than the incumbent.

ECTA suggests that BEREC develop best practices for the performance of the ex-ante 'Economic Replicability Test', which is a key feature of the recommendation when NGA wholesale access will not be regulated.

Furthermore, ECTA stresses the need for a harmonised definition of the characteristics and specifications for key-wholesale-access products (physical unbundling, virtual access and terminating segments of leased lines) in order to ensure that fit-for-purpose solutions are made available by Significant Market Power (SMP) operators. Thus, ECTA invites BEREC to consider an additional deliverable, to be subject to public consultation: 'Common Position on the definition of harmonised characteristics for key wholesale access products.'

ECTA and another stakeholder fully support these work streams and, bearing in mind the challenges of implementing equivalence of input (EOI), ask for an open consultation in order to collect national market experiences, also in terms of incumbents' malpractices.

FTTH Council invites BEREC to undertake public consultation or public hearing procedures for the deliverables foreseen.

***BEREC Response***

*BEREC would like to thank the contributors for their comments.*

*In response to ECTA's comments, BEREC notes that its WP for 2014 includes a work stream on business grade wholesale virtual access/bitstream (see item 5.3) and one on the application of the economic replicability test (see item (8.2-d)).*

### **Emerging challenges in next-generation networks (5.3)**

Cable Europe and ETNO express the opinion that investment and, ultimately, end users' benefit are mainly driven by infrastructure-based competition. Cable Europe and ETNO share BEREC's views on avoiding overly intrusive regulation setting out parameters and functionalities of access products at EU level in an overly detailed and technical manner.

However, ETNO stresses that BEREC's remit should cover neither business decisions taken by individual companies nor funding decisions by the public (as in the case of developing vectoring as an intermediate step toward FTTH roll-out).

In addition, Cable Europe believes that two independent NGA infrastructures can clearly drive network upgrades and evolve towards the provision of ultra-fast services, and encourages BEREC to support – without any prioritisation – the various technologies.

On the other side, ECTA fully supports BEREC's consideration that competition is the best driver for efficient investment in an NGA environment as well, and agrees that the statement '2 is not enough for competition' still holds. In this regard, ECTA believes that an assessment of joint dominance is critical in the light of the on-going debate about whether or not competition between only two fixed networks might be sufficient to warrant the finding of no SMP and the deregulation of fixed wholesale access markets. Therefore, ECTA encourages BEREC to set up an additional specific work stream and an additional deliverable: 'Report on the finding of joint dominance within the framework of ex-ante regulation in the electronic communications sector'.

The FTTH Council believes that BEREC should also consider the source of the investments in its analysis in order both not to ignore the severe 'budget constraints' of incumbent operators and to envisage a market structure reflecting the different economic and risk profiles of different assets (i.e. passive telecom infrastructure versus active technology equipment).

A different position – focusing on the demand side – is expressed by VON, which strongly believes that the main factor in securing widespread adoption of next-generation networks (NGNs) will come from the availability of internet content, applications and services that are attractive to users.

Regarding the results of the 2013 internal EWG workshop, ETNO believes that the 'ladder of investment' (LoI) is not a meaningful concept in an NGA environment and welcomes BEREC's finding that in some cases active local access product ('VULA (Virtual Unbundled Local Asscess)/bitstream) can be the 'highest rung' of access obligations. In this regard, however, ECTA emphasises that this might be the case only for the provision of business services and not for mass-market consumers.

Cable Europe and ETNO are available to participate in the discussion and contribute to BEREC's work for 'VULA'/bitstream products, as is ECTA, which also welcomes a harmonised definition of key characteristics for these products through dedicated workshops and reports or CPs.

INTUG welcomes BEREC's attention to the business market.

Finally, FTTH Council and ECTA suggest that BEREC develop some activity in the area of network structural separation. In particular, ECTA invites BEREC to investigate and assess to what extent – considering the key characteristics of the different NGA technologies – separation models could play a role in making investments in NGA fit with the risk profiles of infrastructure funds. Moreover, ECTA encourages BEREC to also assess which investment models would at the same time meet the objectives of ensuring competition and efficient investment. ECTA proposes, thus, an additional deliverable, subject to public consultation: 'Report on NGA investment models and forms of separation'.

### **BEREC Response**

*BEREC notes with satisfaction that there is a commitment to this topic and is looking forward to the stakeholder workshop that will be held in 2014 where the issues can be discussed in more detail.*

### **IP interconnection (5.4)**

VON welcomes both the fact that regulators have continued to follow the evolution of the market for Internet Protocol (IP) interconnection and Regulators' assessment that currently no regulatory intervention seems to be necessary.

ETNO is concerned that the position expressed by BEREC on IP interconnection and on the Assured Service Quality (ASQ) product appears to oppose a specific commercial model which could instead enhance quality of service (QoS) and provide new revenue streams for the sector.

BEUC believes it very important that commercial and technical developments in the sector be in line with the protection of an efficient best-effort internet, backed up with investments in infrastructure. Additionally, BEUC encourages BEREC to cooperate with the European Commission, which is carrying out investigations on potentially uncompetitive practices put in place by some of the larger, vertically integrated, telecom operators.

Finally INTUG highlights the emergence of regulatory issues for those business users willing to connect by means of Voice over Internet Protocol (VoIP) (session initiation protocol trunking) to the operators' networks. The stakeholder points to an inconsistent approach in different EU countries.

### **BEREC Response**

*BEREC takes note of the comments that are mainly positive of the specific work stream.*

### **Facilitating access to radio spectrum (5.5)**

Telenor and VON believe that more harmonisation in spectrum management is necessary; therefore, they appreciate BEREC focusing on spectrum and going on cooperating with the Radio Spectrum Policy Group (RSPG) in 2014.

Moreover, VON encourages BEREC to consider in its activity the importance of making additional harmonised bands available for wireless broadband and the relevance of intensive spectrum-sharing practices, particularly when licence-exempt access is enabled.

Regarding the latter principle, one stakeholder believes that the mechanisms of spectrum sharing (e.g. Licensed Shared Access) could be a useful tool only in the very long term, in particular because of the possible troublesome impact of interferences not yet addressed. In this regard, the same stakeholder believes that a BEREC workshop on facilitating access to the radio spectrum should be postponed until at least after Q3 2014, in order to consider a better defined technological framework.

Telenor welcomes the proposal for a public workshop on the radio spectrum and strongly supports BEREC's activity and cooperation with the RSPG aimed at defining recommendations and best practices for auction design and licensing. In addition, Telenor believes that EU-level rules could be strengthened on such issues as spectrum allocation, re-farming and spectrum trading in order to ensure timely availability of the spectrum for mobile broadband across all markets. Therefore, Telenor invites BEREC to add some specific work streams and deliverables related to spectrum management: (a) 'Report on Implementation of Art. 6(8) of the RSPG Decision, mandating spectrum trading as envisaged in Article 9(b)(3) of the Framework'; (b) jointly with RSPG, 'Revision of the 2010 positions on market definitions and competition in the case of spectrum'; and (c) 'Benchmarking of auction rules across Member States'.

#### ***BEREC Response***

*BEREC thank for the comments and will continue to work with RSPG in 2014 as envisaged in the Work Programme.*

### **Common Position on geographic markets (5.6)**

ETNO welcomes BEREC's intention to publish a draft CP on geographic market definition, providing guidance for a more proportionate regulatory practice not limiting the ability of established operators to enter into competition with other platforms in highly competitive areas. Moreover, ETNO suggests that this topic become a central element of BEREC's input to the revision process on the Commission Recommendation on Relevant Markets and also encourages BEREC to carry out parallel work on appropriate symmetric solutions to be applied in the place of SMP regulation.

Cable Europe supports BEREC's activity aimed at investigating geographic segmentation of remedies. However, the stakeholder stresses the necessary flexibility and quick adaptability to market circumstances that should characterise this approach.

#### ***BEREC Response***

*BEREC thank for the above comments that are mainly positive of the specific work stream.*

*BEREC will issue an opinion on the Recommendation on Relevant markets in timely manner, depending on the Commission's plans.*

## **E. Consumer empowerment and protection (section 6)**

Bouygues Telecom is of the general view that consumer protection is already well addressed at a national level. Therefore, according to the stakeholder, BEREC should act only as a platform for the exchange of best practices, without advocating new legislative European provisions, which could prove too demanding for telecom operators and jeopardise their ability to invest.

### **Net neutrality (6.1)**

ETNO emphasises the decline in the revenues of the telecoms sector over recent years, which has to be seen in the context of a lack of an equal regulatory and policy condition both with regard to OTT Internet players and between different world regions. In this regard, ETNO is concerned that the EC proposal for Regulation on a European Single Market for electronic communications, currently under discussion, could add a further layer of regulation in the area of traffic management which asymmetrically affects European network operators.

ECTA generally agrees with BEREC's conclusion that 'competition is expected to discipline operators and ensure the best offers for consumers, but this critically relies on effective transparency and the ability of end-users to easily switch service providers'. ECTA, therefore, invites BEREC to assess to what extent competition barriers in the retail fixed broadband markets are in place and if, at the wholesale level, transparent conditions are guaranteed.

BEUC recognises that over recent years BEREC has carried out a very significant amount of work on different aspects of net neutrality and at different levels of the value chain. Therefore, BEUC welcomes BEREC's on-going monitoring of net neutrality-related developments. However, BEUC strongly disagrees with BEREC's assessment that, on a retail or end-user level, competition is sufficient to discipline operators, since – even if an easy switching process and transparency are ensured – operators' offers can include discriminatory traffic management anyway.

VON invites BEREC to convene a technical advisory group, comprising industry participants (content, application and service providers and ISPs) operating across the EU and other relevant stakeholders (e.g. consumer groups). According to VON, this initiative should aim to take into account the complexity and multi-dimensional facets of the online ecosystem and to receive inputs on what forms of discrimination may be anticompetitive or harm end users or create barriers to innovation.

Cable Europe welcomes a regulatory approach on net neutrality that gives the possibility of developing future business models. Cable Europe considers it essential that network operators be just as free as content and service providers to test new business models and to differentiate their offers on both sides of the market (towards consumers and service providers).

INTUG, subscribes in particular to the following statement by BEREC: 'Both NRAs and end users should be able to monitor the performance of the Internet access service, and of the applications used via that internet access service.'

***BEREC Response***

*BEREC would like to thank for the above comments and is glad to see there is such a big engagement in these questions.*

*BEREC acknowledges the broad support for the work that has been planned for 2014 and will take into due consideration the many suggestions on how the work should be focused and what issues should be covered.*

*BEREC will, in part, be looking at the complexity and multi-dimensional facets of the online ecosystem in the ECODM workstream as suggested by VON.*

**Monitoring quality of service in the context of net neutrality (6.1-a)**

ECTA suggests that BEREC ensure that operators relying on fixed wholesale services have the flexibility to set their own QoS standards at retail level, thereby being able to compete on QoS in the retail markets.

Cable Europe believes that transparency and competition tools would suffice to remedy the situation, also considering that cable operators certainly can meet the QoS requirement of not degrading the Internet access service even if developing specialised services.

FTTH Council Europe welcomes BEREC's proposed actions regarding QoS. FTTH Council would also like to see the QoS guidelines dealing with the proposed QoS metrics in the EC legislative proposal for Regulation of a Single Market for electronic communications, because a poor service delivery compared with the advertised offer can fundamentally undermine the competitive dynamic and can also distort investment signals.

VON emphasises that QoS measurements, as well as the enforcement of open Internet policies and regulations, will require leveraging the deep technical expertise within NRAs and gathering external inputs and data. VON believes that, if measurement tools are put in place, these should be open and transparent (well documented and open-sourced, supported by openly available data and analytic methodologies, consistently managed).

***BEREC Response***

*This work stream will include a public consultation and the results of the study will subsequently be shared publicly. BEREC is working closely with the Commission on questions relating to QoS measuring to ensure that BERECs knowledge and experience in this field is readily available.*

**Ecodem – ecosystem dynamics and demand-side forces in net neutrality developments from an end user perspective (6.1-b)**

BEUC welcomes the objective of the Ecodem project yet wonders how consumer expectations will be collected and analysed. In this respect, BEUC invites BEREC and its members to work together with BEUC's members at a national level.

ECTA and VON and another stakeholder ask that the Report on ecosystem dynamics and demand-side forces in net neutrality developments from an end-user perspective also be

submitted to public consultation. Moreover, VON suggests gathering input for this report also by engaging the Stakeholder Forum.

INTUG considers the Ecodem project a crucial item in the WP-20014. In this regard, the stakeholder emphasises that in this specific context the concept of ‘consumers’ should also include ‘business users’.

#### ***BEREC Response***

*BEREC welcomes the support for the Ecodem project from BEUC and INTUG. The tight schedule for the report does not allow for a full public consultation, as suggested by ECTA and VON. The Ecodem project will however include a consultation with stakeholders in relevant parts of the report.*

### **TMI-2 – second round of the Traffic Management Investigation (6.1-c)**

Several stakeholders (BEUC, VON, EAFM, ETNO, ECTA) support, in principle, BEREC’s initiative of running a second round of the Traffic Management Investigation. One stakeholder, however, questions its necessity, pointing out that BEREC – in the conclusion of the previous round of investigation – stated that problems were highlighted only in specific Member States.

Moreover, ETNO expresses concerns and affirms that several elements of the position on net neutrality expressed in BEREC’s views on the EC’s proposal for a draft Regulation on a European Single Market do not fully reflect the previous work of BEREC and appear to be inconsistent with the discussion held by BEREC with stakeholders over the past years.

Furthermore, VON points out that network operators are slowly but clearly moving toward more ‘sophisticated’ abusive practices in order to favour their own services or those of subsidiaries or a preferred partner. According to the stakeholder, such practices need to be actively looked into and prohibited, where appropriate, by BEREC and its members.

In addition, EAFM suggests that BEREC always consider in its activity that virtual operators may not in all cases have the same level of control as the mobile network operators, and/or may face constraints which are of a different nature from those of network owners.

Moreover, BEUC invites BEREC to, unlike in the first investigation, break down collected data to a national level and make them publicly available. Finally, BEUC suggests a more direct involvement of NRAs in validating and double-checking data provided by telecom operators.

In addition, a number of stakeholders (ECTA, VON, EAFM) recommend that BEREC run a public consultation on the methodology used for the Traffic Management Investigation, the questionnaires and the draft reports.

#### ***BEREC Response***

*The realisation of this work stream depends on if the European Commission requests the report. However, if it is requested and the investigation carried out, the report will be made publicly available as is requested by BEUC.*

*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.*

## **Supporting end users with disabilities (6.2)**

In updating its 'Report on equivalent access and choice for disabled end-users', VON encourages BEREC to ensure that all envisaged measures be technology-neutral and that non-voluntary measures apply only to publicly available telephone services (PATSS).

### *BEREC Response*

*BEREC has noted VON's comment and request.*

## **Best practice to enable choice in the internet consumer market (6.3)**

ECTA welcomes BEREC's work on transparency and switching, which has enabled customer choice.

As part of the monitoring of internet access services, BEUC believes it very important to monitor the development of specialised services as well, and in particular, their impact on internet access services. Thus, BEUC invites both BEREC and its member NRAs to develop work streams in that direction.

FTTH Council Europe welcomes BEREC's work on transparency and believes that it should be coordinated with the measures brought forward by the Commission in this area in 2012.

VON encourages BEREC to submit to a public consultation its Report on consumer protection and empowerment in the Internet market.

### *BEREC Response*

*BEREC would like to thank for the above comments that are generally supportive of the specific work stream.*

## **F. Boosting the internal market for services (section 7)**

### **International roaming (7.1): support for NRAs on the application of Roaming**

#### **Regulation III (7.1-a); roaming benchmark reports (7.1-b); 'Report on transparency and comparability of tariffs' (7.1-c)**

BEUC welcomes all the activities BEREC has undertaken on international roaming and encourages BEREC to continue these work streams, possibly adding a specific focus on international roaming in countries outside the EU. However, BEUC urges BEREC to step up its work in helping to eliminate other relevant barriers to the single market, in addition to international roaming, namely surcharges for cross-border services.

ECTA, EAFM, PosteMobile and another stakeholder invite BEREC to set up an additional work stream focused on the risk that mobile network operators (MNOs) and MVNOs undertake redundant, unproductive investments in implementing the Roaming III Regulation decoupling

obligation. These stakeholders suggest that BEREC provide appropriate guidance to NRAs outlining a report on the implementation of the decoupling obligation and on avoiding redundant investments by mobile and virtual mobile operators.

In this regard, Bouygues Telecom invites BEREC to amend its past guidelines in order to postpone the implementation of the decoupling solution until the new EC legislative proposal on a European Single Market is voted.

In addition, EAFM encourages BEREC to give consideration to a way forward on EU international roaming, leading to a further substantial reduction of the wholesale roaming caps to levels which would enable all providers, irrespective of participation in bilateral or multilateral roaming agreements, to offer retail mobile bundles including 'roam like at home'. Furthermore, EAFM welcomes the establishment and the activity of the Steering Committee for the implementation of Articles 4 and 5 of the Roaming III Regulation.

Finally, EAFM invites BEREC to fully examine the legal merit of its position aimed at requiring host MNOs to support full MVNOs in participating in the provision of local data roaming services (LBO).

With regard to decoupling, INTUG asks BEREC not to forget about business users' requirements. Moreover, INTUG signals that the Threshold Definition and Information Mechanism are not working for businesses services yet, years after their introduction. According to INTUG, management and use of the roaming services should be made as straightforward as possible by implementing uniform mechanisms at both operator and Member State level.

#### ***BEREC Response***

*BEREC would like to thank for the above comments.*

*The amount of work already planned is already considerable and does not allow for the introduction of additional reports or work streams unless some other work is cancelled. To the extent it is possible, BEREC will however take account of the suggestions of what new issues need to be covered within the work already planned.*

### **Machine to Machine (M2M) (7.2)**

EAFM welcomes BEREC's activity concerning M2M and indicates its availability to participate in the activity (stakeholder workshop/consultation on draft BEREC documents).

INTUG urges BEREC and the European Conference of Postal and Telecommunications Administrations (CEPT) to work on SIM portability or 'white' SIM cards.

#### ***BEREC Response***

*BEREC would like to thank for the above comments and offers of assistance.*

### **Initiatives to increase the fluidity of non-residential markets (7.3)**

ECTA welcomes BEREC's intention to carry out a workshop on concrete initiatives taken by NRAs across Europe to increase the fluidity of non-residential markets. However, ECTA

suggests that this workshop be focused on wholesale market failures, mainly originating from the divergent geographical scope of retail business services involving cross-border activities on one hand and the underlying wholesale inputs being offered at national level on the other.

EAFM warmly invites BEREC to ensure that this work stream will also cover mobile services.

Bouygues Telecom expects the market for business services to be a priority for BEREC because in a majority of European countries this market is deemed largely uncompetitive. Bouygues Telecom, moreover, fully subscribes to the aims of BEREC regarding switching processes, unfair contractual provisions and flexible wholesale offers.

INTUG is very pleased to see that the business market for information and communication technology services will be given special and distinct attention by BEREC. INTUG believes that the current regulatory environment neither adequately encourages competition in this market nor supports companies and public entities in optimising their potential. INTUG, moreover, specifically indicates areas for regulatory improvements related to international mobile services and last-mile connectivity.

Finally, both ECTA and EAFM suggest bringing forward this work item, scheduling the workshop as soon as early or mid-2014.

#### ***BEREC Response***

*BEREC appreciates the broad support given for the planned workshop concerning the fluidity of non-residential markets.*

## **G. Horizontal and regulatory quality aspects (section 8)**

### **Quality and consistency of regulatory decisions (8.1)**

No comments received.

### **Benchmarks (8.2)**

#### **Benchmarking on Mobile Termination Rates, Fixed Termination Rates, SMS (8.2-a)**

No comments received.

#### **Implementation of the Termination Rates Recommendation (8.2.b)**

EAFM welcomes BEREC's intention to examine cross-border termination rates and to assess their impact on fair competition between operators, on offers for calls between Member States and on offers of mobile roaming services.

Bouygues Telecom expects BEREC to assess and tackle the persisting termination rates asymmetry amongst different EU countries, which does not satisfy the principles enshrined in the Termination Rates Recommendation. This, according to the stakeholder, is a major obstacle

to the European single market, jeopardising the ability of operators to include international/European calls in their offers. Moreover, considering the complete asymmetry when negotiating with non-regulated counterparts, Bouygues Telecom suggests that BEREC exchange best practices on termination regulation also at international/non-European level.

***BEREC Response***

*BEREC would like to thank for the comments and support of the specific work stream and take note of the suggestions especially of exchanging best practices at an international level.*

**Regulatory accounting in practice report (8.2-c)**

No comments received.

**Ex-ante margin squeeze tests (8.2-d)**

ECTA particularly welcomes BEREC's activity on the ex-ante margin squeeze tests. ECTA emphasises that such activity should be broad-based and not limited to the implementation of the EC Recommendation on Non-discrimination and Costing Methodologies.

One stakeholder urges BEREC to develop best practices for the performance of the ex-ante 'Economic Replicability Test', which is another key feature of the recommendation in question because having the possibility for alternative operators to economically replicate all downstream offers of the SMP operators probably avoids the abuse of price flexibility.

Cable Europe supports and is greatly interested in BEREC's activity on ex-ante margin squeeze tests.

ETNO is seriously concerned by the lack of public consultation on such an important and economically complex work stream and, like ECTA, urges BEREC to submit a report on this initiative to public consultation.

***BEREC Response***

*BEREC would like to thank for the comments and support for the specific work stream. As a response to suggestions a public consultation has been added to the work stream.*

**'Report on oligopoly analysis and regulation' (8.2-e)**

Cable Europe supports and is greatly interested in BEREC's activity on oligopoly analysis and regulation.

ETNO generally suggests that BEREC refrain from issuing recommendations aimed at changing the current EU regulatory framework or the Commission's SMP guidelines, if not based on clear and demonstrable evidence.

BEUC welcomes the work stream on oligopolies, since it is BEUC's opinion that too many markets in Europe still function under oligopolistic dynamics and thus impede the development of healthy competition.

EAFM invites BEREC to explicitly consider in this work stream the conditions for supply of wholesale mobile access (stand-alone for voice, for SMS and for data, as well as for a wholesale cluster market comprising voice/SMS/data).

EAFM, ETNO and FTTH Council suggest undertaking a public consultation procedure related to this BEREC report. In addition, ETNO encourages BEREC to engage fully and transparently with stakeholders on the issue of oligopolies.

### ***BEREC Response***

*As this is an important topic for BEREC, the first step will be to continue the thinking on its own in this area and not rely on mainly Academia to do the thinking. Further, the report will be made publicly available for stakeholders to learn what BEREC's conclusions are in this area.*

## **Engagement with the EU institutions (8.3)**

With regard to the Universal Service Directive, one stakeholder calls upon BEREC to consider carrying out a report on best practices of Member States on how to calculate the net costs of universal service with particular focus on the correct methodology to calculate indirect benefits.

Concerning 112 services, the majority of stakeholders stressed the crucial importance for EU citizens of caller location by means of the emergency number 112 (JCS Consulting, Thales Alenia Space France, Intelligence for Environment & Security – IES Solutions, Creativity Software Ltd, The Association of Ambulance Chief Executives, British Association of Public Safety Communications Officials (BAPCO), 112 MURCIA).

The stakeholders in question represent companies providing consultancy and solutions in the field of caller location, as well as public safety answering points, non-governmental organisations and associations promoting high-quality emergency services reached by the number 112 and active in the field of public safety and national health. Moreover, public bodies, namely the Emergency Response Centre Administration (Finland) and the National Protection and Rescue Directorate (Croatia), raised their voices. These stakeholders mainly supported the position of the European Emergency Number Association (EENA) in relation to the WP-2014. A separate view was expressed by VON representing the Internet-enabled communications industry) with regard to 112 services in the context of network-independent undertakings.

Although the majority of stakeholders welcomed the reference to the topic of 112 in the WP-2014, they judged it too vague and expressed the view that this life-critical issue warrants more attention from BEREC. The main message conveyed by stakeholders' comments is that the timely, accurate and reliable provision of mobile location information to the 112 services is not ensured in EU Member States because the technology currently in use is substandard. In these stakeholders' view, such a situation is neither socially nor economically sustainable.

Moreover, several stakeholders drew the attention to the unavailability of caller location information from multi-line telephony services as well as from IP-based communications systems. With regard to the latter, VON stressed, however, that the Citizens' Rights Directive recognises that for, network-independent undertakings, caller location information may not always be technically feasible.

Against this background, the majority of stakeholders, following the EENA's position, urged BEREC to dedicate a specific work stream in the WP-2014 dealing with 112 caller location information. Through such a work stream, BEREC should, among other things, support the NRAs to meet their obligations concerning the 112 emergency services stemming from the Universal Service Directive. Moreover, a common approach should be taken across the EU for the accuracy and reliability criteria. In this respect, VON, however, advised BEREC to take into account but not to pre-empt the on-going development of standards enabling the feasibility, reliability and accuracy of emergency calling. Moreover, according to VON, consumers' expectations should be taken into account; by way of example, in the UK less than 1 % of the 36 million annual calls to the emergency services originate from VoIP.

Several stakeholders indicated their availability to assist BEREC in the work in question and suggested, moreover, that BEREC liaise with other bodies dealing so far with the topic of 112 emergency services.

#### ***BEREC Response***

*BEREC would like to thank the stakeholders for their comments and take note of them. BEREC will continue discussions with the European Commission on this important topic.*

### **Framework implementation – institutional aspects (8.4)**

ECTA welcomes the initiatives proposed by BEREC under this theme, namely the analysis of the Article 7 cases, and invites BEREC to make this analysis public.

#### ***BEREC Response***

*BEREC would like to thank ECTA for its comments and support for making an analysis of the Article 7 cases.*

### **BEREC evaluation (8.5)**

No comments received.

### **BEREC Stakeholder Forum (8.6)**

VON applauds BEREC's continued commitment to engage with stakeholders and encourages BEREC to continue using the Stakeholder Forum as a platform for multi-stakeholder discussions on methodology and more specifically on 'what' and 'how' to measure.

The FTTH Council supports BEREC's action. It offers to provide input and assistance on technical or policy parameters should a need arise.

EAFM invites BEREC to continue to involve the EAFM in future stakeholder engagement.

Cable Europe welcomes BEREC's dialogue with its stakeholders.

One stakeholder is concerned that some important work streams will have no public consultations and that the Stakeholder Forum and workshops (especially on emerging challenges in next-generation networks, IP interconnection, facilitating access to radio spectrum and M2M) are carried out without the participation of leading global equipment manufacturers.

***BEREC Response***

*BEREC welcomes the support for the stakeholder forum and is looking forward to a continued dialogue.*

**International cooperation (8.7)**

INTUG fully supports BEREC's initiatives in the field of international cooperation, as many European businesses are active outside the European borders.

***BEREC Response***

*BEREC welcomes the support.*

**3. Additional work items and horizontal issues**

Telenor and Bouygues Telecom believe that BEREC's WP-2014 does not specifically address the implications of OTT developments for the traditional telecom sector value chain and equal competition conditions. .

Specifically, Telenor calls upon BEREC to focus on the Content and Applications Providers regulatory treatment against the fact that their provisions of services are increasingly interchangeable with traditional Electronic Communications services. Therefore, Telenor urges BEREC to also deliver in 2014 (a) 'A study on the influence and presence of CAPs based on experience in each Member State'; (b) 'An assessment for the review of the regulatory provisions applied to ECS in order to ensure equal regulatory treatment of same functional equivalent services'; and (c) 'A study on the use of traffic and location data for secondary purposes (emergency calls/marketing/advertising)'.

VON regrets that the draft WP-2014 includes no work streams devoted to numbering, above all considering a very recent recommendation<sup>2</sup> on numbering for nomadic voice services, which NRAs have to implement. Therefore, VON urges BEREC to consider the numbering issue as a priority, developing a specific work stream aimed at supporting these recommendations and, more generally, at reforming the numbering systems at national level in order to improve harmonisation within the EU. Moreover, VON encourages BEREC to provide appropriate guidance to its members in order to ensure retail price transparency and to remove the link between location information and geographic numbers.

<sup>2</sup> See CEPT ECC. (2012, 22 November). *ECC Recommendation (12)04 Numbering for Nomadic Voice Services*. Retrieved from <http://www.erodocdb.dk/Docs/doc98/official/pdf/REC1204.PDF>.

FTTH Council calls for BEREC to include in its WP-2014 the 'technology-neutrality' paradigm, in order to assess if its actual current implementation at EU level is creating efficient investment signals and appropriate definition of policy targets.

Considering the important advisory function of BEREC to the EU legislator, ECTA invites BEREC to outline an independent assessment of the overall performance of the sector which could support BEREC's consideration that 'the state of the sector in Europe is not quite as bleak as has been suggested'. Therefore, ECTA proposes a 'Report on the performance of the electronic communications sector'.

Furthermore, ECTA asks BEREC to develop an additional, more specific, work stream aimed at identifying the lack of harmonisation in national conditions for the award of 'general authorisations' for the provision of Electronic Communications Network Services. According to ECTA, this work stream should also assess the extent to which the Authorisation Directive has been unable to reduce administrative formalities for authorisation. Consequently it proposes the following deliverable to be subject to public consultation: 'Report on the implementation of the "general authorisation" for the provision of electronic communications networks and services (Article 2 seq. of the Authorisation Directive)'.

Finally, EAFM, ECTA and PosteMobile encourage BEREC to consider in its activity the role and specificities of full MVNOs and the fact they are facing competitive difficulties due to the difficulty of identifying SMP in EU oligopolistic markets. In this regard, ECTA in particular proposes that BEREC carry out a monitoring activity or a study assessing: 'The state of competition in the EU mobile markets and key-obstacles preventing MVNOs and new MNOs from successfully competing'.

#### ***BEREC Response***

*BEREC would like to thank the stakeholders and is pleased for the engagement in the work of BEREC. BEREC takes note of the suggestions for work streams above.*

## Contents

BEREC report on the public consultation of the.....	1
BEREC draft work programme 2014.....	1
DRAFT.....	<b>Error! Bookmark not defined.</b>
<b>1. Introduction.....</b>	<b>2</b>
<b>2. Specific contributions per paragraph of the draft WP-2014.....</b>	<b>3</b>
<b>A. Background (section 2) .....</b>	<b>3</b>
<b>B. BEREC work in 2014 – key areas (section 3) .....</b>	<b>4</b>
Infrastructure: boosting the roll-out of next-generation networks (Theme A).....	4
Consumers: boosting empowerment and protection (Theme B).....	4
Services: boosting the internal market (Theme C).....	4
Horizontal and quality aspects (Theme D).....	4
C. Digital single market (section 4) .....	4
D. Boosting the roll-out of next-generation networks (section 5) .....	7
E. Consumer empowerment and protection (section 6) .....	12
F. Boosting the internal market for services (section 7) .....	15
G. Horizontal and regulatory quality aspects (section 8) .....	17
<b>3. Additional work items and horizontal issues.....</b>	<b>21</b>