

Draft

BEREC

STRATEGY

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2. Background and BEREC mission

The Body of European Regulators for Electronic Communications (BEREC) was established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009, as part of the last review of the European regulatory Framework. It replaced the European Regulators Group (ERG) which had been established as an advisory group to the Commission in 2002.

BEREC commenced its activities in January 2010. In the course of 2011 it became fully functional to fulfil its functions under the Framework.

BEREC's mission

BEREC is committed to ensuring the independent, consistent, and high-quality application of the European regulatory framework for electronic communications markets for the benefit of Europe and its citizens.

This paper outlines BEREC's strategic objectives for the period 2015-2017, together with its specific strategic priorities for the coming years designed to achieve these objectives. It builds upon BEREC's work to date, and takes into account the major developments that are taking place in the electronic communications field and the information society more generally (summarised in Part [4] below¹). It serves as a compass of sorts, informing BEREC's annual work programmes and providing a strategic context for the performance of its advisory role.

BEREC published its first medium-term strategic outlook on 23 February 2012, for the period 2012-2015. This document represents BEREC's updated strategic outlook for the next 3-year period 2015-2017, and will be reviewed periodically.

¹ For a more detailed discussion of recent trends, see BEREC annual report 2013 available at http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/4407-berec-annual-reports-for-2013_0.pdf

3. BEREC's strategic pillars

BEREC's strategic objectives are derived from the policy objectives and regulatory principles which its members are required to pursue/apply, pursuant to Article 8 of the Framework Directive², namely

- Promoting competition;
- Contributing to the development of the internal market;
- Promoting the interests of EU citizens.

BEREC and its members individually will always seek to pursue the most efficient, proportionate, and least intrusive regulatory approaches. To that end, they will look to regulate, co-regulate or deregulate as and when needed.

a. Strategic pillar 1 – Promoting Competition and Investment

BEREC and its members, the National regulatory authorities (NRAs), must promote effective competition, and in so doing promote efficient investment and innovation in new and enhanced infrastructures and services. Central to this approach is the understanding that *effective* and *sustainable* competition is what drives *efficient* investment. These qualifiers are important to the integrity of the *ex ante* economic regulatory regime which NRAs are tasked with implementing and enforcing, whereby *ex ante* economic regulation can be gradually scaled back over time as markets become effectively competitive.

Competition also serves the interests of European end-users, as it provides for maximum benefit in terms of choice, price, and quality. Finally, effective competition at the national level fuels the development of the internal market – Europe's global competitiveness relies on competitive European (national) markets. A competitive European telecoms sector in turn contributes to a vibrant European economy.

b. Strategic pillar 2 – Promoting the Internal market

BEREC and its members must also contribute to the development of the internal market, to enable EU citizens and undertakings to enjoy a (high) minimum level of services and benefit from pan-European services wherever they are, to the extent possible³. The promotion of the internal market broadly has two components:

1. **Developing consistent regulatory practice.** The objective is to help ensure that all of Europe is subject to a (high) minimum level of quality of regulatory practice (e.g. fair and transparent processes), and that those with pan-EU ambitions can

² Article 1(3) of the BEREC Regulation provides that “[I]n all its activities, BEREC shall pursue the same objectives as those of the national regulatory authorities (NRAs), as set out in Article 8 of Directive 2002/21/EC (Framework Directive).”

³ Notably, with the exception of international roaming, consumer access markets for electronic communications services and consumer preferences remain national. For instance, there is no benefit associated with the provision of pan-EU services – e.g. an end-user in one country will not want to access a fixed network in another country.

rely on consistent regulatory approaches across Europe. Consistent approaches enable the realisation of potential economies of scale.

2. **Addressing cross-border issues.** Typically this relates to activity targeting services which are provided across national borders. This includes cases where a single coordinated approach is required (e.g. international roaming), or cases where cooperation between regulators is required (e.g. cross-border dispute resolution or consumer protection concerns arising from cross-border fraud or misuse of numbering resources).

The current regulatory framework recognises the important role that NRAs play, both individually in their respective markets and acting collectively through BEREC, in the interests of the internal market. It is important to note that national markets have certain enduring and legitimate differences (e.g. in relation to network topology/technologies, historical investment cycles, and consumer demand patterns). These, sometimes substantial, differences will exist to some degree whatever the institutional design, and cannot be eliminated by regulatory fiat. For this reason, the same regulatory approaches will not necessarily be appropriate in every country. For instance, NGA roll-out (and appropriate regulatory obligations) will depend, among other things, on choices made around network design and technology, which will vary from one country to the next. In mobile, on the other hand, there will be less variation in this respect. BEREC and its members work within this rich and diverse environment, learning from each other's experiences, developing robust best practices based upon what has been shown to work, and targeting their harmonisation efforts at those areas where harmonisation will have a meaningful impact, rather than simply pursuing harmonisation for the sake of it.

c. Strategic pillar 3 – Empowering and protecting end-users

NRAs must also promote the interests of EU citizens, including through the enforcement of rules aimed at the protection of end-users (including business users) and the protection of the interests of vulnerable groups.

Improving the welfare of European end-users has always been at the core of BEREC's mission. As mentioned above, it is a virtuous circle - a high level of competition empowers end-users, and end-user empowerment further fuels competition. This also means that in order to develop regulation that addresses competition problems in a proportionate, targeted and effective manner, NRAs must have a clear understanding of the demand side dynamics of their markets.

For this reason, it is essential that NRAs, both individually and jointly through BEREC, monitor market evolutions and, to the extent possible, respond to ensure end-users' continued ability to choose the services of their choice, at appropriate levels of price and quality. Furthermore, due to end-users' increasing dependence on internet communications in particular, BEREC needs to continue to address issues around the open internet.

4. Major trends and developments

Developments in technology, in the electronic communications (and related) markets, and in the needs, expectations and behaviours of end-users have, and will continue to, impact on the regulatory requirements of the sector. These developments will need to be addressed at both national and EU levels.

a. Technology, market and end-user developments

The evolution of the Internet and Internet-driven services (OTTs, the Internet of Things, M2M, etc.) and service ubiquity mean that some services will increasingly become available independent from location, device or platform. At the same time, the tying of OTT services to devices and platforms creates the potential for new bottlenecks within market segments and across the wider communications value chain. This, together with the growing consumption of bundled products and content services over electronic communications networks, presents challenges to traditional business models, and new challenges for regulators to monitor and regulate markets in an increasingly globalized and convergent network and service environment.

- **The growth of OTT services** increases consumer choice but also presents challenges to the business models of traditional telecoms operators, some of which are facing a decline in revenues in markets they had previously dominated. At the same time, OTT players are also developing new innovative services, which in turn foster the demand for more and better network access. The ecosystem is changing as OTTs are seen to be capable of altering the competitive intensity across the value chain, with calls from some quarters for a new balance between these market players.

These new services are also impacting other sectors (e.g. the postal or music sectors), and offering new possibilities in some sectors (e.g. the health care, energy, automotive sectors), while at the same time raising new regulatory challenges.

- In many European countries **bundled services** have been a key driver for competition. At the same time, the growing complexity of bundled services introduces new challenges to ex ante regulation, once based on the analysis of standalone products provided within vertically integrated business models. And the increasing complexity of retail bundling strategies, including the inclusion of premium or exclusive audio-visual content in bundles, presents competition challenges of their own (e.g. in terms of consumer switching).
- **Network convergence** between fixed (cable/copper/fibre) and mobile technologies is fuelling the supply and demand of triple- and quad-play bundles, which in some cases could result in the development of service oligopolies. At the same time, despite continued access investment by competing operators (e.g. through local loop unbundling), there has not been the degree of infrastructure replication (and competition) in the last mile across all EU countries as might once have been expected.

- The growth of **Machine to Machine (M2M) services** is likely to change the electronic communications ecosystem. Communications originating from “non-human” users, very low consumption/very low traffic terminals (such as smart meters, smart grids, wearable devices, car sensors), using bundled (virtual/software) SIMs and so on, could pose challenges to existing policy and regulatory approaches in the areas of numbering, spectrum usage, net neutrality, roaming, and licensing. They could also raise ease-of-use issues, arguments around the trade-offs between interoperability and specialised communications protocols, permanent roaming, privacy and security issues.
- As the public becomes increasingly reliant on communications networks for a growing range of services, **quality of service** (e.g. in the context of net neutrality, or mobile coverage) becomes critical to the future development both of the market and of new innovative services (e.g. by OTTs), and to an increasingly heterogeneous (with respect to demand) customer base. There are concerns in some quarters that the provision of guaranteed quality services could impact on the provision of “best effort” internet access services, particularly for mobile internet access services.
- Growing demand for bandwidth-hungry services, together with the continued migration from PSTN to all IP-technology, requires **significant investment in high-speed electronic communications networks across Europe**. Investment in new (fixed and mobile) high-speed networks should in turn support innovation in content-rich internet services. In the race towards ultra-fast speeds, and as European citizens increasingly access public services and a wide range of information and content online, the risk of exclusion increases. It therefore becomes increasingly important to address any remaining “digital divides” to ensure all citizens, however rural or remote their location, are connected.
- The increased use of bandwidth-hungry services and the ability to connect devices to alternative networks (e.g. wi-fi) has also increased **mobile offload to fixed networks**. This “dual” network use by end-users creates demand for services that work seamlessly between fixed and mobile networks, and could prompt operators to rethink traditional fixed/mobile business models as mobile operators’ need for fixed access increases and vice versa. It also brings its own challenges, such as the need to secure sufficient spectrum resources for wi-fi and other wireless technologies.
- The increasing consumption and provision of services online have also increased the importance to end-users of **issues like data protection and privacy**, network and information security and reliability/resilience (whether they buy their services from traditional telecoms operators or OTTs), though these issues are not necessarily within the scope of responsibility of BEREC or its constituent NRAs.
- Over the last year some have argued that (in-country) **market consolidation** is necessary to enable investment in network roll-out in Europe, and several important mergers in the sector have obtained clearance from competition authorities. In some countries, operators have pursued network sharing arrangements. The impact of these mergers and arrangements on investment, competition and European end-users’ welfare will need to be carefully monitored. At the same time, the prominence of the Digital Agenda in the Commission’s recent public statements suggests that the Commission’s orienting policy objectives may have widened to encompass something more closely resembling a “European industrial policy,” where investment

is promoted for a wider social purpose (thus going further than the policy objectives of the Framework itself). This is no doubt at least in part the result of the economic crisis, where the telecoms sector is seen as a potential engine and enabler of wider economic recovery.

- In addition to this merger activity between operators, as content becomes an increasingly important determinant of end-users' purchasing choices, Europe is also witnessing **cross-sector mergers, or agreements** between electronic communications providers and broadcasters (or other content providers). These changes in the competitive landscape signal the emergence of new business models, and pose new regulatory challenges.

b. EU regulatory developments

These market and technological developments are taking place against a backdrop of a significant degree of regulatory evolution at the EU level. At the time of writing, the European Institutions are mid-way through the negotiation of the draft Connected Continent Regulation. Once adopted, it is expected to include new tasks for BEREC, including new monitoring tasks and the development of guidelines in a number of areas.

A new Commission is expected to be in place by the end of 2014, joining a new Parliament that was elected in mid-2014.⁴ Over the next few years, the success of general EU policies (e.g. Europe 2020) and sectoral policies (e.g. the Digital Agenda for Europe) will be reviewed and new legislative initiatives might be tabled. These developments could have a significant impact on the future regulatory landscape, and, by extension, on BEREC's strategy for the period 2015-2017.

The most significant of these regulatory developments is likely to be the review of the European regulatory framework, a process which is expected to be formally launched by the Commission over the next 18 months (but which arguably began in 2013 with Catherine Trautmann MEP's report on the operation of the current Framework⁵). The last review of the Framework, completed in 2009, was based on an evolutionary approach, retaining the founding principles of competition law on which the 2002 package had been based, and which have helped generate growth and innovation in the sector to date.

The next review should aim to build on these principles, and to comprehensively address the challenges facing the sector, taking into account the technological, market and end-user developments since the last review, as briefly described above. It is likely to include consideration of, e.g.:

- how best to address the role of OTT players, which are increasingly providing services considered substitutable for traditional electronic communications services

⁴ TBC depending on date of issue of this document

⁵ Mrs Trautmann's report is available at

http://www.europarl.europa.eu/document/activities/cont/201306/20130617ATT67940/20130617ATT67940_EN.pdf. BEREC's input to her report is available at

http://berec.europa.eu/eng/document_register/subject_matter/berec/others/1408-berec-preliminary-informal-views-on-mep-catherine-trautmann8217s-set-of-questions

- how best to respond to the challenges posed by market consolidation and the possible development of high-speed infrastructure oligopolies
- the impact of IP technology and fixed/mobile convergence on the traditional relationships between retail and wholesale markets
- challenges arising from the exponential growth of Machine to Machine (M2M) services
- the future role of symmetric regulation vs asymmetric regulation
- the scope of the universal service obligation
- how best to assess leverage effects and joint dominance on an ex ante basis
- the scope for NRA cooperation with national competition authorities
- the scope of NRAs' independence and NRAs' competences, including any role for NRAs on issues at the edge or outside of their current powers, but which are expected to become increasingly important over the coming years for consumer confidence in the sector.

In addition to the review of the Framework, a review of the Radio Spectrum Policy Programme (RSPP) is expected in 2015, as well as the completion of the review of the EU data protection framework, both of which are likely to have an impact on the sector. Merger clearances and conditions and the terms of state aids will also have a significant impact on the job of NRAs.

5. BEREC's strategic priorities

Strategic Priority 1 – Promoting Competition and Investment

Against the backdrop of the rise of OTTs, the need for investment to address the growing demand and for increasing levels of quality of service, and the potential for competitive pressures from service bundling and market consolidation, BEREC will continue to focus on promoting competition and creating a favourable climate for investment (e.g. removing possible barriers) and innovation through effective, predictable, and consistent regulation of national wholesale markets (and in particular, broadband markets). The risk of service and network oligopolies described above provides particular challenges for regulators, and BEREC intends to devote considerable effort to address these. BEREC will also look closely at the potential impacts of OTT players on the competitive dynamics of the market, and continue to follow the evolution of service bundling in Europe.

While BEREC's primary tool is asymmetric regulation, it will nonetheless keep an eye on the increasingly complex web of regulatory rules and measures (e.g. including state aid rules and other measures), to help ensure that these complement rather than undermine each other.

As stated on several occasions, radio spectrum is also essential to the development of the market and of innovative products and services, and to the proper functioning of competition and the achievement of the goals set out in the Digital Agenda 2020. Radio spectrum is therefore crucial to BEREC's work, and BEREC will maintain close relations with relevant parties working on this subject matter.

a. Promoting competition

Convergence, including the growing take-up of bundled offers, and any (service and infrastructure) consolidation will require the continued attention of BEREC and its members to ensure effective competition. The demand side will also remain important to the competitive health of Europe's national markets: appropriate levels of information transparency and ease of switching are necessary to enable end-users to find the offer that meets their needs and to oil the wheels of competition.

b. Fostering a favourable climate for investment

An environment where investment in high-speed networks can flourish depends on market players being able to rely on a stable regulatory framework enabling effective competition in downstream markets. This link between the supply and demand sides is critical to providing fair and risk-appropriate rates of return on investment. Commercial incentives are key and the challenge for regulation (whether exercised by NRAs or competition authorities, or through state aid rules) is to ensure that they can operate in an undistorted market, while not undermining investment incentives. Among other initiatives, facilitating different types of network sharing arrangements (including co-investments between private operators and/or public/private arrangements) could help to stimulate investment further.

c. Supporting innovation

Turning to next generation networks (NGNs) in the core and backbone networks, BEREC will continue to help ensure a smooth transition from PSTN to all IP-technology, including the possible switching off of copper networks, by taking a pro-competitive, technologically neutral and forward-looking approach that supports the development of new business models, while protecting the interests of end-users. BEREC will continually monitor the dynamics and functioning of (IP-) interconnection markets in order to inform its views on whether or not regulatory intervention is needed.

Looking ahead to the next review of the Framework, BEREC will seek to protect the underlying principles of the current Framework, which have been broadly successful in promoting effective competition based on a conviction (supported by the evidence) that end-users benefit from competitive markets, and that innovation and efficient investment (both critical to Europe's global competitiveness) are spurred by that competition. At the same time, it will take a candid look at some of the regulatory building blocks of the current Framework in order to ensure regulators are able adequately to address the challenges facing the sector.

Strategic Priority 2 – Promoting the Internal market

Convergence and the increasing ability of end-users to access services independently from their location, device or platform present both opportunities and challenges.

a. Supporting convergence

The potential ubiquity of services, in part thanks to IP convergence, makes the vision of “completing” an internal market in services appear closer. To help provide fertile ground for the growth of these new services and business models, BEREC will continue to support the development of IP network technologies, and to address the challenges of fixed/mobile network convergence.

b. Taking down barriers

At the same time, IP convergence puts the focus on potential barriers to true cross-border service provision. Many of these potential barriers have already been identified by the European Commission and are outside the scope of telecoms regulation (e.g. the diversity of copyright regimes, e-payment and e-commerce regimes), some sit alongside telecoms regulation but strictly speaking outside the scope of BEREC’s mandate (e.g. data privacy regulation) whereas others sit squarely in BEREC’s patch, such as a common approach to “net neutrality”, a harmonised consumer protection framework, a European approach to international mobile roaming, and addressing pan-European and cross-border challenges as they might arise. BEREC will continue to focus its efforts on these areas, where telecoms regulation can play a role in helping to realise the internal market. At the same time, and already as noted above, it will seek to cooperate with all relevant bodies (including the RSPG, ENISA and ERGA) where appropriate.

Strategic priority 3 – Empowering and protecting end-users

The protection of end-users is at the heart of NRAs’ regulatory activity, and BEREC will continue to put end-user empowerment at the heart of its work.

a. Promoting end-user choice, accessibility and affordability

NRAs need to ensure end-users are equipped to make informed choices about the increasingly complex products emerging in a convergent environment. In this context, ensuring ease of switching to enable end-users to access offers that meet their needs will be a key objective. As noted above, effective switching is an important component of a competitive market. But the promotion of competition alone cannot always ensure optimal outcomes for end-users. Affordability and accessibility remain central concerns for regulators.

b. Safeguarding an open internet

BEREC will also remain attentive to emerging end-user needs arising from new business models, including the development of OTT services. Quality of service provided over electronic communications networks will become an increasingly important aspect of end-user protection, as IP technology enables a growing range of services to be consumed online. BEREC will therefore also focus on safeguarding an open Internet and ensuring a common approach to net neutrality, so that the Internet remains a fertile platform for the development of new innovative services.

c. Promoting end-user protection online

Last but not least, BEREC will also seek to cooperate with other relevant bodies, outside its immediate field of expertise, as necessary, in order to help ensure a coordinated and coherent approach to improving end-users' trust around issues such as data privacy protection, internet security and content regulation. This will become increasingly important given the growing "substitutability" of OTT services for traditional telecoms services, and as end-users increasingly access "real world" services (such as healthcare, smart metering, or e-government services) online.

6. Quality of BEREC output and operational efficiency

It is important to ensure that BEREC's output continues to contribute directly to its strategic vision. BEREC will reflect its vision in its work programmes, and seek to improve its work planning in order to make optimum use of its resources. To identify its priorities, BEREC will seek to clearly define regulatory problems in order to address itself to possible solutions. In doing so, BEREC will also follow up on several recommendations on its efficiency which were made in the context of the BEREC Evaluation (2013). To this end, BEREC remains committed to:

a. Working to improve the quality and consistency of individual NRA decisions

- through the development of common positions and best practice guidelines,
- through the active sharing of best practices
- through the provision of assistance to NRAs
- through monitoring, benchmarking and reporting activities, so as to provide NRAs and policymakers with robust evidence to inform their decision making

b. Engaging and cooperating effectively

- by improving the coordination between the development of the respective work programmes of BEREC and the Commission, and aligning their planning horizons to help ensure they are better able to be responsive to each other's initiatives

- by seeking to develop its relationship with the legislator (the European Parliament and Council), and to be systematically involved at the earliest stages of any Commission initiative (whether binding or non-binding): regulation, directives, related impact assessments, recommendations, communications, implementing acts
- by continuing to develop its stakeholder engagement strategy, in order to understand developments within the core and the periphery of its field of activity
- by continuing to develop its international relationships, with other fora and regulators in other regions, through the elaboration of an international strategy
- with academic and research communities, where appropriate.

c. Improving its working methods and the quality of its output

- by continuing to improve the transparency and accountability of the Article 7/7a procedures
- by making wider and more intensive use of the BEREC Office to support the delivery of its work programme
- by encouraging active and broad participation of all NRAs at all working levels
- by continuing to improve the efficiency of its decision-making processes
- by continuing to improve the consistency of BEREC opinions across cases, and the accountability of its decision-making
- by periodically reviewing BEREC's progress to assess its performance, including the quality of its work and the efficiency of its procedures.