

28th Ordinary Plenary Meeting of the Board of Regulators

Hosted by Lithuanian Communications Regulatory Authority (RRT)

Conclusions

Chair: **Wilhelm Eschweiler**
Vice-President of
Bundesnetzagentur (BNetzA)

6 - 7 October 2016 (Vilnius, Lithuania)

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Annex - List of documents approved for publication at the 28thBoR plenary meeting

Main Results of the 28th Meeting of the BEREC Board of Regulators

The BEREC Board of Regulators (BoR) held its 28th ordinary plenary meeting on 6 October 2016 in Vilnius, Lithuania. The meeting was hosted by the RRT.

During the meeting the BoR discussed and/or approved the following documents:

1. Documents approved for publication

- [BEREC Report on Regulatory Accounting in practice 2016](#);
- [17th BEREC International Roaming Benchmark Data Report](#);
- [BEREC report on the outcomes of the public consultation on the draft BEREC Common Position on Layer 2 Wholesale Access products](#);
- [BEREC Common Position on Layer 2 Wholesale Access products](#);
- [BEREC Report Case Studies on Migration from POTS/ISDN to IP on the Subscriber Access Line in Europe](#);
- [BEREC Report on the outcomes of the public consultation on the draft BEREC Report on challenges and drivers of NGA roll out and infrastructure competition](#);
- [BEREC Report on challenges and drivers of NGA roll out and infrastructure competition](#);
- [BEREC Decision on confirmatory application for access to BEREC internal documents](#).

2. Documents approved for internal use

- Report on Regulatory treatment of termination rates for voice calls originated outside the EEA;
- Follow-up Report on Oligopoly Analysis and Regulation;
- BEREC Report on New Bundle Trends;
- BEREC Report from the USA study trip.

3. Documents approved for public consultation

- [Draft BEREC Work Programme 2017](#).

4. Discussion on topics of strategic importance

- Draft BEREC input to the European Commission implementing acts on fair use policy and sustainability of the abolition of retail roaming surcharges.

5. Documents submitted for information and/or consideration

The BoR took note of the information provided in the following Reports:

- Information on the electronic voting procedures since the last plenary meeting;
- 2016 BEREC Work Programme status update;
- BEREC Chair interventions/meetings since the Vienna Plenary meeting;
- Draft BEREC input to the EC regarding the implementing acts setting out the weighted average of maximum mobile TRs across EU;
- Draft agenda for the 4th BEREC Stakeholder Forum meeting (17 October 2016, Brussels);

- Draft outline for a study on net neutrality and draft tender specification.

6. Oral up-date on important topics

The BoR was briefed in relation to several other important topics, as follows:

- BEREC International activities
- Information from Chair including oral update on elections of Chair 2018 and Vice-Chairs for 2017
- Information from the Commission including presentation on the legislative proposal on the telecommunications regulatory framework;
- Framework review-related developments;
- Review of the AVMS Directive;
- Media regulation;

7. Next meeting

The next ordinary meeting of the BoR will take place on **8 and 9 December 2016 in Berlin (Germany)** and will be hosted by the German [Federal Network Agency](#) (BNetzA).

Introduction and participation

The BEREC Board of Regulators (BoR) held its 28th ordinary plenary meeting on 6 October 2016 in Vilnius, Lithuania.

The meeting was attended by the Heads and/or high-level representatives of the NRAs established in each EU Member State which have primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services. Heads and high-level representatives of the NRAs from the EFTA States and the States that are candidates for accession to the EU, the Commission and the EFTA Surveillance Authority also took part in the meeting.

List of documents

The list of final documents approved by the meeting for publication in compliance with the BEREC Regulation and the BoR transparency rules is presented in Annex to the Conclusions.

Items discussed

A short overview of the information presented under each agenda item and a record of the conclusions reached by the BoR under each agenda item is presented below.

1. Opening of the meeting and adoption of the agenda

Document(s)	BoR (16) Draft BEREC BoR Agenda
Introduction by	BEREC Chair
Information presented	The BEREC Chair opened the meeting and presented the draft agenda to the BoR meeting for approval. The BoR members were invited to suggest any additional issues to be raised or presented under “Any other business” (AOB). There were no such requests from the meeting participants. Next, the Chair welcomed Mr Marcin Cichy, the President of the Office of Electronic Communications in Poland, who attend BEREC Plenary meeting for the first time.
Conclusions	The BoR approved the meeting agenda without amendments.

2. Information from the Commission including presentation on the legislative proposal on telecommunication regulatory framework

Document(s)	No documents
Introduction by	Commission Representative
Information presented	The representative of the European Commission presented to the BoR the latest legislative proposal: the Connectivity Package for the Digital Single Market. The Connectivity Package is complementary to the EU Agenda for Jobs, Growth and Investments and the Bratislava process on the future of the EU.

	<p>The EC representative outlined the key DSM projects which are currently underway: Decision on 700 MHz, Portability Regulation, Roaming Wholesale Regulation, Regulation on geo-blocking and a legislative package on the EU copyright rules. He also thanked BEREC for the input to the ePrivacy Directive review and noted that a new proposal will probably be presented at the end of the year or beginning of next year.</p> <p>Next, the EC representative described the new Connectivity Package for the Digital Single Market, its main components, objectives and key provisions.</p> <p>The Connectivity Package consists of one draft directive and two draft regulations, accompanied by various communications, such as impact studies, explanatory memoranda, an action plan and other communications.</p> <p>The legislative centrepiece of the proposal is a draft directive establishing the European Electronic Communications Code. This new codification will incorporate all four directives that comprise the current European telecoms framework – Framework Directive, Authorisation Directive, Access Directive, Universal Service Directive – and update this framework in key areas such as access regulation and investment incentives, spectrum, service regulation, universal service, and user rights.</p> <p>Further, the Commission proposes a regulation modifying the institutional framework of BEREC. The third legislative proposal is a regulation regarding the promotion of internet connectivity in local communities and public spaces.</p> <p>Beyond these legislative proposals, additional policy papers have been issued: the communication aiming to build a European Gigabit Society and the 5G Action Plan.</p>
Conclusions	The BoR took note of the information.

3. List of the ‘A’ items

Document(s)	<p>BoR (16) 159 Draft BEREC Report on Regulatory Accounting in practice 2016</p> <p>BoR (16) 160 Draft 17th BEREC International Roaming Benchmark Data Report</p> <p>BoR (16) 161 Draft BEREC report on the outcomes of the public consultation on the draft BEREC Common Position on Layer 2 Wholesale Access products</p> <p>BoR (16) 162 Draft BEREC Common Position on Layer 2 Wholesale Access products</p> <p>BoR (16) 164 Draft Report on Regulatory treatment of termination rates for voice calls originated outside the EEA (for internal use)</p>
Introduction by	BEREC Chair
Information presented	The Chair presented the list of “A” items and requested the consent of the BoR Members for including the documents mentioned above in the “A” item list and then asked the BoR to approve them.

Conclusions	The BoR approved the documents included in the 'A' item list.
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4. Information from the BEREC Office

Document(s)	BoR (16) 165 Information on the electronic voting procedures since the last plenary meeting BoR (16) 166 2016 BEREC Work Programme status update
Introduction by	BEREC Office Representatives
Information presented	The BEREC Office representative presented the implementation status of the 2016 BEREC Work Programme. The BoR was also informed about the major BEREC projects/developments that have just been finalised or are currently underway, notably article 7 cases, Information Sharing Portal, BERECnet, BEREC training programme, procurement for the subscription to the regulatory database, study on the effects of Mergers and Acquisitions and the percentage of documents submitted to the meetings which comply with the BEREC Style Guide.
Conclusions	The BoR took note of the information.

5. Roaming

5.1 BEREC input to the European Commission implementing acts on fair use policy and sustainability of the abolition of retail roaming surcharges

Document(s)	BoR (16) 167 Draft BEREC input to the European Commission implementing acts on fair use policy and sustainability of the abolition of retail roaming surcharges
Introduction by	IR EWG Co-Chairs
Information presented	Pursuant to the Regulation (EU) No. 2015/21201 (Roaming Regulation), mobile telecommunications operators are obliged from 15 June 2017 onwards not to levy any surcharge in addition to the domestic retail price on any customer of an EU mobile provider for any regulated roaming voice call, SMS or use of data in an EU country other than that of the home provider. This obligation depends on a legislative act proposed by the European Commission (EC) in July 2016, following a comprehensive review of national wholesale roaming markets in the EU, and to be adopted by the co-legislators by June 2017. On 26 November 2015, the EC began its public consultation on the review of national wholesale roaming markets, a fair use policy (FUP) and the sustainability mechanism referred to in Roaming Regulation EU No. 531/2012 as amended by Regulation No. 2015/2120. The results of the

¹ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance); OJ L 310, 26.11.2015, p. 1–18 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV); <http://eur-lex.europa.eu/eli/reg/2015/2120/oj>

	<p>public consultation, which ended in February 2016, are available on the EC's website.</p> <p>The European Commission, in a letter of 20 June 2016, requested BEREC, in accordance with the Roaming Regulation, to deliver an opinion on (i) detailed rules on the application of a fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges, and (ii) weighted average of maximum mobile termination rates across the EU.</p> <p>The EWG Co-Chairs informed the BoR about the provisions of the new EC proposal and presented updated BEREC opinion.</p>
Conclusions	The BoR discussed the draft document and decided to integrate comments made during the meeting into the draft document and launch the e-clearance procedure with a view to providing the BEREC response to the EC on 14 October 2016.

5.2 BEREC input to the EC regarding the implementing acts setting out the weighted average of maximum mobile TRs across EU

Document(s)	BoR (16) 168 Draft BEREC input to the EC regarding the implementing acts setting out the weighted average of maximum mobile TRs across EU
Introduction by	IR EWG Co-Chairs
Information presented	<p>On 17 December 2015, European Commission adopted an Implementing Regulation (EU) 2015/2352 setting out the weighted average of maximum mobile termination rates across the Union.</p> <p>Pursuant to the Regulation (EU) No 531/2012 the Commission is obliged to review, after having consulted BEREC, the weighted average of maximum mobile termination rates across the Union annually.</p> <p>On the basis of the criteria set out in Article 6c (2) of the Roaming Regulation IV, BEREC collects the figures from Member States and calculates the weighted average of the maximum MTRs in the European Union.</p> <p>The IR EWG Co-Chair informed the BoR on the recent developments and the ongoing e-clearance procedure that would be finalised on 7 October 2016 and the document submitted to the European Commission.</p>
Conclusions	The BoR took note of the information.

6. BEREC Work Programme 2017

Document(s)	BoR (16) 169 Draft BEREC 2017 Work Programme
Introduction by	Representative of the Incoming BEREC Chair
Information presented	<p>The representative of the Incoming BEREC Chair (ARCEP) presented the draft BEREC Work Programme (WP), which is the basis for the work to be carried out by BEREC in 2017. The speaker recalled that the Incoming BEREC Chair 2017 launched a call for inputs for the preparation of the BEREC WP for 2017 in March 2016. In accordance with the practice of the last two years, the process started early in order to give enough time to collect and exchange views as extensively as possible.</p>

	<p>After approval the draft WP would be published for a public consultation, which would last till 2 November 2016, with a public hearing on 17 October 2016 (during the BEREC Stakeholder Forum).</p> <p>After the closure of the public consultation a final draft WP 2017 will be prepared, which will be tabled for approval at the 29th Plenary meeting to take place on 8-9 December 2016 in Berlin.</p>
Conclusions	The BoR approved the Draft BEREC WP 2017 for public consultation which will run from 7 October to 2 November 2016 with a public hearing at the BEREC Stakeholder Forum (17 October 2016, Brussels).

7. Information from the Chair, including oral update on elections of Chair 2018 and Vice-Chairs for 2017

Document(s)	BoR (16) 183 BEREC Chair interventions/meetings since the Vienna Plenary meeting
Introduction by	BEREC Chair
Information presented	<p>The BEREC Chair briefed the meeting on the most important meetings he and other BEREC representatives attended since the Vienna Plenary meeting.</p> <p>Next, the BEREC Chair informed the BoR about the rules and procedures for the election of the BEREC Chair 2018 and Vice-Chairs 2017 which had been launched before the Plenary meeting. Elections for the position of BEREC Chair 2018 and BEREC Vice-Chairs 2017 will take place in P4.</p> <p>In addition, the BEREC Chair informed the BoR about the upcoming EWG Co-Chairs elections. He presented rules and procedures governing the elections and informed the BoR that the call for the EWG Co-Chairs will be launched immediately after the Plenary meeting. The time for which the EWG Co-Chairs will be appointed covers the period from January 2017 till the end of 2018.</p>
Conclusions	The BoR decided to launch the call for the EWG Co-Chairs.

8. Next Generation Networks (NGN)

8.1 Draft BEREC Report on challenges and drivers of NGA roll out and infrastructure competition

Document(s)	<p>BoR (16) 170 Draft BEREC Report on the outcomes of the public consultation on the draft BEREC Report on challenges and drivers of NGA roll out and infrastructure competition</p> <p>BoR (16) 171 Draft BEREC Report on challenges and drivers of NGA roll out and infrastructure competition</p>
Introduction by	NGN EWG Co-Chair
Information presented	The Draft Report on Challenges and drivers of NGA rollout and infrastructure competition was approved by the BoR for public consultation at Plenary 2/2016. The public consultation ran from 6 June till 1 July 2016. In total, BEREC received 7 submissions from different stakeholders.

	<p>The Draft BEREC Report on the outcomes of the public consultation summarises the public consultations. Its objective is to provide an overview of the contributions received and to present BEREC's consequent view of the need to amend the consultation document.</p> <p>The BEREC Draft Report on challenges and drivers of NGA rollout and infrastructure competition is motivated by the different approaches to NGA rollout across MS. It provides an overview of current situations in member states in terms of NGA rollout and investigates the main drivers and challenges. The analysis is based on a case study approach, drawing on information provided by the NRAs.</p>
Conclusions	The BoR approved the documents for publication.

8.2 BEREC Report Case Studies on Migration from POTS/ISDN to IP on the Subscriber Access Line in Europe

Document(s)	BoR (16) 163 Draft BEREC Report Case Studies on Migration from POTS/ISDN to IP on the Subscriber Access Line in Europe
Introduction by	NGN EWG Co-Chair
Information presented	<p>The Draft BEREC Report on Case Studies on Migration from POTS/ISDN to IP on Subscriber Access Lines in Europe analyses the impact of the migration to NGN in the access network with a focus on the technology used for the subscriber access line (SAL). In order to get a deeper insight into the migration of the SAL technology from POTS/ISDN to IP (VoIP) and to foster the exchange of experiences between NRAs, this report has two main objectives. Primarily, it aims to give an overview of the status of the migration to VoIP-based SAL in Europe at a high level, based on information gathered from 31 European countries. Secondly, it aims to give an overview of the migration to VoIP-based SAL already taken place at least to some extent in the network of the incumbent based on the experiences of ten countries (Croatia, Germany, Italy, Luxembourg, Montenegro, Netherlands, Slovakia, Slovenia, Spain and Switzerland).</p>
Conclusions	The BoR approved the document for publication.

9. Market and Economic Analysis

Document(s)	BoR (16) 172 Draft Follow-up Report on Oligopoly Analysis and Regulation
Introduction by	MEA EWG Co-Chairs
Information presented	<p>Draft Follow-up Report on Oligopoly Analysis and Regulation is an "input paper" following the Report on Oligopoly analysis and regulation, which was adopted at 4th Plenary 2015.</p> <p>This document elaborates on:</p> <ul style="list-style-type: none"> – Criteria and potential indicators to be used to identify tight oligopolistic market conditions, organised around the concept of Unilateral Market Power; – Remedies in the context of tight oligopolistic market conditions;

	<ul style="list-style-type: none"> – Tight oligopoly regulation in the context of the ECS Framework rules in relation to remedies – (the law as it is and as it should be); – Existing approaches which are already being used when applying competition law.
Conclusions	The BoR approved the documents for internal use.

10. Benchmarking (BMK)

Document(s)	BoR (16) 173 Draft BEREC Report on New Bundle Trends
Introduction by	BMK EWG Co-Chair
Information presented	<p>Over the past years, bundling has become a common practice that has changed the landscape of services significantly. Bundles satisfy customers' expectations in terms of wide scope of services under one offer.</p> <p>The report describes bundling practices in relation to "Added Services".</p>
Conclusions	The BoR approved the document for internal use.

11. Regulatory Framework – oral update on review related developments

Document(s)	No documents
Introduction by	RF EWG Co-Chairs
Information presented	The Co-Chairs of the RF EWG informed the BoR about that the work of the RF EWG on the BEREC analysis of the new European Electronic Communication Code is ongoing.
Conclusions	The BoR took note of information.

12. BEREC international cooperation

Document(s)	BoR (16) 174 Draft Report from the USA study trip
Introduction by	BEREC Vice-Chair and representative of BEREC Vice-Chair
Information presented	<p>The BEREC Vice-Chair briefly informed the BoR about the study trip to the USA and its main outcomes. During the study trip BEREC representatives held a number of meetings with operators, investors, academics, think tanks, and other stakeholders.</p> <p>The BEREC Vice-Chair representative reported on other recent international events which the BEREC representatives attended. The BoR was also informed about the future international activities.</p>
Conclusions	The BoR took note of the information and approved the document for internal use.

13. Presentation on media regulation

Document(s)	No document
Introduction by	Representatives of CNMC and AKOS
Information presented	Representatives of CNMC and AKOS delivered a presentation on recent developments in the field of media regulation in their countries.
Conclusions	The BoR took note of the information.

14. Presentation on the review of the AVMS Directive

Document(s)	No document
Introduction by	Representative of the EC
Information presented	The EC representative noted that the AVMS directive is currently open for review. A new legislative proposal amending the AVMSD was adopted by the European Commission on 25 May 2016. Viewers, and particularly minors, are moving from traditional TV to the online world, while the regulatory burden is much higher for TV, which requires better protection against harmful content. The Directive therefore introduces flexibility when restrictions only applicable to TV are no longer justified. At the same time, it ensures that consumers will be sufficiently protected in the on-demand and Internet world. This is done while making sure that innovation will not be stifled. The main idea is to achieve a balance between competitiveness and consumer protection. The new proposal is fit for purpose and addresses new challenges arising from convergent environment.
Conclusions	The BoR took the note of the information.

15. 4th BEREC Stakeholder Forum meeting

Document(s)	BoR (16) 153 Draft agenda for the 4th BEREC Stakeholder Forum meeting (17 October 2016, Brussels)
Introduction by	BEREC Vice-Chair (ARCEP)
Information presented	<p>A Representative of the BEREC Vice-Chair (ARCEP) informed the BoR about the 4th Stakeholder Forum meeting, which will take place on 17 October 2016, in Brussels (Belgium), at Hotel Le Plaza.</p> <p>The event will be fully open to the public and in addition will be made available to the public through live web streaming, with sign interpretation. The citizens and other interested parties will have the opportunity to watch the event in real time and to send comments or questions to the speakers through the official BEREC account in the social media.</p> <p>The first part of the BEREC Stakeholder Forum will be dedicated to the connectivity as a primary need, during which speakers will present connectivity challenges for European economy and society. They will also present the state of play of current usages and end-users' needs, as well as technical solutions to improve connectivity and the state of current roll-outs in Europe and possible evolutions.</p> <p>During the second part of the Forum, speakers will present the activities constituting the digital economy and the role of regulation in the sector. In particular, interactions between new actors and traditional operators will be debated as well as the evolution of the use of frequencies. Speakers will also have the opportunity to analyse the impact of the regulation of the open internet on the different undertakings in the value-chain as well as on innovation.</p>
Conclusions	The BoR took note of the information.

16. Proposal for a study on net neutrality

Document(s)	BoR (16) 175 Draft outline for a study on net neutrality and draft tender specification
Introduction by	Representative of BEREC Vice-Chair
Information presented	A representative of ARCEP presented a proposal for a study on net neutrality. The study could consist of two parts. The first part would focus on specific examples of NN regulations adopted in different parts of the world (US, India, and South-America countries – Brazil, Chile) outside the EU. The second part of the study would be dedicated to the implementation process and would focus more on operational aspects (legal context and other aspects; analysis of practical approaches taken by regulators outside the EU; assessment of detection tools).
Conclusions	The BoR decided to amend the scope of the study in accordance with the comments made and launch the procurement for the study.

17. BEREC Decision on request for access to internal documents

Document(s)	BoR (16) 176 Request for access to NN documents BoR (16) 177 Confirmatory application for access to NN documents BoR (16) 178 Draft BEREC Decision on confirmatory application for access to BEREC internal documents
Introduction by	BEREC Office Administrative Manager
Information presented	The Administrative Manager (AM) of the BEREC Office informed the BoR that the BEREC Office had received two requests for access to internal BEREC documents concerning the drafting of the BEREC NN Guidelines.
Conclusions	The BoR approved the decision for publication and asked the AM to proceed with sending an answer to the applicant denying access to the documents requested. .

18. AOB– **Information on the next BoR meeting (8-9 December 2016, Berlin)**

Document(s)	No documents
Introduction by	Representatives of the meeting host (BNetzA)
Information presented	A representative of the meeting host, BNetzA informed the BoR on the logistics of the next plenary meeting.
Conclusions	The BoR took note of the information.

List of documents approved for publication at the 28th BoR plenary meeting

Document number	Document title/hyperlink
	Final documents
BoR (16) 159	BEREC Report on Regulatory Accounting in practice 2016;
BoR (16) 160	17th BEREC International Roaming Benchmark Data Report;
BoR (16) 161	BEREC report on the outcomes of the public consultation on the draft BEREC Common Position on Layer 2 Wholesale Access products;
BoR (16) 162	BEREC Common Position on Layer 2 Wholesale Access products;
BoR (16) 164	BEREC Report Case Studies on Migration from POTS/ISDN to IP on the Subscriber Access Line in Europe;
BoR (16) 170	BEREC Report on the outcomes of the public consultation on the draft BEREC Report on challenges and drivers of NGA roll out and infrastructure competition;
BoR (16) 171	BEREC Report on challenges and drivers of NGA roll out and infrastructure competition;
BoR/2016/02	BEREC Decision on confirmatory application for access to BEREC internal documents.
	Approved for public consultations
BoR (16) 169	Draft BEREC Work Programme 2017.

Vilnius, 6 October 2016