27th Ordinary Plenary Meeting of the Board of Regulators

Hosted by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)

Conclusions

Chair: Wilhelm Eschweiler

Vice-President of

Bundesnetzagentur (BNetzA)

3 June 2016, Vienna (Austria)

Contents

Main Results of the 27th Meeting of the BEREC Board of Regulators

The BEREC Board of Regulators (BoR) held its 27th ordinary plenary meeting on 2-3 June 2016 in Vienna, Austria.

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

1.   Documents approved for publication:

- Termination rates at European level January 2016;

- BoR Decision amending Decision BoR (11) 37 on the Establishment of a Public Register of the BEREC Documents;

- Input paper on potential regulatory implications of SDN and NFV;

- BEREC response to the European Commission's public consultation on the evaluation of the Termination Rates Recommendation

2.   Documents approved for public consultation:

- Draft BEREC Guidelines on Regulators' Implementation of European Net Neutrality rules;

- Draft BEREC Common Position on Layer 2 Wholesale Access Products;

- Draft BEREC report on challenges and drivers of NGA rollout and infrastructure competition

3.   Documents approved for internal use:

- Draft BEREC Communication Strategy

- Draft BEREC Communication Plan 2016

- Draft Rules of procedure for the Information Sharing Portal and oral report on experiences during "testing phase";

- Draft BEREC input paper on OTTs/CAPs

4.   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;

- Outline of the BEREC 2017 Work Programme;

- Preliminary schedule for the ordinary BEREC and Contact Network (CN) meetings in 2017.

5.   Oral up-date on important topics

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

-       recent activities of the BEREC Chair and important events which he attended on behalf of BEREC;

-       the state of work on the key projects developed by the BEREC Office to support the activities of BEREC, BEREC Expert Working Groups (EWGs) and the NRAs;

-       the recent and forthcoming BEREC international activities.

6. Next meeting

The next meeting of the BoR will take place on **6 and 7 October 2016 in Vilnius (Lithuania)** and will be hosted by the Communications Regulatory Authority (RRT). The meeting will be preceded by a Heads Workshop on 5 October 2016.

Introduction and participation

The BEREC BoR held its 27th ordinary plenary meeting on 2-3 June 2016 in Vienna, hosted by Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR).

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, a summary record of the proceedings 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) 89 Draft BEREC BoR Agenda
Introduction by	BEREC Chair
Information presented	The BEREC Chair opened the meeting and welcomed the Members and Observers who attended the meeting for the first time. The BEREC Chair presented the meeting agenda and invited suggestions for any additional topics to be raised or presented under "Any other business" (AOB). The BEREC Chair suggested to include a new item under AOB in the agenda: RF EWG co-chairs oral update on cooperation with RSPG.
Conclusions	The BoR approved the meeting agenda with the amendments mentioned above.

2   Information from the Commission

Document(s)	BoR (16) 110 Letter from Director General CNECT to BEREC Chair
Introduction by	Commission Representative
Information presented	A Commission Representative briefed the BoR members on the following topics: - **Update on the telecom review**: The Digital Single Market (DSM) is centred on the work of independent regulators (NRAs) as is the Framework Review. Since timing is crucial, therefore the EC is accelerating the delivery of the impact assessment of the Framework Review. EC and the Commissioner is open to any discussion and hopes to continue the dialogue with BEREC. - **Review of e-Privacy Directive:** e-Privacy review is ongoing. BEREC has received detailed questions concerning this review. There are many open questions regarding e-Privacy. It has to be discussed further whether e-Privacy should retain the form of a directive. Data retention is not strictly considered part of privacy but at the same time, due to the extensive use of social media, it cannot be completely separated. - **Roaming:** The Commission will table a draft proposal on 15 June 2016 on the review of the wholesale markets. BEREC support will be expected throughout the whole legislative procedure. Concerning the first stage of the new roaming regulation, the EC is satisfied with the implementation. On the other hand, the special roaming packages such as per diems should always be the decision of the user who must also be able to opt-out. The EC strongly believes that any marketing behaviour of operators which confuses end users is unacceptable. On this work item the co-operation with BEREC is crucial. - **European Digital Progress report:** The Digital Progress Report has been published. The report shows the state of the digital communications markets across the different Member States. - **Other:** The EC presented the recent Audio-visual Directive, the Content Portability Regulation and the recent developments in the regulation of 700MHz band. 5G development is considered important and therefore may require a different approach form regulators. As of 1st July, DG CNECT will be reorganised.
Conclusions	The BoR took note of the information.

3   Information from the BEREC Office

Document(s)	BoR (16) 98 Information on the electronic voting procedures since the last plenary meeting BoR (16) 99 2016 BEREC Work Programme status update
Introduction by	BEREC Office Representatives
Information presented	The BEREC Office AM presented the outcome of the three recent electronic voting procedures. A BEREC Office representative presented the implementation status of the 2016 BEREC Work Programme and updated the BoR on major BEREC projects that are currently underway (BERECnet phase two, IS-Portal, BEREC training new procurement status, new AV equipment).
Conclusions	The BoR took note of the information.

4   Net Neutrality (NN)

Document(s)	BoR (16) 94 Draft BEREC Guidelines on Regulators' Implementation of European Net Neutrality rules
Introduction by	NN EWG Co-Chairs (Ofcom/Nkom)
Information presented	Following the adoption of the Telecoms Single Market Regulation, BEREC has been tasked with producing guidelines for the implementation of the provisions related to net neutrality by 30 August 2016. The NN EWG co-chairs presented the draft BEREC NN guidelines. They emphasised the importance of this task both for BEREC and for the market and stakeholders. Since September 2015, 13 drafting meetings were held and 40 experts were involved in the drafting team representing 20 NRAs in close collaboration with the EC.
Conclusions	The BoR discussed and approved the draft NN Guidelines for public consultation until 18 July 2016 and the communication toolkit for publication on 6th June 2016.

5   Roaming - oral update on the BEREC input to the European Commission implementing acts on fair use policy and sustainability of the abolition of retail roaming surcharges

Document(s)	Presentation
Introduction by	Roaming EWG Co-Chairs (RTR/CNMC)

Information presented	According to the BEREC Work Programme 2016, BEREC shall agree on the input to the implementing acts on FUPs (Fair Use Policy) and the methodology to assess the sustainability of RLAH. With regard to the FUP, the drafting team is analysing different options for the implementation of the FUP, which should prevent abuse of these rules. The final rules should be flexible enough and easy to implement by operators. Concerning the sustainability of RLAH, the drafting team is discussing several approaches for the assessment. The Roaming EWG presented only some preliminary results for discussions.
Conclusions	The BoR took note of the information.

6   Next Generation Networks (NGN)

6.1   BEREC Common Position on layer 2 wholesales access products (WAPs)

Document(s)	BoR (16) 95 Draft BEREC Common Position on layer 2 wholesale access products
Introduction by	NGN EWG Co-Chair (RTR)
Information presented	. In recent years, several incumbent operators rolled out NGA networks in order to provide higher bandwidths to end-users. This leads to situations in which access to physical infrastructure was not considered sufficient to ensure effective competition at the retail level. In order to foster the exchange of experiences and contribute to the harmonisation of regulatory instruments used in the European Union, BEREC has already analysed L2 WAP in the past years and published the BEREC Report "Common characteristics of L2 WAP in the EU". In the current document BEREC goes one step further and defines Common Positions for L2 WAP imposed on the wholesale local access market (market 3a) and L2 WAP imposed on the wholesale central access market (market 3b). Common Positions are defined for the conditions for the imposition of L2 WAP, prices and technical characteristics, contributing to the regulatory objective of enabling ANOs to provide a variety of competitive services for residential and business customers (including voice, internet, IPTV, data).
Conclusions	The BoR approved the document for public consultation until 1 July 2016.

6.2   Challenges and drivers of NGA roll out and infrastructure competition

Document(s)	BoR (16) 96 Draft BEREC Report on challenges and drivers of NGA roll out and infrastructure competition
Introduction by	NGN EWG Co-Chair (BNetzA)

Information presented	In the light of the Digital Agenda targets and national NGA-rollout plans, the effective regulation of markets related to NGA-networks and services remains one of the key challenges for regulators.
	BEREC has further studied the factors determining NGA roll-out across MS and the broad regulatory approaches towards promoting effective competition and regulatory predictability to incentivise NGA investment to the benefit of European citizens.
	The report provides an overview of where MS currently stand in terms of NGA rollout and investigates the main drivers and challenges. The analysis is mainly based on a case study approach, drawing on information obtained from NGA experiences provided by NRAs.
Conclusions	The BoR approved the document for public consultation until 1 July 2016.

6.3 Input paper on potential regulatory implications of NFV and SDN

Document(s)	BoR (16) 97 Input paper on potential regulatory implications of SDN and NFV
Introduction by	NGN EWG Co-Chair (RTR)
Information presented	In recent years the electronic communications sector has been working very intensely on Software-Defined Networking (SDN) and Network Functions Virtualisation (NFV). Both aim to transform the way that network operators design and operate networks. In order to assist NRAs to cope with the possible regulatory challenges related to these new technological developments and to respond to the request of the European Commission for a BEREC opinion on the review of the regulatory framework, the draft document gives an overview of what SDN and NFV is and on the current state of development of SDN and NFV. The regulatory implications of SDN and NFV are analysed and the requirements which the revised regulatory framework needs to fulfil are discussed.
Conclusions	The BoR approved the draft document for publication and for submission to the Commission.

7   Information from the Chair

Document(s)	No documents
Introduction by	BEREC Chair
Information presented	The BEREC Chair briefed the BoR on the outcome of the most important recent meetings: - meeting between the BEREC Chair and BEUC (2 March 2016, Brussels) and ECTA (15 March, Brussels); - IIC Telecommunications and Media Forum (16 March 2016, Brussels); - AmCham EU's Transatlantic Conference (17 March 2016, Brussels);

	- EaPeReg Workshop (7 April 2016, Riga); - 10th Annual Digital Regulation Forum (20 April 2016, London); - High-Level-Meeting with Commissioner Oettinger (21 April 2016, Brussels); - BEREC-MEP meeting (25 April 2016, Brussels); - INTX Cable Conference (16 – 17 Mai 2016, Boston) Upcoming meetings: - 6 June with GSMA - ITRE Committee 15 June 2016 - JP Morgan conference (20 June 2016, London)
Conclusions	The BoR took note of the information provided.

8   List of the 'A' items

Document(s)	For publication: BoR (16) 90 Draft BEREC Report on Termination rates at European level January 2016 BoR (16) 91 Draft BoR Decision amending Decision BoR (11) 37 on the Establishment of a Public Register of the BEREC Documents For internal use: BoR (16) 92 Draft BEREC Communication Strategy BoR (16) 93 Draft BEREC Communication Plan 2016
Introduction by	BEREC Chair
Information presented	The BEREC Chair presented the list of "A" items as listed above. The list of "A" items had been drawn up on the basis of the conclusions of the CN according to which BoR approval of the document mentioned above should be possible without further discussion.
Conclusions	The BoR approved the documents included in the 'A' item list.

9   Remedies

9.1   BEREC input to the review of the Termination Rates Recommendation

Document(s)	BoR (16) 100 Draft BEREC response to the European Commission's public consultation on the evaluation of the Termination Rates Recommendation
Introduction by	REM EWG Co-Chair (ARCEP)
Information presented	On 7 May 2009 the Commission adopted its Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, aiming at coherent regulation in termination markets across the EUIn March 2016, the Commission launched a public consultation. The BEREC response recalls the benefits of setting the termination rates at a pure BU-LRIC level, consistent with the recommendation. It shows the positive effects of a coherent approach across Europe, for national markets as well as the development of an internal market.

	The document recognizes that the Recommendation has been successful in reducing termination rates across the EU. However, despite the significant and widespread decrease of rates there are still divergences among countries, and the Recommendation itself has some limitations. It recommends that the Commission chooses the most appropriate tool in the review of the TRR.
Conclusions	The BoR approved the document for publication and submission to the Commission.

9.2 Regulatory treatment of termination rate for voice calls originated outside the European Economic Area – Oral update on preliminary results

Document(s)	No documents
Introduction by	REM EWG Co-Chair (ARCEP)
Information presented	In 2015, the European Commission suggested it may be useful that BE-REC develops an overall position on regulatory treatment of termination rates for voice calls originated outside the EEA, in light of the EU international commitments. The BoR was informed about the current state of play in Member States and the group's preliminary assessment of options.
Conclusions	The BoR agreed to submit the report as an internal document for the 28th BEREC Plenary.

10 Benchmarking

10.1 Information Sharing Portal

Document(s)	BoR (16) 101 Draft Rules of procedure for the Information Sharing Portal and oral report on experiences during "testing phase"
Introduction by	Benchmarking EWG Co-Chair (ANACOM)
Information presented	The ISP was launched in February 2016 for a transitional period for around 3 months for use only by the NRAs with a view to gaining more experience and assessing the need for any adjustments before opening the ISP (Information Sharing Portal) to the public. The draft Rules of Procedure (RoP) prescribes the general principles dealing with how the ISP is structured and includes guidance on how links should be uploaded to the IS Portal from a technical and contextual point of view.
Conclusions	The BoR approved the RoP for internal use. The BoR also approved the opening of the ISP to the public.

11 BEREC international activities – oral up-date

Document(s)	No documents
Introduction by	Representative of the BEREC Vice-Chair (ANACOM)
Information presented	A representative of ANACOM provided information on BEREC international activities, namely on the BEREC international mission to the United States and on the activities with the current cooperation partners (FCC, Regulatel, EMERG and the EaPeReg).
Conclusions	The BoR took note of the information provided.

12 BEREC Work Programme 2017

Document(s)	BoR (16) 102 Outline of the BEREC 2017 Work Programme
Introduction by	Representative of incoming BEREC Chair (ARCEP)
Information presented	The annual WP is the basis for the work to be carried out by BEREC during the year in question. Its early preparation facilitates a broad consultation with the NRAs, the Commission, the EWG Chairs and the BEREC Office and also promotes effective resource allocation. In order to ensure timely preparation of the BEREC WP for 2017 onwards, the Incoming BEREC Chair launched a call for input to the NRAs, the Commission, the EWG Chairs and the BEREC Office. The outline of the BEREC WP 2017 and a comprehensive list of proposed topics to be included in the WP 2017 were presented to the BoR for its approval. The draft WP 2017 will be presented for approval for public consultation at CN3/P3 and for final approval at CN4/P4.
Conclusions	The BoR voted to continue to work on the draft WP 2017 incorporating the comments received and to submit it for the 28th BEREC Plenary.

13 BEREC input paper on OTTs

Document(s)	BoR (16) 103 Draft BEREC input paper on OTTs/CAPs
Introduction by	Drafting Team Leader (ACM)
Information presented	The input paper is based on a rule-by-rule assessment of most of the rules of the ECN/S Framework. The primary objective of the assessment is to identify the proportionate scope of most of the rules of the ECN/S Framework, "scope" being the services to which the rules apply. The objective of the input paper is to be able to respond more effectively to proposals regarding the new ECN/S Framework from the European Commission.

	The input paper groups the rules that could share the same or a similar scope, e.g. rules regarding telephony, in order to get a more compact document. The input paper takes a clear position on the scope of most of the rules. Further in-depth assessment would be needed to assess the options.
Conclusions	The BoR agreed to continue the work taking into account the guidance provided by the Plenary and to continue the co-operation with the Commission.

14   4th BEREC Stakeholder Forum meeting

Document(s)	BoR (16) 109 Draft agenda 4th BEREC Stakeholder Forum
Introduction by	Incoming BEREC Chair (ARCEP)
Information presented	BEREC Vice-Chair (ARCEP) briefed the BoR members about the 4th Stakeholder Forum meeting, which will take place on 17 October 2016, in Brussels (Belgium), at Hotel Le Plaza. 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.
Conclusions	The BoR took note of the information presented.

15   AOB

15.1 Calendar of Meetings for 2017

Document(s)	BoR (16) 104 Preliminary schedule for the ordinary BEREC and Contact Network (CN) meetings in 2017
Introduction by	Incoming BEREC Chair (ARCEP)
Information presented	According to Article 4 (6) of the BEREC Regulation the Board of Regulators shall meet at least four times a year in ordinary session, which shall be convened by its Chair. The ordinary meetings of the Board of Regulators are prepared by a specific type of Expert Working Group, called "Contact Network", which is composed of senior representatives of all Members, chaired by a representative of the Chair of the Board of Regulators. The Rules of Procedure of the Board of Regulators also state that any BEREC member may host a meeting of the Board of Regulators. The BEREC Chair 2017 listed all the preliminary venues of the year 2017.
Conclusions	The BoR took note of the information.

15.2 Information on the next plenary meetings (5-7 October 2016, Vilnius)

Document(s)	No documents
Introduction by	Representative of the meeting host (RRT)
Information presented	Representative of the meeting host, RRT I provided information on the logistics for the meeting.
Conclusions	The BoR took note of the information.

Vienna, 3 June 2016

List of documents approved for publication at the 27thBoR plenary meeting

Document number	Document title/hyperlink
	Final documents
BoR (16) 90	Termination rates at European level January 2016
BoR/2016/01	BoR Decision amending Decision BoR (11) 37 on the Establishment of a Public Register of the BEREC Documents
BoR (16) 97	Input paper on potential regulatory implications of SDN and NFV
BoR (16) 100	BEREC response to the European Commission's public consultation on the evaluation of the Termination Rates Recommendation
	Approved for public consultations
BoR (16) 94	Draft BEREC Guidelines on Regulators' Implementation of European Net Neutrality rules
BoR (16) 95	Draft BEREC Common Position on Layer 2 Wholesale Access Products
BoR (16) 96	Draft BEREC report on challenges and drivers of NGA rollout and infra-structure competition

3 June, 2016