

## **BEREC Report on the outcome of the consultation on the Draft BEREC Medium Term Strategy for 2018-2020**

5 October, 2017

## Contents

<b>Executive Summary</b> .....	2
<b>Market and Technological Developments</b> .....	4
<b>BEREC Strategic Priorities 2018-2020</b> .....	6
<b>Strategic Priority 1: Responding to connectivity challenges and to new conditions for access to high-capacity networks</b> .....	7
<b>Strategic Priority 2: Monitoring potential bottlenecks in the distribution of digital services</b> .....	9
<b>Strategic Priority 3: Enabling 5G and promoting innovation in network technologies</b> .....	11
<b>Strategic Priority 4: Fostering a consistent approach of the net neutrality principles</b> .....	13
<b>Strategic Priority 5: Exploring new ways to boost consumer empowerment</b> .....	14
<b>BEREC Work</b> .....	16
<b>Output and efficiency</b> .....	16
<b>Stakeholder engagement</b> .....	16
<b>Concluding remarks</b> .....	17

## Executive Summary

This report summarises the responses to BEREC's consultation on the Draft Medium Term Strategy (MTS) for 2018-2020 that ran from 7 June until 5 July 2017.

BEREC's MTS has the function of guiding its work in the medium term and serves as the blueprint for BEREC's annual Work Programmes. The MTS was last updated in 2014, establishing three over-arching strategic objectives that follow from the policy objectives and regulatory principles that BEREC members apply in accordance with Article 8 in the Framework Directive: promoting competition and investment, promoting the internal market and empowering and protecting end-users.<sup>1</sup>

BEREC is reviewing its MTS to make sure that its work stays relevant in relation to major developments in the digital ecosystem and this year's update will establish a strategy for the period 2018-2020 based on BEREC's mandate and on the input provided by stakeholders.

To this end, BEREC launched an initial consultation on 8 March, running until 5 April, in which it sought input from stakeholders on how BEREC's work is perceived and on which market developments will be important for BEREC to consider in its MTS for the period 2018-2020. Following this, BEREC conducted a second consultation on the updated draft MTS, which ran from 7 June until 5 July 2017.

In response to this consultation, BEREC received 14 contributions:

1. A submission sent on behalf of a group of MNOs ('a group of MNOs'):
  - i. Bouygues Telecom
  - ii. 3 / Hutchison
  - iii. Free / Iliad
  - iv. MASMOVIL Group
  - v. Tele2
  - vi. Vodafone
2. AT&T
3. BEUC
4. Cable Europe
5. Democritus
6. Digital Europe
7. European Broadcasting Union (EBU)
8. European Competitive Telecommunications Association (ECTA)
9. European Digital Rights (EDRi)
10. European Telecommunications Network Operators' Association (ETNO)
11. FTTH Council Europe ('FTTH Council')
12. GSM Association (GSMA)

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<sup>1</sup> BoR (14) 182, BEREC Strategy 2015-2017, 4 December 2014

[http://berec.europa.eu/eng/document\\_register/subject\\_berec/annual\\_work\\_programmes/4785-berec-strategy-2015-2017](http://berec.europa.eu/eng/document_register/subject_berec/annual_work_programmes/4785-berec-strategy-2015-2017)

13. MVNO Europe

14. Unión General de Trabajadores (UGT)

These contributions and BEREC's response to them, are summarised in the following sections of this report. The non-confidential responses will also will be published on BEREC's website.

## Market and Technological Developments

With regard to data, **DIGITALEUROPE** stated that Article 20 of the General Data Protection Regulation provides for data portability, which should ensure the transfer of personal data and facilitate switching by end-users between service providers.

Also, with regard to digital exclusion, **DIGITALEUROPE** welcomed the proposals in the European Electronic Communications Code and suggested that NRAs could build on this to work with operators and local communities with the aim of deploying high speed broadband in rural, sparsely populated areas. It also highlighted the importance of education and skills for using the internet and online tools.

**BEREC** acknowledges the two comments from DIGITALEUROPE. An explanation that digital exclusion may become a particular problem in rural or sparsely populated areas where access to essential services can be a challenge was added to the MTS. Furthermore, BEREC specified that the ability to transfer personal data from one provider to another will likely become an important condition for switching.

**EBU** agreed that the continued transition to next generation broadband access and the trend towards internet-enabled services are underpinned by technical developments in networks and an increasing willingness by end-users to buy and use services (as stated in paragraph 2 on page 3 of the draft MTS). However, it also highlighted the importance of high quality content and applications on the open internet as a driver for fast broadband usage, IAS demand and accelerating digitisation. Therefore, it suggested that BEREC should recognise the role of content and applications providers (CAPs) online in the Internet value chain.

**BEREC** acknowledges the comment and has changed the term from OTT to CAPS in the MTS. Furthermore, the drivers for a continuing transition to next generation fixed and mobile broadband access were complemented.

**EBU** also agreed with the statement on page 5 of the draft MTS that 5G needs spectrum resources, but suggested that other services and applications may also need their own access to dedicated spectrum resources in the future.

**BEREC** acknowledges that spectrum resources will continue to be important to a wide variety of services in the future and not only for 5G.

**ECTA** supported the statements made about the importance of very high-capacity networks and requested that this position is confirmed and emphasised in the final version of the MTS.

**BEREC** takes note of the comment and will maintain the position in the final version of the MTS.

**ECTA** and **MVNO Europe** highlighted the issue of Business-to-Business (B2B) markets, which they considered may be characterised by a lesser degree of competition than Business-to-Consumer (B2C) markets. They requested that more attention was given to this issue.

**BEREC** acknowledges this comment and has added a reference to business markets in the text in order to clarify that BEREC will pursue the objective of promoting competition in both B2B and B2C markets as needed.

**MVNO Europe** suggested further attention is needed with regard to developments in mobile markets due to the impact of consolidation and related competition issues. It also suggested work was needed to facilitate competition and innovation in 5G networks, including MVNO access on 5G. It also highlighted the issue of fixed-mobile convergence.

**BEREC** acknowledges that facilitating competition will be an important aspect to work with in relation to 5G and has added this to the list of challenges under Strategic Priority 3.

**AT&T** considered that BEREC has correctly identified many of the market and technological developments that will be relevant over the time period. In this context, AT&T welcomed BEREC's recognition of the significance of technologies such as 5G, IoT, Network Function Virtualisation (NFV) and Software Defined Networking (SDN). It considered that these developments demonstrate the need to continually review and adapt regulatory models to the evolving digital ecosystem.

**BEREC** agrees and takes note of the comment but has not found that the comment warrants any change to the current text.

**DIGITALEUROPE** expressed its support for an ex-post regulatory approach to accelerate the transition from copper-based networks to more advanced options.

**BEREC** agrees and takes note of the comment but has not found that the comment warrants any change to the current text.

**DIGITALEUROPE** also emphasised that telecom network access providers, device manufacturers and OTT providers are interdependent and considered that this should be reflected more in BEREC's MTS.

**BEREC** agrees and takes note of the comment but has not found that the comment warrants any change to the current text.

**ECTA** also urged BEREC and the NRAs to continue to robustly address structural telecommunications infrastructure, network and service competition issues on an ex-ante basis, which it considered as NRAs' core mandate.

**BEREC** agrees and takes note of the comment but has not found that the comment warrants any change to the current text.

**A group of MNOs** argued that the requirements for backhaul are changing due to 5G networks. In particular, they suggested that the infrastructure that meets these requirements is usually only available to MNOs with SMP on fixed infrastructure. They suggested that this situation may lead to a reduction in competition on the retail market for 5G services.

**BEREC** agrees with the importance of backhaul for 5G development, but is of the opinion that the MTS sufficiently covers this aspect, not least in the first and third strategic priorities. Therefore, no change has been made to the text.

## **BEREC Strategic Priorities 2018-2020**

**AT&T, EBU, ECTA, ETNO** and **MVNO Europe** supported or emphasised the importance of BEREC's three over-arching strategic objectives.

Notwithstanding this, **ETNO** argued that the overriding objective of the regulatory framework and its implementation should be to provide society with best-in-class connectivity, as it considered this is the key tool to empower EU citizens and promote growth across the EU in a sustainable competitive environment.

Several respondents made specific comments in relation to the three over-arching objectives.

With regard to the first strategic objective – promoting competition and investment:

- **Democritus** expressed support for this objective.
- **Cable Europe** suggested that the statement “effective and sustainable competition is what drives efficient investment and choice for end-users” could be misleading. It suggested that further explanation may be necessary, based on the conclusions of the BEREC report “Challenges and drivers of NGA rollout and infrastructure competition”. Cable Europe suggested instead that investment in cable or FTTP networks was crucial for competition. Cable Europe stated that regulation should be a catalyst for competition, but could not create competition itself.
- **EBU** suggested that this objective was linked to the third objective, in particular in the way that consumer choice underpins competition and consumer empowerment and protection provides incentives to invest appropriately.
- **ETNO** requested BEREC to note the importance of creating the right incentives for investment.
- **FFTH Council** emphasised NRAs' roles in lowering barriers to entry in potentially competitive urban areas and suggested that a consistent EU-wide approach on best practices with regard to this issue would be beneficial.
- **MVNO Europe** requested that BEREC recognises the investments of MVNOs and the contributions they make to financing mobile networks.

With regard to the second strategic objective – promoting the internal market:

- **AT&T** encouraged BEREC to consider how to streamline and harmonise the various data gathering exercises that NRAs conduct in order to reduce the regulatory burden on cross-border service providers. It suggested that this may also facilitate improved information sharing and comparative market analysis.
- **Cable Europe** and **ETNO** argued in favour of harmonised and consistent regulation and raised concerns about the risks of fragmented legislative initiatives.

- **ETNO** suggested that in order to achieve a Digital Single Market, it is important to address converging technologies and services through a technology-neutral approach, maintaining fair competition. It suggested BEREC had a role in this regard to achieve a consistent regulatory environment.

With regard to the third strategic objective – empowering and protecting end-users:

- **Cable Europe** suggested more could be done to involve operators in the process of empowering and protecting end-users.
- **Democritus** expressed support for the objective.
- **EBU** supported a broad definition of "end-user", as interpreted by BEREC in its Net Neutrality Guidelines and in accordance with the European Commission proposal establishing the European Electronic Communications Code.
- **ETNO** suggested that the most important and practical ways to achieve the objective were to maximise availability, quality and choice of communications networks and digital services. ETNO also emphasised the balance between ensuring reasonable safeguards and granting consumers the right to make informed decisions, without creating "information overload".

**UGT** advocated for a greater focus on economic growth and, in particular, employment, within the regulation of telecommunications markets.

**BEREC** would like to thank all stakeholders for providing comments on the wording and scope of the over-arching strategic objectives. These objectives are meant to outline the high-level, generally applicable purpose of the work of BEREC. They are also designed to be consistent with the policy objectives and regulatory principles applied by its members and with the objectives pursued by regulators at the EU level. Using this as a basis, the MTS develops some slightly more specific aims under the 'strategic priorities', as described in the following sections. As such, BEREC will maintain the draft text relating to the over-arching strategic objectives, due to their continued relevance.

## **Strategic Priority 1: Responding to connectivity challenges and to new conditions for access to high-capacity networks**

**FTTH Council** also noted the importance of Very High Capacity (VHC) networks and argued that the competitive process should drive private investments in telecom networks. However, it also suggested more clarity was needed on whether that competition is infrastructure-based or service-based using virtual access remedies. It emphasised the benefits of end-to-end infrastructure-based competition, especially in potentially competitive urban areas, rather than service-based competition and it argued that service-based competition normally undermines network investment. However, it also noted the benefits of sharing passive infrastructure, in particular in-building wiring. It suggested that a consistent approach across the EU, based on best practices, could be highlighted in BEREC's MTS.

**BEREC** acknowledges this comment and has highlighted the importance of developing best practices.



**MVNO Europe** highlighted a general interpretation of high-capacity networks, i.e. including wireless as well as fixed networks. It argued that the draft MTS places too much emphasis on fixed high-capacity networks and requested this to be modified in the final version in order to make it clear that connectivity challenges and access to high-capacity networks concerns mobile/wireless networks in an equal manner.

**BEREC** agrees with the comment. The importance of both wireless and fixed high-capacity networks are explicitly mentioned in the first and third strategic priorities. Therefore, no further change has been made to the text.

**BEUC** encouraged BEREC to ensure that this strategic priority also takes into account the need for monitoring and resolving new forms of anticompetitive dynamics in telecoms markets. It also expressed effective and sustainable competition has been the driving force of success of the European liberalisation process in the telecoms sector and that investment will not be incentivised through deregulation.

**BEREC** agrees with this comment, but is of the opinion that the MTS sufficiently covers this aspect. Therefore, no change has been made to the text.

**ECTA** and **Cable Europe** argued in favour of the continued relevance of the SMP regime.

**Cable Europe** considered that symmetric or non-SMP based access should only be applied in rare and clearly defined cases to deal with certain instances of local monopolies and should not replace the role that SMP plays within the regulatory framework. In its view, any departure from the SMP concept would undermine investment incentives of cable operators as challengers to the incumbent operators.

**BEREC** agrees with the central importance of the SMP-regime and takes note of these comments. No change has been made to the text.

**ECTA** suggested that competition problems are likely to persist, including for Very High Capacity (VHC) networks and that regulatory vigilance was needed to prevent re-monopolisation and anti-competitive oligopolies. It suggested that symmetric obligations, meant to address infrastructure bottlenecks, would not be appropriate for these purposes. It also highlighted the need to consider competition problems regarding VHC networks from a B2B perspective as well as a B2C one.

**BEREC** acknowledges the comment and is of the opinion that the MTS sufficiently covers this aspect in the first strategic priority. Therefore, no change has been made to the text.

**ECTA** and **a group of MNOs** also stated that, since 5G will require suitable backhaul infrastructure (including VHC), there was a risk that fixed SMP MNOs could take advantage of this and leverage their position on the mobile market to the detriment of competition. Therefore, they suggested that BEREC closely monitors the availability of fit-for-purpose backhaul on competitive terms and consider remedies to potential competition problems through the imposition of passive access obligations (ducts and dark fibre). ECTA also suggested that BEREC should assess the potential economic, operational and technical barriers to rolling out networks with very

dense small cells and ensure that all operators can continue to offer a competitive retail offer in 5G.

**BEREC** agrees but is of the opinion that the MTS sufficiently covers this aspect in the first and third strategic priorities. Therefore, no change has been made to the text.

**ETNO** and **GSMA** appreciated the recognition of the importance of investments in new and enhanced infrastructure and services as a strategic priority. **ETNO** emphasised technology neutrality and the role of incentives to encourage investment and innovation.

**BEREC** agrees but is of the opinion that the MTS sufficiently covers this aspect. Therefore, no change has been made to the text.

**ETNO** and **GSMA** also advocated the benefits of cooperation between operators (such as network and spectrum sharing) and cautioned against regulatory intervention to mandate access or shared use.

**BEREC** considers that the issue of cooperation between operators (such as network and spectrum sharing) has been taken into account in the MTS, but that judgements about its merits or risks should be dealt with under specific items of the BEREC Work Programme. Therefore, no change has been made to the text of the MTS.

**ETNO**, **GSMA** and **FTTH Council** raised concerns about “oligopoly regulation”, in particular due to perceived risks for investors.

**ETNO** also considered that the emergence of less homogenous competitive conditions requires attention, including the application of granular geographic segmentation of remedies to avoid disproportionate remedies on a broader level.

**DIGITALEUROPE** highlighted the risks of unnecessary regulatory intervention, particularly with regard to “Very High Capacity Networks”.

**BEREC** takes note of the concerns expressed about oligopoly regulation, less homogenous competitive conditions and unnecessary regulation, but considers that these potential issues are sufficiently taken into account in the MTS and that further work would be needed in each case under specific items of the BEREC Work Programmes. Therefore, no change has been made to the text of the MTS.

## **Strategic Priority 2: Monitoring potential bottlenecks in the distribution of digital services**

**Democritus** and **EDRi** raised concerns that bundling and other marketing strategies will create incentives for ISPs to violate key net neutrality principles. They urged BEREC to closely monitor such practices.

**BEREC** acknowledges this comment and has emphasised the example of new bundling practices more clearly in the second strategic priority.

**EBU** emphasised the importance of monitoring potential bottlenecks in the distribution of digital services. It suggested further developing robust data in the public domain about the behavior of intermediary actors, their role as gatekeepers and the repercussions they may have on the digital value chain.

In addition to monitoring potential bottlenecks to competition, **EBU** suggested that BEREC should more broadly consider potential access or distribution bottlenecks. Referencing a previous BEREC report (on differentiation practices and related competition issues in the scope of net neutrality) EBU highlighted the risk of network operators excluding rivals and hampering end users' access to new services and content without necessarily infringing competition rules.

**BEREC** takes note of the comments from EBU but is of the opinion that the MTS sufficiently covers these aspects in its second strategic priority. Therefore, no change has been made to the text.

**ETNO** considered that the variety of business models requires a consistent regulatory approach across the digital services market. It also suggested that care was needed when regulating bundles, and that clarification was needed on the understanding of the term “bundles”. **ETNO** also argued that the transparency framework established by Regulation (EU) 2015/2120 is sufficient and no further work or specification that limits flexibility and may impose additional burden is required in this regard. It cautioned against overloading customers with too much information that may distract them from the relevant information and ensure that an appropriate balance is struck to aid consumer decision making.

**BEREC** takes note of the comments from ETNO but is of the opinion that the MTS sufficiently covers these aspects in its second strategic priority. Therefore, no change has been made to the text.

**BEUC** suggests BEREC should consider competition across adjacent markets, in particular within the Internet value chain. For instance, it highlighted the relevance of vertical integration by telecoms and content providers and the risks around zero-rating. In general, BEUC suggested it was important to identify and address competitive bottlenecks in the digital value chain.

**BEREC** takes note of the comment but is of the opinion that the MTS sufficiently covers this aspect in its second and fourth strategic priorities. Therefore, no change has been made to the text.

**DIGITALEUROPE** advised BEREC and its members to exercise caution and ensure they have the right expertise before analysing markets beyond the traditional telecoms sector and be ready to adopt different regulatory approaches, in particular due to the variety of business models and fast-changing markets.

**BEREC** takes note of the comment. No change has been made to the text.

**GSMA** considered that it was important to analyse and evaluate how the digital value chain is evolving and how potential bottlenecks, arising due to the changing interaction between service

and network providers, could be addressed. GSMA also referred to its report on the Internet Value Chain, which identifies a number of general findings related to the value chain.

**BEREC** takes note of the comment but is of the opinion that the MTS sufficiently covers this aspect in its second strategic priority. Therefore, no change has been made to the text.

**Cable Europe** suggested that NRAs will have to include new players in the digital ecosystem when performing new market analysis. It also highlighted the issue of a disparity between the obligations placed on ECS (Electronic Communication Services) players and those that are placed on ISS (Information Society Services) players, even if the services are interchangeable.

**BEREC** takes note of the comment. No change has been made to the text.

**MVNO Europe** emphasised that work under this strategic priority should not be to the detriment of BEREC and its constituent NRAs robustly addressing competition issues in telecommunications markets on an ex-ante basis, which it considered remains NRAs' core mandate. It also referred to its response to BEREC's previous consultation on its new MTS.

**BEREC** takes note of the recommendation. No change has been made to the text.

### **Strategic Priority 3: Enabling 5G and promoting innovation in network technologies**

**Democritus** and **EDRi** highlighted the importance of non-discrimination principles in the net neutrality regulation and ensuring that the conditions around 5G did not undermine this. They also urged BEREC to monitor the standardisation process for 5G, NFV and SDN and to participate in it where possible, so that new technical specifications are compatible with the current telecoms regulatory framework in the EU.

In relation to this strategic priority, **ECTA** and **MVNO Europe** highlighted the continued need to promote competition, for instance ensuring that technologies are not deliberately designed or implemented in a way that dampens competition or makes it impossible.

**BEREC** acknowledges these comments and has emphasised the importance of competition and consistency in the third strategic priority.

**BEUC** considered that BEREC should focus closely on the development and deployment of the Internet of Things, in particular to ensure that consumers are well protected.

**BEREC** agrees but is of the opinion that the MTS sufficiently covers this aspect in its third strategic priority. Therefore, no change has been made to the text.

**Cable Europe** recommended that BEREC and the NRAs should keep an open dialogue with the industry in relation to 5G and new network technologies, rather than focusing on regulation that will impact technology developments at a very early stage. Cable Europe also considered that BEREC and NRAs have a critical role in educating consumers and cooperating with electronic communication operators.

**BEREC** agrees but is of the opinion that the MTS sufficiently covers this aspect in its third strategic priority. Therefore, no change has been made to the text

**DIGITALEUROPE, ETNO and GSMA** argued that there should be acknowledgement of the massive investments needs for 5G and the need to ensure regulatory certainty and predictability.

**BEREC** acknowledges the need for investments in 5G and the importance of regulatory certainty and predictability. While securing investments should not be a strategic priority for BEREC, regulatory certainty and predictability should. The third strategic priority has thus been amended to include an aim for BEREC to ensure consistency with the regulatory framework.

Additionally, in **ETNO's** view, BEREC should also consider the changes in the digital environment deriving from IoT services, especially regarding data ownership and end-user experience, and should support the development of innovative business models.

**BEREC** agrees but is of the opinion that the MTS adequately covers this aspect in its third strategic priority. Therefore, no change has been made to the text

**GSMA** considered that new technologies, such as SDN or NFV, are still at their formative stage and that there would not be any justification to include such new technologies or new innovative interfaces and services in the scope of sector specific regulation.

**BEREC** acknowledges the comment but is of the opinion that the MTS adequately covers this aspect in its third strategic priority. Therefore, no change has been made to the text

**DIGITALEUROPE** highlighted the role of spectrum management and allocation rules across the EU in order to promote 5G. It argued for long duration licenses to incentivise investments and allow for continuous technological upgrades. It also suggested that peer review mechanisms between NRAs in the auction proceedings would help to achieve an early and coherent implementation of the 5G networks across the EU. It also highlighted the importance of fibre availability in the roll-out of 5G. Because of the growing importance of small cells **DIGITALEUROPE** also encouraged BEREC to investigate ways to facilitate the economic and fast roll out of small cell equipment, taking into account all aspects that might hamper such deployments, as well as harmonisation of approaches.

**BEREC** takes note of these comments but is of the opinion that the MTS adequately covers these aspects in its first and third strategic priority. Therefore, no change has been made to the text

**A group of MNOs** highlighted the importance of the availability of backhaul capacity under reasonable conditions in order to provide users with an alternative to the retail mobile offers of MNOs with SMP on fixed infrastructure. This was due to the changing requirements for backhaul in 5G and because of the fact that infrastructure that meets these requirements is usually only available to fixed SMP MNOs. They raised concerns about a potential reduction in competition in retail mobile markets and in markets with a high take-up of quad-play offerings. Therefore, they urged BEREC to consider regulatory interventions, such as passive remedies based on ex-ante market analysis to ensure that very high capacity connections to 5G base stations are available

to all network operators and to support alternative MNOs to engage in pro-competitive, market based solutions, such as joint roll-out of backhaul infrastructure.

**BEREC** takes note of these comments but is of the opinion that the MTS adequately covers these aspects in its first and third strategic priority. Therefore, no change has been made to the text

**EBU** noted some of the challenges that need to be addressed, which BEREC referenced in the draft MTS (namely solutions for standards, interoperability, business models and other issues) and stated that it suggested that it was important that BEREC work on these issues.

**BEREC** takes note of these comments.

#### **Strategic Priority 4: Fostering a consistent approach of the net neutrality principles**

**BEUC** highlighted the importance of regulators certifying a monitoring mechanism, as stipulated under Article 4(4) of Regulation (EU) 2015/2120, that allows consumers to test their internet connection and assess compliance with contracts. It also argued that the data generated by such tools should enable comparisons both within national markets but also across Europe.

**BEREC** acknowledges this comment and would like to point out that further work on this issue is foreseen in the current BEREC Work Programme.

**ECTA** and **MVNO Europe** requested BEREC to ensure that, when issuing or updating guidelines and when making other policies that NRAs will impose on operators, care is taken to ensure that smaller operators, including MVNOs, are not faced with disproportionate implementation costs.

**Cable Europe** suggested that BEREC should maintain a neutral approach and work with every stakeholder to avoid rules that stifle innovation and create additional barriers to the European digital economy.

**EBU** welcomed BEREC's continued commitment to foster a consistent approach with regard to net neutrality. It also suggested that NRAs should be proactive in implementing Article 5 of the TSM Regulation and should maintain a dialogue with industry. EBU also encouraged regulators to monitor the effect of commercial practices on cultural diversity and media pluralism.

**BEREC** acknowledges these comments and has reinforced the close cooperation with stakeholders in its strategy. With regard to the issue of implementation costs, BEREC notes that the MTS states that BEREC will conduct its work while pursuing the most efficient and least intrusive regulatory approaches.

On the issue of zero rating, **ETNO** made reference to the report published by the European Commission "Zero-rating practices in broadband markets", stating that zero-rating does not necessarily result in anti-competitive practices, and may deliver benefits for innovation in services and for competition in the market.

**BEREC** notes that the report in question discussed both potential benefits and harmful effects of zero-rating. It would not be appropriate to engage in a detailed discussion on this issue in the

context of the MTS. Therefore, BEREC emphasises that its work on the issue of net neutrality will continue through projects outlined in its Work Programme.

**Digital Europe** emphasised BEREC's role as a platform to share best practices and ensure a consistent approach to the application of net neutrality rules.

**ETNO** suggested that the open internet rules need to be implemented in a way that does not restrict communication services, in particular in a 5G environment from being optimised to meet widely different quality of service requirements. In particular, it urged BEREC to support NRAs to foster development of robust monitoring systems with regard to speed monitoring, based on common principles.

**GSMA** emphasised the importance of implementing Regulation 2015/2120 in a consistent way across Europe. It also suggested that implementation should take into account the particularities of 5G networks.

**BEREC** acknowledges these comments, but considers that these issues are sufficiently taken into account in the MTS and that any further work would need to be conducted under specific items of the BEREC Work Programme. Therefore, no changes have been made to the text of the MTS.

## **Strategic Priority 5: Exploring new ways to boost consumer empowerment**

**BEUC** suggested that NRAs should cooperate with consumer organisations in a systematic and regular way, for instance learning from the experience of the Council of European Energy Regulators (CEER) in this regard. In particular, it suggested further work on making market data available to enable easy comparison of services for consumers. It also suggested that particular reference should be made to monitoring and enforcement of Roam Like at Home (RLAH) rules.

**BEREC** acknowledges this comment. Some changes have been made to the text (in the final section of the MTS) to reflect the specific importance of the role of consumer organisations among the stakeholders with which BEREC engages. Furthermore, BEREC considers that its work on the consistent implementation of roaming regulations is sufficiently taken into account in the MTS and that no change is required in this regard.

**Democritus** and **EDRI** suggested that, in addition to developing new quality of experience indicators in relation to the implementation of Regulation 2015/2120, BEREC should also assess enforcement of existing provisions

**BEREC** acknowledges the importance to continue to assessing enforcement of existing provisions.

**Cable Europe** considered that the electronic communications sector is one of the most transparent and highlighted the benefits when cable operators are present in the market.

**BEREC** takes note of the opinion from Cable Europe.

**DIGITALEUROPE** expressed support for measures to increase consumers' awareness and understanding with regard to technology, while also specifying that there should be a balance between helpful information and information overload for consumers.

**DIGITALEUROPE** also considered that, in general, the consumer markets for digital services are highly competitive, rapidly changing and characterised by high levels of consumer choice. Therefore, it suggested that new rules to protect consumers should be based on evidence of consumer harm and should be proportionate, targeted and aligned with technology.

**GSMA** advocated the importance of consumer protection in terms of transparent information and consistent application of rules, while also specifying that there should be a balance between helpful information and information overload for consumers. It also highlighted the issues of data protection, privacy and network security.

**BEREC** agrees and takes note of the comments from DIGITALEUROPE and GSMA.

**FTTH Council** highlighted the issue of transparency and accuracy, in particular with regard to information that consumers receive about broadband performance. It also highlighted the issue of network performance as being relevant for consumer empowerment.

**BEREC** takes note of the comments.

**ECTA** and **MVNO Europe** requested BEREC to ensure that, when issuing or updating guidelines and when making other policies that NRAs will impose on operators, care is taken to ensure that smaller operators, including MVNOs, are not faced with disproportionate implementation costs.

**BEREC** takes note of the comment. BEREC will always seek to pursue the most efficient and least intrusive regulatory approaches.

**ETNO** emphasised the need for evidence-based regulation, avoiding overregulation. It was in favour of a clear set of rules that is consistently and fairly applied. Regarding transparency, ETNO considered that the transparency framework established by Regulation (EU) 2015/2120 is sufficient. It also suggested that the interests of digitally disengaged citizens can be best protected by creating an environment of trust in the use and take up of digital services. In its view, regulators should rely on horizontal consumer protection and privacy rules wherever possible, rather than sector-specific ones, since it considered that less-granular rules are more flexible and more future-proof in dynamic service markets.

ETNO also noted that end-user experience may be influenced by factors that are beyond operators' control. Therefore, it emphasised the distinction between end-user experience and issues of contractual compliance.

**BEREC** takes note of the comments and recommendations from ETNO.



## **BEREC Work**

### **Output and efficiency**

**Cable Europe** and **GSMA** highlighted the benefits of regulatory certainty. Cable Europe also emphasised the importance of taking timely and proportionate decisions grounded in evidence on relevant regulatory matters. GSMA also suggested BEREC should aim for better coordination and harmonisation between NRAs.

**BEREC** acknowledges these comments and considers that they are already sufficiently reflected in the MTS, such that no further change would be necessary.

**GSMA** suggested that, in order to remain efficient, it encouraged BEREC to remain within the scope of its current competence.

**BEREC** agrees with the importance of remaining within a defined scope of responsibility and does not consider that this would require any changes to the MTS.

### **Stakeholder engagement**

**BEUC** requested BEREC to systematically consult on all its policy papers. For instance, it noted its disappointment that no consultation was undertaken on BEREC's guidelines on retail roaming. It also encouraged BEREC and the NRAs to work towards more enhanced and efficient collaboration with other relevant national and EU authorities, such as the Article 29 Working Party and the Consumer Protection Co-operation Network.

**Democritus** and **EDRi** considered that BEREC should broaden its participation in public forums for all relevant stakeholder groups and not limit its presence to industry events.

**BEREC** conducts consultations where appropriate, taking into account the nature of the subject in question, possible alternatives to consultation, confidentiality issues, the interests of third parties and the urgency of the matter. BEREC may also occasionally participate in public forums and does not limit its engagement to any particular groups of stakeholders. BEREC also regularly operates quarterly public debriefings on its work as well as an annual Stakeholder Forum, which are open for all interested parties. Therefore, BEREC does not consider that any further changes to the MTS are needed in relation to these issues.

**GSMA** stated that BEREC should continuously improve its stakeholder engagement. In its view, sometimes consultation periods were too short.

**BEREC** notes that the improvement of stakeholder engagement is one of the major aims of reviewing its MTS. One of the ways in which BEREC has attempted to improve stakeholder engagement is by providing advanced notice of the opening of public consultations and the updated MTS also mentions BEREC's intention to organise two-stage consultations on important topics where relevant, allowing stakeholders further opportunities to contribute.

**ETNO** argued that public consultations should always be promoted, sufficient time should be given to interested parties to provide meaningful contributions, and reports should always be

made public. It also urged BEREC to justify the reasons for not accepting stakeholders' suggestions.

**BEREC** notes that its procedures for conducting public consultations require BEREC to publish a summary of all contributions and an explanation as to how the views expressed were taken into account in the final position adopted by BEREC, taking into account any requests for confidentiality. BEREC must also consider whether or not an individual report should be published, taking into account its obligations regarding transparency and accountability. BEREC aims to conduct its activities with a high level of transparency. The updated MTS includes provisions to consolidate this aim.

**EDRi** also pointed out that the United Kingdom is likely to leave the European Union during the period covered by BEREC's new MTS. Therefore, it suggested that BEREC should outline its work that is relevant to Brexit in this timeframe. It also suggested BEREC should provide details about how it would deal with Ofcom (the NRA in the UK) under these circumstances. EDRi also considered that BEREC should work with the European Commission and European Parliament where possible to ensure that the UK Internet market functions with the same rules and enforcement as in the EU in order to secure a fair playing field for business and consumers.

**BEREC** takes note of the issue raised by EDRi and remains aware of the challenges that may lie ahead in relation to the United Kingdom's departure from the European Union. However, BEREC is of the opinion that this is not a topic that fits within the scope of the MTS.

## **Concluding remarks**

The Medium Term Strategy is a high-level, strategic document. It is meant to outline BEREC's objectives and priorities in relatively concise terms, in order for these to be applied to BEREC's work. Therefore, whilst BEREC welcomes the input of all those who responded to the consultations and has taken their comments into account where possible in the updated MTS, some comments may be too specific or beyond the scope of the MTS. BEREC encourages stakeholders to continue providing such comments, in particular in response to the consultations on BEREC's annual Work Programmes and in response to the consultations that BEREC will open on individual items on its Work Programmes.