Body of European Regulators
for Electronic Communications
BEREC

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# 5th BEREC Stakeholder Forum – Summary of proceedings

7 December 2017

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# 5th BEREC Stakeholder Forum
# 18 October 2017 Brussels

**Le Plaza Hotel Brussels**
Boulevard Adolphe Max 118-126, 1000 Brussels

**11.30** Registration

**12.00-13.00** Lunch

**13.00-13.10** **Welcome**
Steve Unger, Ofcom

**13.10-13.50** **Presentation of draft BEREC Work Programme 2018**
Johannes Gungl, incoming BEREC Chair 2018
Q&A

**13.50-15.20** **Panel discussion 1: New models of investments**
**How to incentivise new models of investment and competition in the access framework?**
*In the European Electronic Communications Code (EECC), there is a debate on how best to balance the objectives of incentivising investment in very high capacity (VHC) networks and promoting/protecting competition. The draft Code proposed a lighter touch approach to some forms of investment such that, provided they met certain criteria, would be exempt from ex-ante SMP remedies. The intention was to send the right investment signals to encourage investment in certain market structures that could benefit from lower costs and risks for individual participating investors. This discussion will examine how to incentivise new models of investment and competition in the new access framework.*

**Moderator**
Henk Don (ACM)

**Introductory keynote:**
Maxime Lombardini, CEO, Iliad

**Speakers**
- Maxime Lombardini, CEO, Iliad
- Brad Burnham, Co-founder, Union Square Ventures (US investment group)
- Filipa Carvalho, Director for Regulation, NOS
- Alistair Davison, Director, Wireless Infrastructure Group (UK mobile wholesale network provider)
- Richard Feasey, Independent Consultant

**15.20-15.45** Coffee break

**15.45-16.00** **Keynote Address:** Sébastien Soriano, BEREC Chair 2017

**16.00-17.15** **Panel discussion 2: Services and innovation**

**As content and traditional ECS converge and new players enter this converging market, how should regulators balance setting consumer safeguards with the need to foster innovation?**

*New players are entering the market and existing players are merging or altering their market propositions (e.g. traditional CPs moving into content, new types of bundles or the disaggregation of bundles, new vertically integrated/disaggregated value chains). This means consumers might benefit from the efficiency of "one-stop shops", but also means they become more dependent on single providers, and the increasing complexity and heterogeneity of bundles could make it more difficult for them to properly compare propositions and exercise informed choice. In this context, regulators must decide how to set appropriate consumer safeguards that seek to prevent the emergence of new switching barriers while retaining a more flexible approach that foster innovation.*

**Moderator**

Sara Andersson, PTS

**Speakers**

- Kevin Martin, VP, Mobile and Global Access Policy, Facebook
- Michael Bryan-Brown, MD, Regulation and Competition Policy, Liberty Global
- Guillermo Beltrà, Head of Legal and Economic Department, BEUC
- David Jevons, Partner, Oxera

**17.15-17.45** **Closing address**

Andrus Ansip, Vice-President of the European Commission

**17.45-17.50** **Conclusions**

Steve Unger, Ofcom

**17.50-18.30** Networking reception

## Introduction to BEREC Work Programme 2018

## Johannes Gungl (Incoming BEREC Chair)

- WP2018 is undergoing public consultation and BEREC seeks a reality check from stakeholders

- **The fundamentals of the WP are:**
    - **It is based on the BEREC Strategy 2018-2020**
    - **Addressing the 5G challenge and in particular how NRAs can help remove hurdles to a quick and consistent rollout**
    - **Promote the single market**
    - **Enhance stakeholder management**

- The MTS re-iterated BEREC's three overarching objectives:
    - Promoting competition and investment;
    - Promoting the internal market;
    - Empowering and protecting end users.

- It also set out 5 strategic priorities that will encapsulate BEREC's WP:
    - Responding to connectivity challenges and to new conditions for access to high-capacity networks
    - Monitoring potential bottlenecks in the distribution of digital services
    - Enabling 5G and promoting innovation in network technologies
    - Fostering a consistent approach of the net neutrality principles
    - Exploring new ways to boost consumer empowerment

# Panel Discussion 1: New models of investments

**How to incentivise new models of investment and competition in the access framework?**
In the European Electronic Communications Code (EECC), there is a debate on how best to balance the objectives of incentivising investment in very high capacity (VHC) networks and promoting/protecting competition. The draft Code proposed a lighter touch approach to some forms of investment such that, provided they met certain criteria, would be exempt from ex-ante SMP remedies. The intention was to send the right investment signals to encourage investment in certain market structures that could benefit from lower costs and risks for individual participating investors. This discussion examined how to incentivise new models of investment and competition in the new access framework.

**Moderator:** Henk Don, ACM

- Maxime Lombardini, CEO, Iliad [ML]
- Brad Burnham, Co-founder, Union Square Ventures (US investment group) [BB]
- Filipa Carvalho, Director for Regulation, NOS [FC]
- Alistair Davison, Director, Wireless Infrastructure Group (UK mobile wholesale network provider) [AD]
- Richard Feasey, Independent Consultant [RF]

<u>Competition versus investment</u>

- Both operators emphasised that there is no tension between competition and investment.
- **A co-investment proposal should not be enough to justify a regulatory holiday. Where it works, it can be recognised in SMP analysis.** [ML, FC]
- The US is often cited as a comparator, but it has higher prices and less coverage than the EU. [ML]
- In France, symmetric regulation has led to lots of investment over last five years and fewer subsidies – this is forecast to result in 80% FTTH coverage by 2022. [ML]
- Similar story in Portugal where 60% HHs will be covered by three FTTH/HFC operators by 2020. [FC]
- So, no impediments inhibiting investment in Portugal or France and instead a virtuous cycle of competition and investment. [ML, FC]
- ML said that when there is sufficient competition and good regulation, everything goes well:
    - In France, the incumbent(s) were not at first interested in sharing so it cannot just be left to commercial arrangements. **Details are important, and the threat of regulatory action is needed.**
    - Even in countries characterised by high fibre deployment and DPA, regulation remains important in non-competitive areas.
    - **A mix of asymmetric and symmetric regulation is required. SMP remedies can ensure passive infrastructure sharing but in non-competitive areas, symmetric regulation has a part to play to ensure access to essential (non-replicable) facilities.**
    - **Networks across Members States and within Members States are different and NRAs are best positioned to come up with appropriate and targeted solutions.**
- RF said that assessing the demand side is important and is often overlooked. Adoption of high capacity broadband is running well behind deployment. Policy-makers should think more radically, e.g. collective switching as often happens in the energy industry.

How could co-investment work in the context of the EECC

- It is important to note the interaction between investment incentives and the policy framework. [RF]
- Since the financial crisis, there is a sense that investments can only come from existing vertically integrated players. [RF]
- The EECC proposes modest changes in investment incentives but this will not drive significant change - there is a misalignment between the EECC's aims and incentives. [RF]
- **RF proposed that one way is to think of co-investment proposals like mergers.** For example, potential co-investment partners go to NRAs and tell them of their plans and (specific) timelines. The NRA then issues binding guidelines based on the proposals.
- The important aspect is that it binds the NRA (so long as the agreement is implemented according to the terms of the binding guidelines). **Essentially, the NRA would undertake a competition analysis.**
- AD noted that it is important to note that there is a lot of difference between allowing and forcing MNOs to share. In the UK, there has been more unilateral investment by MNOs in 4G than in 3G as they saw opportunities for competitive advantage (e.g. earlier rollout).
- RF noted that in France, the market structure is such that mutualisation of assets encouraged sharing. However, each market is different and such competitive situations might not exist elsewhere**.**
- **Co-investment lends itself to a case by case analysis like a merger analysis.** [RF]
- **Co-investment also offers an alternative to the risk of overbuild which does not help anyone.** [BB]
- **The underlying problem is not with capital but where it can be invested.** Long term, there will need to be a debate about stranded assets (and asset write-offs). However, the European wireless industry had written off E100bn so copper write-off is not an insurmountable problem. [RF]

Vertically separated operators - mobile

- AD emphasised that WIG, as an independent operator, has a different business model to vertically integrated MNOs. **Its investors are low cost of capital investors with 30-year horizons.**
- WIG can build assets with one initial loss-making anchor customer, confident that in time, it will get other customers. **It can therefore offer its first customer capacity based charging and as a result, it can offer MNOs a total cost of ownership that is 40% of that from self-investment.**
- On mobile infrastructure sharing, Sweden is an exemplar. In a country of 9m people, there are 5 MNOs that compete. They were authorised to share 100% of passive infrastructure and 70% of active infrastructure. The underlying analysis was done jointly by the NRA and the Competition Authority. [Sara Andersson, PTS]
- AD noted that the model for independent TowerCos is more advanced in the US where half of small cell deployment has been done by independents.
- Sharing infrastructure also brings additional operational benefits to operators. 68% of towers worldwide have been outsourced by MNOs because independents can manage them better as well as getting more utilisation. [AD]
- **With 5G, there is an opportunity from the outset to get more and faster passive infrastructure rollout from independents.** [AD]

<u>Vertically separated operators - fixed</u>

- **RF stated that monopoly assets only become a problem when there is vertical integration.** Co-investment is effectively CPs concluding that sharing some assets is an efficient outcome.
- RF went on to say that from a strategic regulatory and commercial perspective, investing in assets that do not have any retail or regulatory risk and mixing them with other types of monopoly assets is an impediment to targeted regulation. **Spinning out assets that have inherent monopoly characteristics such as ducts can be one way of optimising the investment situation.**
- **Regarding duct sharing, ownership matters. Vertically integrated owners will not have an incentive to increase capacity whereas if you are an independent operator, there is lots of incentive to increase capacity**. Passive infrastructure regulation should consider ownership issues.
- **BB noted that the commercial case for vertical integration is that it provides a high margin application layer business that allows investment in infrastructure. However, infrastructure itself is a good business.** The application business is also competitive and does not always support infrastructure investment.
- **RF concluded by saying that infrastructure sharing also increases returns on investment. For incumbents, infrastructure sharing can also mean less/no SMP and therefore greater flexibility. In effect, they would be trading off market power with commercial and regulatory policy objectives.**

## Sebastien Soriano, BEREC Chair 2017: Keynote address

- Stakeholder engagement is key to enable BEREC to be smart
- **There are two alternative facts in Brussels that need to be addressed**
  - **Deregulation is good for investment**
  - **NRAs have a conservative mindset and are preoccupied only by competition and lower retail prices**
- **Regulation provides predictability and illuminates the environment for service providers**
- We also are guided by facts, not opinions. Today, we heard about investments and NGA deployment by NOS and Iliad but there are other examples in Europe – Stokab, Tele2, Vodafone
- **Regulators are tuned to new social demands and political objectives; we are not focused on the issues from the past**
- 20 years ago, the issue was on opening markets for competition; now it is a broader digital story
- **This year, there has been a focus on enabling connectivity**
- **The other core forward-looking are is safeguarding an open environment** as BEREC did last year with its net neutrality guidelines. BEREC is now developing a common tool to monitor the quality of internet service.
- We are also increasingly co-operating with and exchanging learnings with other bodies. Our study trip to India this year was insightful and we found TRAI's experience of net neutrality interesting and relevant
- **The open environment is not limited to net neutrality – we are increasingly looking at content and new emerging bottlenecks in the digital environment**

# Panel discussion 2: Services and innovation

**As content and traditional ECS converge and new players enter this converging market, how should regulators balance setting consumer safeguards with the need to foster innovation?**

New players are entering the market and existing players are merging or altering their market propositions (e.g. traditional CPs moving into content, new types of bundles or the disaggregation of bundles, new vertically integrated/disaggregated value chains). This means consumers might benefit from the efficiency of "one-stop shops", but also means they become more dependent on single providers, and the increasing complexity and heterogeneity of bundles could make it more difficult for them to properly compare propositions and exercise informed choice. In this context, regulators must decide how to set appropriate consumer safeguards that seek to prevent the emergence of new switching barriers while retaining a more flexible approach that drives innovation.

**Moderator:** Sara Andersson, PTS

- Kevin Martin, VP, Mobile and Global Access Policy, Facebook [KM]
- Michael Bryan-Brown, MD, Regulation and Competition Policy, Liberty Global [MBB]
- Guillermo Beltrà, Head of Legal and Economic Department, BEUC [GB]
- David Jevons, Partner, Oxera [DJ]

- The moderator stated that the main theme in this debate is how NRAs balance consumer safeguards versus innovation in light of new distribution models. Are new measures required or will current arrangements suffice?
- KM said that from Facebook's perspective, the question of balance is being pushed by technology. What are the principles we should use to guide us?
- The key principle is **what is the problem in terms of potential consumer harm?** And what self-regulatory measures is the industry already doing to address this? Good regulation should be flexible and targeted. The BEREC net neutrality guidelines are a good example. [KM]
- Another key principle is **the role of different players in the ecosystem – the application and the infrastructure players**. **There are low entry barriers for online service players and the rise of multi-homing is an important consideration.** [KM]
- In a converging (ECS and content) environment, there is an opportunity to remove some regulations. **It also highlights the continued importance of net neutrality protection to enable services that ride over the infrastructure.** Transparency is important for consumer protection. [KM]
- **DJ agreed that a principles based environment in which firms are encouraged to innovate and operate within framework works best.** It is important for the regulator and service providers to keep trust in the market as otherwise switching stops which is bad for all players.
- **KM stated that regulators should not blindly apply old telco regulation in the new environment.** Social media applications like Facebook do not have permanent geo-location but they can provide a safety check mechanism to allow people in danger zones to send alerts in priority. This is an example of how different types of service and technologies can work together.
- MBB noted that from Liberty Global's perspective, **regulation should protect consumers not competitors.** Companies like to develop products for multiple markets and regulation should facilitate this.

- He also made the point that **a level playing field is important. It is important to have a regulatory environment that promotes infrastructure.** Where Liberty operates, “we have the fastest broadband network and this requires continuous investment which requires a good return”.
- GB said that whereas from a consumer perspective, bundling can bring consumer benefits, it can also bring challenges regarding switching. A variety of solutions (switching regulations concerning bundled services, antitrust action regarding PayTV, stronger enforcement) are required. **In light of convergence, it is most important for competent authorities to work together in anticipation of how tomorrow’s digital services are distributed and consumed.**
- **DJ noted that it is also important to understand how consumers choose products** – this is more difficult than it seems. Economic rationality is not enough. **Digital services are more exciting for consumers than networks so** putting the two together can make consumers more engaged.
- **MBB noted that even similar services are not necessarily homogenous and standardised rules and regulations can lock in service development. A good example is the conflict between Amazon and Netflix and their very different business models.**

## VP Ansip closing address

- Discussions are timely in helping to realise DSM and to innovate in 5G.
- There needs to be spectrum co-ordination for badly needed investment if we are to catch up with the US, South Korea and Japan. However, there is still a lack of consensus for common rules to realise our aims.
- We will need E500bn to invest in high speed networks.
- Competition drives investment and we clearly need both. The regulatory framework is based on finding SMP. This is predictable and provides certainty. **This would be compromised if obligations become broader as the Council now proposes and if the Joint Dominance test departs from comp'n case law.**
- **We need to keep right balance. Devil is in the detail so no need for new instruments.**
- On spectrum, this comes down to stability and predictability. The EECC aims for a minimum spectrum licence across Europe. The EP supports this although Council are less receptive.
- Everyone agrees on the need for investment. So we need to address licence duration and renewal. BEREC has a role to play in assessing spectrum assignments.
- As we enter 5G age, new territory and regulators can learn from each other. We need independent regulators and BEREC needs to make sure that decisions are consistent on connectivity, 5G and spectrum. **That is why we propose a stronger BEREC taking the form of an EU agency**
- **Finally, there must be a high level of consumer protection and this requires common rules irrespective of types of communication service used.**