6 November 2019

ETNO Submission to the public consultation on BEREC Work Programme 2020 and call for input to the BEREC Medium Term Strategy 2021-2023

BEREC Work Programme 2020

ETNO welcomes the opportunity to provide its comments to the BEREC Work Programme 2020.

With reference to the earlier call for inputs to the BEREC Work Programme 2020, ETNO did not propose additional items or projects for BEREC's consideration at this stage. We believe that the implementation of the new European Electronic Communications Code (EECC) and the carry-over items from 2019 already present a heavy workload for BEREC as well as for the associated stakeholders in the course of next year.

We commend BEREC for largely focusing on carrying out the strategic priorities and deliverables already identified in the outline.

At the same time, we take note of BEREC's growing interest in emerging areas such as Digital Platforms, the impact of 5G on regulation, and 5G security issues. While we see the benefits of a deeper understanding of future market trends that are poised to impact the electronic communications market directly or indirectly, we encourage BEREC to strictly focus on subjects that belong to the Body's immediate remit and that bring significant added value to the debate.

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

BEREC's planned deliverables related to connectivity and access are crucial for a harmonised and timely implementation of the EECC. The proposed Work Plan 2020 rightly focuses the continuation of the implementation of the key areas the EECC to accelerate investment in very high capacity networks.

ETNO appreciates the progress made with regards to the preparatory activities related to a number of the future Guidelines, such as those for geographical surveys and co-investment (and Open-Internet), and welcomes the ongoing and planned stakeholder engagement in this regard.

However, we have some concern specifically regarding the preparatory activities concerning the Guidelines on very high capacity networks (VHCN), which are likely to have a fundamental

impact across different policies and regulations at an EU level. While ETNO members have been consulted on the various technical aspects of defining VHCN, we believe it would also be beneficial to have a wider discussion on the impact of the future VHCN Guidelines on different policy areas. Particularly, there is currently a consultation on geographic surveys, where it would have been necessary to know more about the BEREC views on VHCN scope in order to align the outcome of both guidelines.

BEREC also intends to develop a quantitative model of the competition and investment dynamic between actors (BEREC Study on the determinants of investment in very high capacity networks). The model is supposed to be used to test different regulatory options resulting in a dynamic non-linear system modelling. This is concerning, as such models are very complex and, in this case, BEREC's effort seems to go beyond current scientific frontier in the academic literature with respect to market modelling. Furthermore, this type of modelling risks delivering unpredictable and inconsistent results, considering that the global evolution is very dependent on infinitesimal variation of initial parameters giving rise to random fluctuations. This raises a lot of question about the utility and the employability of such model, which raises serious concerns and serious reserves as to this exercise with the ETNO membership.

Consequently, as BEREC advances in this endeavour, ETNO believes that it is critical for different stakeholders to be closely involved in the development of the model. Apart from some bilateral interviews with individual operators in the beginning of the process, no public consultation was carried out on the actual work of this BEREC workstream. Furthermore, no consultation is planned for phase 2 (should this be adopted by the Board of Regulators), which is a real concern for ETNO-Members.

Finally, ETNO sees a concentration of important workstreams in the BEREC plenary 2, where BEREC plans to run in parallel three public consultations, namely those on very high capacity networks, symmetric access obligation under article 61(3) and co-investment. In order to effectively and efficiently contribute to these BEREC public consultations, ETNO would ask BEREC to set longer deadlines for stakeholder submissions i.e. minimum of six weeks.

Strategic priority 2: Monitoring potential bottlenecks in the distribution of digital services

ETNO agrees that the distribution of powers and the identification of bottlenecks in the distribution of digital services – including electronic communications services – are crucial topics that are rightfully undergoing broad discussions both at EU and national level, both from the regulatory and competition standpoints.

Keeping in mind the general need to assess the crucial role of digital gatekeepers, we welcome relevant public authorities' efforts to evaluate how the digital economy has evolved and restate the importance of the identification of new potential bottlenecks (devices, Operating Systems, App stores, digital platforms). Most importantly, this analysis requires the assessment on how

market power is distributed in the digital market, the existence of competition failures and how these can be best addressed, taking into consideration the role of data in the market dynamics.

In so far, we welcome BEREC's endeavour to acquire a wider understanding of the digital market and of its competitive landscape, beyond traditional telecommunications services and providers, to develop a comprehensive view on the digital market. This also includes ETNO long standing call on regulators to collect information from providers of number-independent interpersonal communications services (NI-ICS) in order to improve their ability to carry out comprehensive, accurate market analysis. A workshop on data collection from authorised undertakings and OTTs will be a useful step toward elaborating objectives and parameters for the collection of market data from NI-ICS.

BEREC's input to the policy debate could be very relevant (for instance, in the event decision-makers were to assess ex-ante tools).

We would encourage BEREC to map out the existing and ongoing work carried out by other competent authorities (e.g., competition authorities, data protection authorities) and to strengthen cooperation with them, given that platform-related issues do not primarily refer to MNOs, in order to provide useful insights when needed.

Mobile network operators are increasingly becoming enabling platform for a wide range of sectors and services, competing within their national markets across the EU. This is done within the boundaries of the European regulatory framework, the EECC, containing specific elements to ensure competition in an already highly competitive sector, access rights to competitors, pricing controls as well as to provide a high level of protection of end-users. In addition, telecoms operators comply with a wide range of rules related to ensuring the protection of content rights and horizontal consumer rights. Accordingly, the legal and competitive environment of MNOs is not comparable to many other digital platforms.

When considering ex-ante tools for digital platforms, ETNO would recommend BEREC to ensure that providers of ECS do not fall under a duplicate set of ex-ante rules but that new rules focus areas of market failures. The potential aim of having a regulatory playing field addressing platform specific issues should not lead to unintended consequences on providers of competing ECS.

Strategic priority 3: Enabling 5G and promoting innovation in network technologies

In the light of the initially published policy priorities of the new European Commission, BEREC's role in enabling 5G can be an important one in helping to clarify specific aspects related to 5G deployment through stakeholder engagement and studies.

With reference to the recent BEREC call for input on the impact of 5G on regulation, ETNO believes that 5G does not trigger a general need for additional regulation as many issues such as privacy are typically covered by existing horizontal regulation.

However, the peer review process and infrastructure sharing will be important elements in order to create an investment-inducing environment with a view to accelerate 5G implementation in the EU. ETNO feels that both the peer review process and infrastructure sharing would benefit from wider stakeholder engagement and would be happy to provide inputs and share our practical experience. In particular regarding network sharing, BEREC's recent work provided for a backward-looking approach, missing the positive elements and also the increased need for cooperation in a 5G-environment.

Regarding 5G deployment in an industrial context, network operators and different industry verticals will be working together in the framework of commercial agreements. We invite BEREC to adopt a neutral approach on the relationships between verticals and Mobile Network Operators in its effort to support 5G deployment in the EU. BEREC or NRAs should not introduce any bias in the definition of relationships between these commercial parties especially considering the early stage of 5G launch.

The required enabling of 5G deployment should also consider the removal of barriers for 5G resulting from unjustified health concerns related to electromagnetic fields and the promotion of a science-based approach.

ETNO supports a European approach to the security of 5G and of its supply chain. A harmonised approach will be conducive to ensuring resilience of 5G networks across Europe and trust in digital services enabled by 5G.

The sharing of practices existing in various Member States, for example regarding the testing and audit of products for critical infrastructure can contribute to a common understanding and approach of the 5G risks and how to address them effectively. However, this needs to be embedded in a more general approach for ensuring a secure digital environment.

Strategic priority 4: Fostering a consistent approach of the open internet principles

ETNO appreciates that the Open Internet Regulation sets out important principles on the provision of Internet Access Services (IAS) and welcomes the review of the current BEREC Guidelines on the Open Internet. This is a positive example on how BEREC Expert Working Groups are increasingly engaging with stakeholders.

ETNO, together with GSMA, have expressed its view on the specific aspects of the Open Internet Regulation and Guidelines in several previous submissions to BEREC.

Strategic priority 5: Exploring new ways to boost consumer empowerment

ETNO fully upholds BEREC's focus on "consumer empowerment", which goes beyond consumer protection strictly speaking. ETNO recently released a [report](#) on Delivering Consumer Value in Digital Times that describes the telecom sector's developments in terms of evolving services, improved trust, and enhanced customer relationships – which all concur to consumer empowerment – and which additional aspects need to be considered when assessing consumers' views.

We recommend that, following the BEREC-BEUC joint workshop on "Understanding Consumer Vision and Perspectives in respect to Europe's Telecoms" in June 2019, BEREC organises an external workshop with its stakeholder community to discuss consumer expectations and empowerment in the evolving electronic communications market.

We take note of the bulk of carry-over work on guidelines related to end-user rights. Harmonisation of end-user protection requirements is a crucial requisite of a competitive European market for electronic communication services, similar to high level of harmonisation in other areas of digital services markets. Whereas the EECC could have achieved a higher level of harmonisation in this area, BEREC's guidelines and reports will hopefully help approximate regulatory and enforcement practices across Member States.

BEREC obligatory work and stakeholder engagement

ETNO would like to commend BEREC for taking additional steps in increasing transparency and stakeholder engagement. We believe these interactions deserve to be further embedded in the BEREC structures, as they have the potential to contribute to an improved quality of well-informed output and legitimacy of BEREC's work, in particular in the field of EECC.

Based on ETNO's cooperation with BEREC in the course of 2019, we find that many BEREC EWGs have increased the level of engagement with stakeholders through calls for early inputs and stakeholder meetings. While we appreciate these steps towards increased transparency, the practices across different EWGs vary greatly and it would be important to share at least an approximate engagement plan and timeline with stakeholder in the beginning of each year to ensure sufficient time for preparation. We would also welcome the establishment of a Permanent Stakeholder Group (PSG) and encourage BEREC to define the objectives and functioning of this group. We recommend that this group be used as a "sounding board" for consultation on specific topics in order for NRAs to gather inputs and expectations from interested parties that can support BEREC's strategic planning as well as internal work on specific issues.

We would also recommend rethinking the overall concept of the BEREC Stakeholder Forum in order to make it more meaningful and effective for both BEREC and its stakeholders. In our view, the Forum should facilitate a series of expert discussions around a set of defined topics

between BEREC issue leads and experts from participating parties. This would greatly enhance stakeholders' involvement and impact of this Forum and serve the purpose of having effectively such interaction.

BEREC Medium Term Strategy 2021-2023

ETNO welcomes the opportunity to provide early inputs towards BEREC's Medium Term Strategy (MTS) 2021-23. To this end, ETNO would like to put forward some initial reflections based on current market trends and ongoing work and discussions at EU level.

- "Promoting competition and investment" should remain a key principle, focusing specifically on reducing 5G and fibre rollout costs. BEREC could potentially facilitate this by carrying out studies and stakeholder dialogue on perceived key barriers e.g. permissions and fees at local government level.

- Competitive situation in the telco market is evolving due to changing business models (partially backed up by regulation). The infrastructure wholesale model is gaining ground, but there is discussion about risk of monopolisation (partially driven by capital investors).

- 5G is part of a converged communications infrastructure and value chain - 5G should be integrated into "competition and investment" priority rather than singled out as a separate priority.

- The promotion of the "electronic communications internal market", including by harmonising requirements and practices (e.g., on consumer protection), should not be overlooked in favour or objectives pertaining to the European's competitive relation with other regional markets.

- A priority objective should be the establishment of structured cooperation mechanisms with competent authorities in emerging areas like Digital Platforms, in order to channel BEREC's input where appropriate and to avoid overlying initiatives.

ETNO commends BEREC for exceptionally organising an additional stakeholder meeting in the spring/ early summer of 2020 and looks forward to further discuss the MTS 2021-23 in that occasion.