

**TELEFONICA'S Submission to the public consultation on the BEREC Strategy 2021-2025 and early call for input on the BEREC WP 2021**

## **BEREC Strategy 2021-2025**

### **I- INTRODUCTION AND OBJECTIVES**

TELEFONICA supports BEREC's forward-looking approach of a strategic time horizon of 5 years aligned with the legislative cycle of the European Commission and concurs with the three high-level strategic priorities of connectivity (very high capacity networks), digital issues (including open internet) and end-users (including the digital divide). Connectivity in particular has become a clear political target with the aspirations for European leadership in 5G and even 6G reflected in the Digital Strategy of the European Commission<sup>1</sup>. Indeed, connectivity is featured as the most fundamental building block of the digital transformation while admitting an investment gap of EUR 65 billion per year to achieve the Gigabit Society goals according to the EIB<sup>2</sup>. We believe it is necessary to overcome the mismatch between the policy objectives defined by the legislator in terms of connectivity targets and the current regulatory practice that has not been sufficiently conducive to investment. BEREC and National Regulatory Authorities should remain independent from the market in order to avoid distortions in competition, but should not be misaligned with political priorities, such as the stimulus of investment in connectivity, and the overall aspiration for digital sovereignty in Europe based on the development of European capacities in the digital space. The indication that *further to promoting the fibre and 5G roll-out, BEREC will contribute, through cooperation with the competent bodies, to ensuring that future network technologies meet their connectivity targets in line with European values and interests* is in this sense particularly welcome.

### **II- MARKET, TECHNOLOGICAL AND POLICY DEVELOPMENTS**

TELEFONICA welcomes the effort of BEREC to keep pace with the technical and market developments. It is necessary that all NRAs are equipped with the necessary human resources, technical knowledge and market insight to successfully achieve its goals. BEREC should play the important role of assisting NRAs and interchanging information on technical and market developments, especially in digital markets which go beyond traditional telecommunication markets. The rapid development of the so-called "digital economy" must be considered and effectively taken into account when analysing prospectively the markets. The way digital services are being offered has dramatically changed and will change much more in the future, demanding a new approach for the regulation of markets in a digital world. The relevance of OTT players, at the service and infrastructure level, must be increasingly considered as a competitive constraint in order

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<sup>1</sup> COM(2020) 67 final, Shaping Europe's digital future, 19 Feb 2020

<sup>2</sup> *Restoring EU competitiveness*, EIB 2016. The EIB Investment Report 2019/20, *Accelerating Europe's Transformation*.

to assess the position of traditional players in the provision of communication services, both at the retail and wholesale level. A prospective approach is critical at this stage of technological and market dynamism.

We welcome BEREC's considerations about the transition to 5G, paving the way for network virtualisation and disaggregation. In this sense it is important for BEREC to consider as well the effect of technological developments on competitive dynamics from a supply side perspective. The evolution of networks through virtualization process and the move of software to the edge, make easier for non-telco players to enter the connectivity market. On the other hand, developments like the remote SIM turn other non-telco players, such as device manufacturers, into potential competitors going forward. Software Defined Networks (SDN) and Network Function Virtualisation (NFV) will allow operators to use the cloud to manage the network, reducing fixed costs and making it more feasible for smaller players to compete effectively with incumbents. Networks based on SDN and NFV are akin to the networks that OTTs like Google or Netflix deploy to provide their services. In fact, Google is positioning itself as a leader in the supply of cloud services for operators. Consequently, there is a trend of entry from new players expanding into the network layer and potentially managing their own infrastructure.

TELEFONICA welcomes in particular the observation that "The new market dynamics are by no means limited to the electronic communications sector but affect all industries in our connected society", and that new market structures and the high market power concentration of digital platforms caused new bottlenecks beyond telecommunications. In this sense we believe that rules should be consistent all along the digital value chain, i.e., same concerns should be subject to similar solutions. Therefore, new gatekeeping roles appearing on other layers on the value chain beyond connectivity should call for similar principles to those applied today to telecom operators with a Significant Market Power position or controlling a bottleneck (as for instance under Net Neutrality rules, which should be turned into Digital Neutrality rules applicable to all layers of the digital ecosystem). Typical regulatory ex-ante obligations (non-discrimination, access to essential resources, neutrality, transparency...) should be applied to players enjoying such gatekeeping roles. In this respect, BEREC and NRAs powers should urgently be amended to fulfil the urgent task of "monitoring of the sector and the appropriate level of transparency" and to enable the empowerment of end-users in the broader digital market.

If we take into account the current digital market realities, the related societal challenges and the strategic priorities adopted by the European Commission (listed on page 7), it would be reasonable to assume that when we would create NRAs and BEREC today, its set up and tasks would need to be different than in 2009 when BEREC was created. In light of those market realities and societal challenges TELEFONICA advocates for the transformation of the current telecommunications NRAs and BEREC towards fully

fledged digital regulators, that can oversee and intervene in the broader digital economy. This would not be a revolution, but rather an evolution considering the accumulated capacities and know-how of in-depth technical and sectoral expertise of the existing NRAs.

### **III- HIGH LEVEL STRATEGIC PRIORITIES**

TELEFONICA welcomes the ambition of BEREC to help the industry to fight climate change and to achieve the EU climate targets and sustainable development goals. Telecommunications operators are committed to reduce the energy consumption and the carbon footprint of fixed and mobile networks. Operators are upgrading mobile networks to 5G and are increasingly using energy efficient fibre in the fixed and backhaul networks. BEREC can foster this effort by favouring network sharing agreements that are more energy efficient avoiding duplication of network elements, by reducing any regulatory hurdles to the roll out of energy efficient networks and by facilitating the decommissioning or phase out of legacy copper networks since fibre is more efficient in terms of power savings in bits per Watt.

As previously mentioned, we welcome BEREC focus on promoting full connectivity and we note the interest in the development of 5G and the reference to the need to ensure wholesale access to fibre backhaul, with duct and pole access and dark fibre becoming increasingly relevant. We would like to recall BEREC that the very diverse situation of available physical infrastructure (mainly ducts and poles) and the different network deployment architectures per Member State make it very hard to establish a single European physical infrastructure solution. Therefore, in Member States where infrastructure competition has been historically weak or non-existent and where no practicable access to physical infrastructure has been granted, the creation of such a domestic market (including pipes, chambers, manholes, ducts and poles), based on SMP, could be a tool to effectively spur fixed and mobile infrastructure investment. The focus should therefore be in markets where passive infrastructure access can in turn help the creation of a competitive wholesale market for active access products by competing infrastructure players as already exists in Spain.

On the topic of 5G security Telefonica supports the harmonised, comprehensive, fact and risk-based approach taken so far by the EU. We believe that when putting in place effective risk mitigating actions in line with the provisions of the EU 5G cybersecurity toolbox, Member States should avoid actions that could cause a disruption of equipment supply for 5G networks. We believe BEREC should be supportive of such an approach collaborating with the relevant authorities and avoiding inefficient duplicities that could unnecessarily increase BEREC's and the telecom operators workload in this space.

Telefonica welcomes that BEREC continues to prioritize supporting sustainable and open digital markets. It would be relevant however for BEREC to consider that the debate on openness in the internet will not be conditioned by developments in 5G but by the new

bottlenecks in the digital value chain that may have a much relevant impact in terms of the ability of internet users to access any content of their choice and run any application or service of their choice through any device. The biggest online platforms act not only as intermediaries in two sided markets but compete with their corporate users with their own products and services with a strong incentive for self- preferencing and anticompetitive discrimination. BEREC should not miss the opportunity to tackle the broader concept of digital neutrality, to ensure the principle of open, fair and non-discriminatory markets for maximum innovation along the digital value chain.

We agree with BEREC's concern on the risk of some companies becoming dominant in the digital economy. In fact, we are witnessing so far an uneven control and distribution of wealth in this space where the bulk of the value is going into a very small number of non European players reaching a non-contestable competitive advantage through their ability to collect and integrate diverse sources of data combined with the control of especially valuable processing technologies, computational power and AI capabilities. The mere application of competition law has proven insufficient to ensure contestability in digital markets, avoiding competitors' foreclosure and ensuring that emerging bottlenecks are not perpetuated by monopolization of future innovation. We believe there is room for asymmetric ex ante regulation in this space aimed with a broad perspective to capture large entrenched online platforms with a relevant role to be played by telecoms NRAs and BEREC based on their experience that can be leveraged in analyzing markets, finding dominance and applying remedies to avoid potential market failures.

#### **ADDITIONAL COMMENTS**

The Covid-19 crisis is showing the importance of a robust telecommunications networks and broadband connectivity infrastructure for the internal market and society as a whole. In the wake of the crisis it is becoming clear that Europe does not suffer a competition problem (let alone a retail price problem for the residential mass market), but rather an investment challenge to serve society with resilient fixed and mobile very high capacity networks. This does not mean that promoting competition would not be a legitimate objective anymore, but might suggest how biases and priorities can tilt the balance in a way which leads to capacity constrains in the long run. This may be of particular relevance in upcoming work on network sharing, where misplaced biases and a failure to take into account new market dynamics may hamper reaping efficiency gains by sharing necessary to speed up roll out.

In a long term strategy, it might be also worth considering the dramatic evolution of the stock and capitalization of European operators, in particular, the ones that are infrastructure investors compared to virtual players. The paradox of a contradicting evolution between an alarming stock market performance versus the everyday more valued and used service of connectivity is surely not only due to (ex-ante) regulatory

intervention, but is nevertheless relevant in any forward looking approach. Only financial healthy operators will be capable of delivering the investment to provide Europe with high capacity networks it needs.

Brussels, April 10, 2020