



## **GSMA response to the BEREC public consultation on the BEREC Strategy 2021-2025 and early call for input on BEREC Work Programme 2021**

10 April 2020

The GSMA, which represents the interests of mobile operators worldwide, welcomes the opportunity to comment on the [draft BEREC Strategy 2021-2025](#) and the [outline of the BEREC Work Programme 2021](#). We hope the following detailed comments can serve as a constructive contribution to BEREC's deliberations on its draft.

### **Strategic priority 1: Promoting full connectivity**

#### **GSMA comments:**

The GSMA would like to emphasize that mobile markets are fiercely competitive, and that mobile operators have achieved sharing or co-investment agreements and will continue to do so. Therefore, sharing or co-investment schemes should remain a possibility for mobile operators, based on a voluntary decision, as long as competition law principles are respected, and a positive outcome is achieved (i.e. technical and economic efficiencies, pro-competitive impacts, consumer welfare, etc.). As 5G has to be underpinned in an optimized and cost efficient roll out in order to commit with the performance and coverage targets expected for the Gigabit society, operators should be allowed to experiment with different network sharing models adapted to their different business models. Consequently, the GSMA fully agrees with the importance given to network sharing, for the different reasons expressed in the BEREC document but also due to the high level of investment necessary to deploy new fixed and mobile networks all over Europe. In that respect, the proper regulatory environment and the recognition of the pro-competitive aspect of sharing are necessary to optimize the investment and make them happen.

Aligned with these proposals and considering the heterogeneity across network maturity evolution in Member states, copper switch-off dispositions should be flexible enough to adapt to different national circumstances and leave to operators the decision regarding the switch-off. We highly recommend that, despite the fact that some kind of high-level agreement could be reached at EU level, the main provisions aimed at facilitating the switch-off from legacy should be left to local NRAs which are perfectly up to date with the network status and migration limitations in each Member State.

5G will remain a political priority for Europe and BEREC's role in enabling 5G can be an important one in helping to clarify specific aspects related to 5G deployments through stakeholders' engagement and studies. As such, the GSMA also welcomes BEREC's focus on promoting full connectivity. As one of the

main challenges the sector will face in the new decade is how to upgrade current legacy networks in order to commit with the Gigabit Society by 2025, it is of utmost importance that the current legislative framework is perfectly aligned with said target.

BEREC and NRAs already have a different set of legislative pieces, that have been delivered since 2010 in order to speed up NGN roll out. Namely, BCRD, state aid, small cells, network sharing or co-investments models might be perfectly aligned and enforced in order to avoid duplicity and achieve an efficient network roll-out. As such, we highly recommend reviewing the reach of these existing pieces and complement when necessary in order to a guarantee healthy and wide basis for the upcoming VHCN and 5G roll out.

However, with reference to BEREC's ongoing work on the impact of 5G on regulation, GSMA 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.

Furthermore, BEREC should avoid presuming any need for additional regulation, especially in markets which in the past have already been deemed to be competitive by the NRAs. In particular, we are concerned that BEREC states that *"wholesale access to fibre backhaul connectivity of cell sites needs to be ensured (and regulated, if appropriate) to prevent potential problems in terms of lack of coverage and refusal of access to bottleneck facilities"*.

Any additional regulation in new markets shall be preceded by a thorough analysis demonstrating the absence of competition and the need to address market failures.

## Strategic priority 2: Supporting sustainable and open digital markets

### GSMA comments:

As mentioned in the section on market and technological developments, markets and services have evolved from pure voice services in 2000 to a digital experience nowadays, thus provoking a set of consequences not properly tackled by the original market analysis framework. Access is becoming less and less determinant in digital markets, while bottlenecks have evolved from copper access towards access to data, creating a risk of OTTs acting as gatekeepers in the digital economy.

We would like to highlight that as explained in the BEREC "Report on the Digital Economy" – June 2019, the mandate of most NRAs is limited to the scope of ECS and ECN as defined in the EECC, which this is too narrow to address the broad and interlinked range of challenges in the Digital Economy. ECS and ECN are typically not defined as "platform" and currently discussed problems such as those concerning gatekeeping hardly refer to telecoms. Consequently, we encourage BEREC to strengthen cooperation with other competent authorities (e.g. in competition, media regulation, consumer protection and data protection) in order to provide useful insights when needed, given that platform-related issues do not primarily refer to telecommunications operators.

We believe that BEREC's experience and knowledge would be valuable as input alongside with the contribution from other public stakeholders to any policy initiative in digital markets, and in particular in the Digital Services Act package, which will potentially include regulation. As such, to tackle competition related problems linked to platforms, the current rules under the competition framework should be revised and **as necessary** complemented by proportionate regulation that addresses structural market failures.

Regarding BEREC's possible investigation of data-centric approaches and data-driven regulation

principles in the digital economy, particularly as to their ability to achieve regulatory targets while empowering end-users, we wonder whether this investigation relates only to telecommunications market or to the more relevant broader digital market beyond telecoms. Such trends are, again, neither telecoms specific nor are telecoms the main driver. Accordingly, a policy approach that focusses ECS would be misleading. Therefore, we encourage BEREC to not consider primarily the current role of telecommunications operators in the data economy but first of all the important and increasing competitive pressure that digital platforms can exert as suppliers of ECS and telecoms as potential challengers of the big platforms and at the same users of their services. These investigations should be wide in scope and not limited to traditional ECS markets and traditional suppliers of ECS services. Consequently, we encourage BEREC to strengthen cooperation with other competent authorities and their work streams.

As far as open internet is concerned, GSMA is supportive of a well-balanced regulation. We would like to restate that within the following period, traffic management measures will evolve over time and technical solutions contributing to better quality and a more efficient, dynamic and flexible use of network resources should be encouraged. As customer choice is central to the Open Internet Regulations, it should also be central to the NRAs actions in that domain.

We appreciate BEREC's strategic interest to contribute to the policy discussion around the European Green Deal. In terms of climate action, telecom operators constantly improve their energy efficiency despite increasing traffic demands and have implemented voluntarily a broad range of good practices (e.g. in the scope of the circular economy). More importantly, the mobile industry has developed a decarbonisation pathway aligned with the science-based target initiative (SBTi) and in line with the Paris Agreement target of achieving net-zero emissions by 2050. Many European MNOs have set more ambitious targets for their own operations. Already now, telecom's positive enabling effect for the economy is significant and larger than telecoms' negative footprint. As such, BEREC should consider that ECN and ECS are crucial enablers for a digitalized economy that intends to become climate neutral and should help decision makers to leverage telecoms' positive enabling effect. Furthermore, BEREC could facilitate the sharing of telecoms' expertise and good practices with decision makers. While we fully welcome the European Green Deal, we encourage that the regulation on sustainability to be applied to MNOs, as well as to all industry, is accurately balanced with the necessary support measures in order to help MNOs make their sustainability contributions even more effective. Indeed, a holistic approach is required and efforts are needed along the whole value chain.

### **Strategic priority 3: Empowering end users**

#### **GSMA comments:**

We greatly support the empowerment of consumers, which enables consumers' trust in digital services and facilitates responsible consumption patterns. Today's challenges for consumers in the digital market are manifold and cross-cutting, beyond telecoms' services. A silo approach for telecoms that leads to fragmentation and high complexity for consumers and businesses alike should be avoided. This also includes to improve the level playing field between all ICS.

The GSMA believes BEREC will play a very important role in ensuring that end user rights are always fit for purpose, considering the evolutions of the market and of end users' expectations. As such, in the short term, BEREC should ensure that the consumer protection rules defined in the Code are applied in a harmonized way across the EU, possibly by issuing guidelines (see comment on compensation in the case of early termination of contracts in the 2021 WP). In the longer term, BEREC should assist the

Commission in assessing whether market evolution and end users' expectations on level of protection require a review of the rules included in the Code.

## **BEREC obligatory work and stakeholder engagement**

### **GSMA comments:**

GSMA appreciated the improvements provided by BEREC in its interaction with the stakeholders and its willingness to continue this line of actions. Particularly, GSMA appreciated that BEREC recognizes "that in order to provide quality responses to BEREC's consultations, stakeholders need sufficient time to respond" and that "In this regard, BEREC will strive to afford stakeholders the maximum possible time to provide input to its projects". An improvement in this respect will be welcome.

## **Input on Outline BEREC Work Programme 2021**

In reference to the Outline BEREC Work Programme 2021, the GSMA recommends that BEREC should focus on the following for 2021:

- Taking into account that the EECC is currently in the implementation period on national levels, BEREC should refrain from proposing already new rules. This also relates to end-user rights, particularly given that they are already more excessive with regard to telecoms compared to other players in the digital market. A cautious approach should be considered when assessing the need for better transparency, regulation of third-party billing, compensation in case of early contract termination or migration to new services. Contrary to this, we encourage BEREC's work on e.g. assessing telecoms' positive contribution to enabling energy efficiency and to promote a science-based approach on exposure limits for electromagnetic fields and health.
- Concerning the list of "Possible work for 2021 and beyond", and in line with the comments above under the "Supporting sustainable and open digital markets" section, we encourage BEREC to prioritise inter alia the workstreams on the "Internet Value Chain" and the "Economic analysis of digital markets", based on the above suggested conditions.
- Concerning BEREC's considered work on "Compensation in the case of early termination of contracts", BEREC should clarify towards Member States to not diverge from the principle of full harmonization and to respect the EECC's foreseen flexibility for telecoms operators concerning compliance with this provision, to support a correct interpretation in all Member States ensuring a balance of the interests of the parties and ensuring that the value of the contract is respected.

We thank BEREC for the opportunity to comment on its draft Strategy 2021-2025 and Outline Work Programme 2021 and look forward to working with BEREC on these important topics.