



## **Liberty Global response to BEREC's Call for Input for its 2021 Work Programme and draft Strategy 2021-2025**

Liberty Global welcomes the opportunity to provide feedback on BEREC's draft Strategy 2021-2025<sup>1</sup> and to provide input to BEREC's Work Programme for 2021 (WP2021)<sup>2</sup>. We strongly support BEREC's commitment to engage with stakeholders on its priorities, with the aim of focussing its work on issues that are relevant to them. Liberty Global understands that the Call for Input will form the basis for BEREC's draft WP2021, which will be consulted upon in October and November 2020.

Liberty Global will, on an ongoing basis, seek to engage with BEREC and provide insights in how a pan-European provider perceives developments in markets and regulation across the EU.

### **BEREC strategy 2021-2025**

As BEREC develops its Strategy for the next five years, Liberty Global considers it is timely to look back at the development of the telecommunications market in Europe and recent developments in telecommunications policy. This will naturally feed into the next five year Strategy. The *ex-ante* regulatory framework for telecommunications networks was introduced to facilitate the transition from state-owned monopolies to open, competitive markets.<sup>3</sup> The objective of this *ex-ante* regime is to 'produce benefits for end-users by making retail markets effective competitive on a sustainable basis' — particularly, to improve efficiency, increase innovation and protect consumers within the telecoms sector.<sup>4</sup> This regime has proven remarkably successful, effective and flexible, paving the way for significant *ex ante* deregulation in the sector over the last 15 years. In fact, there have been significant innovations in technology and product offerings in the sector over the years, which have been driven mainly by increased levels of infrastructure-based competition. The focus of EU regulatory policy has now shifted from anti-monopolistic policies to policies aimed at promoting 'Connectivity for a European Gigabit Society' — specifically, increasing the availability and take-up of high-speed infrastructure. This is clearly reflected in BEREC's **Strategic Priority 1**: 'Promoting full connectivity'.

A key focus of the European Commission, in reviewing the regulatory framework and the development of the new European Electronic Communications Code (Code), has been to create the right conditions for private investment in very high capacity broadband networks (VHCN) to enable Europe to meet its Gigabit Society objectives.<sup>5</sup> As a means to achieve this goal, the Code seeks to promote consistency of rules (and application of rules), regulatory certainty, harmonisation across the EU single market and a level playing field for all players.

Liberty Global expects that a key aspect of BEREC's Work Programmes between 2021-2025 will be monitoring the implementation and functioning of the Code, to ensure that it achieves these

<sup>1</sup> Draft BEREC strategy 2021-2025 BoR (20) 43, 5 March 2020.

<sup>2</sup> Outline BEREC Work Programme, BoR (20) 09, 30 January 2020.

<sup>3</sup> i.e. by introducing rules aimed at allocating scarce spectrum and number resources, facilitating access to and interconnection with newly competing networks, and protecting consumers

<sup>4</sup> Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation (EU) 2014/710, OJ L 295 [2014], p.2.

<sup>5</sup> Directive (EU) 2018/1972 establishing the European Electronic Communications Code (Recast), OJ L 321/36 [2018] (EECC/Code), recital 3.



objectives. Here, BEREC has an important role to ensure that the Code is implemented in a consistent, harmonised manner across the EU and that it continues to promote private infrastructure-based competition in a technologically-neutral manner.

HFC network operators have long been drivers of infrastructure-based competition through investment in high-speed broadband networks, at scale, across Europe. Liberty Global operates far-reaching, scalable, VHCN that rely on optical fibre at their core. A large portion of our network is already built to provide Gigabit speeds, ultra-high capacity, reliability, and resiliency tailored to the needs of our customers. We are currently offering 1 Gbps services to 10 million homes across the UK, Netherlands, Belgium, Switzerland, Poland and Slovakia. Today, as society faces the challenges associated with COVID-19, our HFC networks have demonstrated that they are fast, reliable and capable of supporting the expected broadband and traffic demands of wide-scale home working and school closures. More than ever, our networks are providing critical connections to families, friends and loved ones, as well as the wider community of business, government, universities and hospitals. Moreover, HFC networks are expected to be able to deliver 5 Gbps speeds within the next 5-10 years, which will ramp up to 10 Gbps and beyond as demand for high-speed services grow.

In BEREC's draft Strategy 2021-2025, BEREC notes that infrastructure of the future will have specific requirements, including extremely quick response times, high capacity, resilience and efficiency. We reiterate that future VHCN will not be limited to the network infrastructure and technologies that exist today, and policies limited to these would quickly become irrelevant. Any regulatory policy should be designed to promote a mixed technology approach, which not only maximises scope for innovation and infrastructure-based competition, but can also serve as the most cost-effective means to achieve the Commission's Gigabit Society objectives. Thresholds for response times, high capacity, resilience and efficiency should be realistic and reflecting customer needs. We therefore encourage BEREC to promote policies that support investment in the full spectrum of technologies which could help deliver future performance needs. It is also important to note that incentives to invest in network and capacity upgrades — across all providers and technologies — are driven by the demand (i.e. whether there is a business case to do so). It is vital that BEREC recognises that incentivising VHCN investment is not a one-way-street and that its upcoming activities should not solely centre on the supply-side of the market. In this regard, we consider more should be done by BEREC to consider the demand-aspect of VHCN roll-out, both in terms of take-up of high speed product offerings, consumer expectations and actual usage patterns. Additionally, we would support further efforts by BEREC to monitor the impact, and effectiveness, of the newly inserted provisions, with a view to collecting sufficient quantitative and qualitative data for future Code reviews (as required under articles 122-123 and outlined in BEREC's WP2021 Call for Input).

In regards to BEREC's **Strategic Priority 2**: 'Supporting sustainable and open digital markets', Liberty Global notes that there are many differing views across the EU on how to address new challenges associated with the rise of new digital services and technologies, and that this can lead to regulatory fragmentation. As a heavily regulated industry, there is always risk that new rules will be imposed on telecommunications operators to deal with such novel issues, even where these issues are faced by



more industries in Europe. For example, BEREC refers to big data and artificial intelligence (AI) as one of the key market, technological and policy developments. However, we note that issues relating to big data and AI are not limited to telecommunications services and that any policies should be designed to apply horizontally to all sectors across the EU—in line with the level playing field that is foreseen by the Commission’s Digital Single Market strategy. We encourage BEREC to keep this in mind when undertaking any work under this Strategic Priority.

Liberty Global also welcomes BEREC’s continued commitment towards empowering end users (**Strategic Priority 3**). In this regard, we note that one of the goals of the Code is to create more consistency in the application of consumer protection legislation across the EU, through modified full harmonisation of the end-user rights provisions. End-user rights is an area where there is significant fragmentation across the EU, and — as previously submitted in response to the draft WP2020 — we consider that BEREC will have an instrumental role in promoting regulatory best practice (incl. evidence-based consumer policy) and consistent application of these Code provisions across the EU. In this regard, we note that BEREC has been tasked with providing the Commission with an opinion by 21 December 2021 on market and technological developments, and their impact on the application of the end-user rights provisions of the Code (as foreseen by the WP2021 Call for Input).

BEREC indicates in Draft Strategy that its approach to empowering end-users is based on two pillars: monitoring of the sector and ensuring the appropriate level of transparency. On this latter pillar, Liberty Global notes that whilst we agree that transparency over telecommunications services is essential — and that providing easily understandable and relevant information to consumers throughout the entire contractual relationship is essential— it is important that providers do not burden consumers with providing too much information (leading to ‘information overload’). In this regard, we consider more could be done to promote empowerment of consumers through further simplification of regulatory requirements and by promoting digital skills and education.

### **Outline BEREC Work Programme 2021**

We note that the a large portion of BEREC’s upcoming work, outlined in the WP2021 Call for Input, is being carried over from previous years or part of its regular activities. In this regard, Liberty Global refers to and repeats its responses to previous Work Programmes.<sup>6</sup> Where Liberty Global does not comment in this response on an initiative identified by BEREC in its WP2021 (and/or has not previously commented), we may do so when the specific initiative is consulted upon by BEREC. Liberty Global may also provide more detailed responses to the draft WP2021 once it is published.

We note that the overwhelming majority of BEREC’s work with regards to the Code Guidelines will have been completed by end-2020. As noted above, we consider a key part of BEREC’s role in the coming year will be to monitor the implementation and functioning of the Code, including how these Guidelines work in practice. BEREC is also tasked with providing opinions on the functioning of certain provisions of the Code. Liberty Global supports BEREC taking a proactive approach to monitoring the

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<sup>6</sup> See: Liberty Global response to WP2020 dated 6 November 2019; Liberty Global response to WP2020 Call for Input dated 23 April 2019; Liberty Global response to WP2019 dated 7 November 2018.



market, and the new Code provisions, with a view to ensuring that regulation (where necessary) is fit-for-purpose and current.

### *Geographical surveys – Phase 2*

BEREC published its final (Phase 1) Guidelines on the consistent application of geographical surveys of network deployments, and foresees adoption of Phase 2 of these Guidelines by Q1, 2020. Phase 2 will focus on verification of the reach and performance information required to be provided by operators (incl. relevant measurement tools), and the procedures for parties to declare their intention to deploy VHCN.

BEREC has indicated that it will use QoS-1 — as used for the European Broadband Mapping Project — in conducting the geographic surveys to characterise the reach and performance of broadband networks (incl. the presence or not of VHCN), and will use QoS-2 and QoS-3 indicators as a means of verifying QoS-1 data. According to BEREC’s draft VHCN Guidelines, the VHCN requirements are based on the ‘capability’ of networks and it is not necessary that the operator offers a commercial service that meets these criteria. In this context, it is not clear how national regulatory authorities and other competent authorities will be able to measure services based on end-user quality of service or experience if there are currently no commercial services being offered which are capable of meeting these criteria.<sup>7</sup> We encourage BEREC to address this issue in their Guidelines.

Liberty Global supports BEREC’s continued commitment to stakeholder engagement in relation to the Guidelines of geographical surveys, and has found the two stakeholder workshops on this topic to be useful. It is not clear whether BEREC intends to consult publicly on Phase 2 of these Guidelines, however we would encourage BEREC to ensure that stakeholders are consulted at all times and that their interests are taken into account. We consider it would be useful to hold a stakeholder workshop regarding this second phase, given the importance of this topic.

### *Study on consumer behaviour and attitudes towards digital platforms*

As stated previously, Liberty Global supports BEREC taking a proactive approach to monitoring the market and support its objective of developing an evidence-based understanding of the impact of digital platforms from a consumer perspective. Liberty Global also considers that BEREC, with its significant experience in the telecommunications sector, can assist policy makers with regards to understanding and regulating complex markets. BEREC should, however, ensure that all relevant stakeholders — including those outside of the telecommunications industry — are alerted to the study and consulted to ensure that its work is representative of the full digital platforms market (and not only stakeholders that are known to BEREC).

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<sup>7</sup> Though such services are capable of being offered over the network, and may be offered in the future (including as a result of continuous innovation and deployment of network upgrades).



### *Regulatory treatment for backhaul*

Liberty Global supports policies that promote continued private investment in VHCN, which is vital for ensuring the availability of backhaul (incl. for 5G). In this regard, we consider that the market will provide for the vast majority of Member States' coverage needs, through privately financed deployment. Any policies in this areas should focus on reducing the costs of roll-out and otherwise incentivising investment. The Code introduces numerous measures — including co-investment procedures — to encourage roll-out of VHCN. State Aid may also be used to provide backhaul coverage to those remote and economically challenging areas where it is proven beyond any doubt that there is no prospect of commercial deployment. This issue should also be considered in light of the purpose of *ex ante* regulation, which deals with bottleneck infrastructure such as access networks. We do not consider that backhaul infrastructure represents such a bottleneck and BEREC should not seek to extend *ex ante* regulation to competitive aspects of the telecommunications network infrastructure. To do so would not only lead to market distortion, but also undermine investment—in direct contradiction to the objectives of the Code. If national circumstances indicate issues regarding backhaul, national regulatory authorities can rely on the three criteria test to assess whether such market would be susceptible to *ex ante* regulation in their national market.

### *Non-discrimination on QoS*

Whilst it is not yet clear what sort of work BEREC plans to undertake on this topic, Liberty Global kindly requests BEREC to ensure that stakeholders are consulted at all times and that their views are taken into account.

### *Workshop on IP peering*

Liberty Global supports BEREC's initiative to host a joint workshop with the OECD on IP interconnection as it sees the value in the sharing of experiences in this domain. Liberty Global kindly requests BEREC to keep all relevant stakeholder closely informed about the outcomes of this workshop, as well as its intended follow-up on this subject.

### **Stakeholder engagement**

A common element of BEREC's WP2021 and Draft Strategy relates to BEREC's engagement with stakeholders. BEREC's stakeholder engagement is intended to promote transparent and effective regulation, based on high-quality professional standards and regulatory best practice. Consultation and information-sharing with a broad range of stakeholders on BEREC initiatives is instrumental to this engagement. In this regard, we appreciate BEREC's efforts to allow sufficient time for stakeholders to respond to consultations, the increased frequency of stakeholder workshops and its efforts to facilitate direct engagement between Expert Working Groups and individual stakeholders during the Annual Stakeholder Forum.<sup>8</sup> As BEREC itself recognises, these one-on-one meetings were hugely popular and many stakeholders — including Liberty Global — missed out on an opportunity to meet

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<sup>8</sup> Though this was unfortunately cancelled as a result of the COVID-19 situation.



with many of the Expert Working Group Chairs due to the limited number of slots. The sheer speed at which these meetings were taken up by stakeholders should demonstrate to BEREC the strong desire amongst stakeholders to discuss, in detail and in person, matters that are important to their business. We would therefore encourage BEREC to provide more opportunities for face-to-face meetings with the Chairs of Expert Working Groups during the year. For example, at each quarterly Plenary De-Briefing.

Liberty Global also strongly supports BEREC's new two-stage process for consultation, which includes a preliminary Call for Input. However, we would urge BEREC to enable operators to engage with BEREC regarding the input they provide at this initial stage of input. We were particularly disappointed with regard to the VHCN guidelines that no opportunities were given to engage with BEREC between the first Call for Input stage and publication of the draft Guidelines. We are particularly concerned that our concerns regarding the overall approach was rejected at an early stage (nor were we given an opportunity to discuss and provide further information to support our concerns) and that this has had the likely effect of pre-determining the outcome of these consultations. In this regard, we note that stakeholder engagement is not a one-way street. Whilst we highly value the ability to provide input to BEREC's activities, it is also important that BEREC engages with this input in a meaningful way. When developing its WP2021, we therefore encourage BEREC to incorporate regular opportunities for stakeholder engagement, including workshops, and keeps in mind the need for these opportunities to be truly bi-directional (e.g. through information sharing and open discussion of issues).



## **About Liberty Global**

Liberty Global is one of the world's leading converged video, broadband and communications companies, with operations in six European countries under the consumer brands Virgin Media, Telenet and UPC. We invest in the infrastructure and digital platforms that empower our customers to make the most of the digital revolution.

Our substantial scale and commitment to innovation enable us to develop market-leading products delivered through next generation networks that connect 11 million customers subscribing to 25 million TV, broadband internet and telephony services. We also serve 6 million mobile subscribers and offer WiFi service through millions of access points across our footprint.

In addition, Liberty Global owns 50% of VodafoneZiggo, a joint venture in the Netherlands with 4 million customers subscribing to 10 million fixed-line and 5 million mobile services, as well as significant investments in ITV, All3Media, ITI Neovision, LionsGate, the Formula E racing series and several regional sports networks.