ecta

ecta RESPONSE

TO THE PUBLIC CONSULTATION BY BEREC ON THE

BEREC STRATEGY 2021 - 2025

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ensure that *all* of BEREC's deliverables correctly reflect the EECC's formal objectives and detailed articles and recitals, as well as each and every aspect of BEREC's own strategy. Omissions, even accidental ones, could have major unintended consequences, harming competition and end-user interests.

2. Market, Technological and Policy Developments

10. ecta agrees with BEREC that **technological change is a reality** in electronic communications markets, and that the **ecosystem** in a broad sense evolves *(page 3)* (although in ecta's view change occurs at very different pace at different layers, with different market dynamics occurring at different levels of the value chain). ecta wishes to point out in this regard that this **does not mean that long-standing bottlenecks to competition for, as well as within, electronic communications networks and services can be expected to vanish, would need lesser regulatory attention, or could be de-prioritised by national regulatory authorities** (hereinafter 'NRAs') **and by BEREC in favour of regulatory attention to other activities, at other levels in the value-chain**.

11. ecta agrees with BEREC that its strategy for 2021-2025 needs to consider the increasing cross-border nature of digital services. Cross-border seamless connectivity for cars and other modes of transport such as airplanes, but also for laptops, tablets, and for IoT use cases is an important element of the internal market and therefore BEREC's strategy should explicitly promote effective competition in this area. This is not only important in a 5G context but is already an issue in a 4G world in some countries.

12. As BEREC states, and ecta agrees, the **infrastructure of the future** will have specific, and indeed, much **enhanced requirements**. F**ixed-mobile integration at the network level** is likely to progress in some cases *(page 4)* (although in ecta's view definitely not in all cases). ecta also notes that BEREC attaches great **attention to 5G** *(page 4)* (presented as 'a cloud of solutions', 'an ecosystem for technical and business innovation involving vertical markets', 'tailor-made solutions dedicated to business users in their respective sectors', etc.) *(page 4)*. ecta considers that enhanced capabilities are **most critical** in the business-to-business **(B2B)** and businesses-to-business-to-consumer **(B2B2C)** markets (including for services provided to and by public administrations to citizens and enterprises). ecta wishes to flag that, **20+ years after full liberalisation, B2B markets are characterised in most EU Member States by incumbent market shares over 60%, and sometimes over 70%. This state of affairs cannot continue as 5G and IoT and fixed-mobile integration progress**.

13. BEREC refers to network **virtualisation**, disaggregation and especially to network **slicing** *(page 4)*. ecta agrees that these are fundamental technology trends. ecta considers that these **trends** could lead to potential risks **in terms of market power, which should be considered following a market analysis, and might lead to the emergence of new bottlenecks**, notably **interconnection/interoperability** issues.

14. In the **specific context of 5G**, BEREC refers to spectrum **regulation** and 'access regulation to ensure access to sites, infrastructure sharing etc.') *(page 4)*. ecta considers that **this limitative expression of forms of regulation is likely to prove insufficient** to prevent and resolve damage to competition and to end-user interests.

15. Where BEREC refers to **fibre networks** *(page 4)*, the focus appears to be less than the full expression of all objectives of the Code. In particular, the **'access to' and 'take up' dimensions** for Very High Capacity Networks contained in Article 3(2) EECC seem to be underrepresented compared to the investment and deployment ('development') dimensions. ecta considers that this needs to be corrected.

16. Evidently, ecta agrees with BEREC that the **digital society must be inclusive**, for all citizens *(pages 4-5)*, but we add that **inclusiveness should explicitly extend to business users** of all kinds (SME, medium-size, large ; start-up, scale-up), **and for competitive network operators and service providers**. **No-one should be left behind**, certainly not by policy decision, but also not by omission. Europe will only be able to improve its socio-economic welfare if it **ensures that *all* its businesses (old and new) can reap the benefits from digitalisation. That requires competitive provision of the underlying electronic communications networks and services**.

17. **Climate change** is a key concern. ecta agrees that the environmental impact of our sector requires (self)assessment in earnest, and ecta also thinks that **putting a positive focus on what our sector does, and can do more, to 'green' the economy and society** more broadly has great value, and could be further emphasised. Whether this falls within BEREC's remit is a matter for consideration.

18. As regards the **European Commission's 2020-2024 programme**, this is of clear overarching importance, and it is logical for BEREC to take interest in the broad context, while maintaining focus on its statutory duties.

19. Based on the above, ecta **asks BEREC to:**

   (a) Systematically reflect all dimensions of the Code's policy objectives, in each area of envisaged action (examining and where necessary **amending chapter 2 of the text of the draft BEREC strategy accordingly – as per** ecta's indications above).

   (b) Reaffirm its **commitment**, by means of an **explicit statement in its final Strategy** 2021 – 2025, to **ensuring effective competition through the removal of bottlenecks on all electronic communications markets**, with explicit recognition of the need to improve competition on **B2B (and B2B2C)** markets. Ensuring effective competition on electronic communications markets must remain one of BEREC's primary tasks, reflecting the legally established mandate of NRAs and BEREC.

   (c) Initiate a **specific workstream on B2B (and B2B2C) markets**, to assess the state of **competition** in all EU/EEA Member States, and work towards genuine improvement of competition. This workstream should include the consequences of fixed-mobile integration, network sharing, and the role of 5G/IoT.

   (d) Initiate a **specific workstream** (separate from the one suggested above) assessing

technology developments enabling improved competition and improving end-user interests (e.g. **wavelength division multiplexing, network virtualisation and network slicing** (on wireless networks as well as on fixed networks)). These may provide **new opportunities for enabling competition and for supporting end-user interests** that can be taken into account when imposing remedies where market analysis justifies it.. With regard to network **slicing** it is also necessary to **anticipate** the potential issues **on interconnection and interoperability between the different slices of** the **different operators**, in order to allow the smooth development of the different use cases (i.e. connected automated car, smart cities ect.) Such anticipation would avoid that NRAs have to act 'after the fact', or worse, be only in a position to accept decisions made strategically by dominant operators with a view to maintaining their market positions (regulatory delay has happened in every technology transition, with severe resulting harm to competition and to end-user interests).

(e) Amend the final text of the draft BEREC strategy, so as to **not pre-emptively limit any forms of access regulation** that could be appropriate.

(f) Affirm as a BEREC objective, that **no-one should be left behind** in the digital transition, extending beyond citizen-consumers, but to all economic actors and to the public sector.

(g) When considering other initiatives and activities, ensure that this **does not distract** BEREC and NRAs from fully exercising their statutory duties and implementing actions on electronic communications network and markets.

3. BEREC's Proposed High-Level Strategic Priorities + Proposed Mission Statement

20. As stated in the introduction above, ecta expresses its **explicit support for the overall thrust and most aspects of the draft BEREC strategy**. This includes the 3 high-level priorities. However, ecta feels compelled to express its observation and related **concern** that, **over time, BEREC's priorities reduce in number (from 5 to 3), and become less focused (on the electronic communications markets that are BEREC's mandate)**.

21. The draft BEREC strategy refers to **'successful implementation of the code'** *(page 6)*, and the **'impact and the effectiveness of the EECC'** *(pages 6-7)*. BEREC does so without indicating what success/effectiveness mean. ecta **submits that the test should be significantly better outcomes for end-users, both consumers and businesses**, than those that have been achieved in the past 25+ years of the EU telecom/electronic communications frameworks. This is **not an abstract claim; it is a serious and practical demand on the part of** ecta to BEREC to set a genuine standard for assessment, and a **specific impact assessment workstream**: are end-user outcomes better, are competition and choice improving, at the electronic communications network level, and on electronic communications services markets? ecta expects BEREC to report on this, distinguishing B2C markets, B2B (and B2B2C markets), and also to assess the situation of public administrations as customers of electronic communications providers.

Strategic Priority 1: Promoting full connectivity

22. ecta **supports this proposed strategic priority**. However, ecta notes that BEREC *(page 7)* refers to conditions for the 'expansion and take-up' of networks (**omitting the crucial access dimension contained in Article 3(2) EECC**). In ecta's view, full connectivity has to mean circumstances under which consumers, businesses, and administrations as end-users not only can obtain some kind of connectivity, but **can enjoy fit-for-purpose connectivity, provided competitively**, at pricing levels reflecting genuine competitive pressure. BEREC also mentions 'a smooth transition from legacy infrastructures'. ecta **receives BEREC's reference to 'smooth transition' very positively, and proposes this to be extended in the final text to make clear that no-one can be left behind**, extending beyond citizen-consumers, but to all economic actors (including competitive operators) and to the public sector. ecta **expects BEREC's Guidelines and Opinions going forward to reflect this.**

23. BEREC refers to guidelines on new instruments (co-investment, symmetric regulation, wholesale-only operators, etc). ecta **believes that one of the most crucial areas for BEREC to provide guidance to NRAs in the short-to-medium term will be the sequence of analyses: should symmetric measures be envisaged before symmetric measures, or vice-versa, or should they form part of a single package?**

Strategic Priority 2: Supporting sustainable and open digital markets

24. ecta notes with regret that **in describing Strategic Priority 2, BEREC's text** is very short (merely 4 paragraphs) and **does not refer to electronic communications markets, and uses an imprecise notion of 'digital markets' instead** *(page 8)*. ecta **asks** BEREC to **re-assess this proposal**, and asks for written reassurance from BEREC, by way of a **textual change**, that BEREC continues to focus on the specific regulatory issues characterising electronic communications markets.

25. Regulatory attention to other activities, at other levels in the value-chain, e.g. the **digital economy, big data, algorithms, artificial intelligence etc.** may be welcome. ecta submits that **relations to wider ecosystem aspects should be examined from the vantage point of their relevance to competition in electronic communications markets and the latter's interaction with markets upstream and downstream in the digital value chain.** Their consideration should not distract BEREC and NRAs from fully exercising their statutory duties and implementing actions to fulfil their pro-competitive priorities on electronic communications markets.

26. ecta **observes that BEREC appears to consider** *(page 8, paragraph 6, and page 11-12 on 'developing the right tools')*, **that it and its constituent NRAs have relevant expertise in the design of regulatory remedies** (such as interoperability) for digital markets. It pains ecta to point out that its members experience every day that major competition problems on electronic communications markets remain unremedied or inadequately remedied to-date, sometimes despite decade-long pleas from challenger operators. NRAs' willingness to address technology transitions (e.g. from dial-up to ADSL, from ADSL to VDSL, the treatment of VDSL vectoring, the transition to fibre, etc.) in a pro-competitive manner has often been

lacking. Modesty with regard to BEREC's positioning with regard to digital markets is therefore appropriate.

Strategic Priority 3: Empowering end-users

27. Where it comes to **Strategic Priority 3** *(pages 8-9)*, ecta again notes with regret that **BEREC's text is very short** (merely 5 paragraphs) and **BEREC's focus is nearly entirely on consumers**. Whilst empowering consumers is clearly important, and ecta has always stood firm in promoting consumer choice and switching, ecta **explicitly asks BEREC to revise the text to refer to end-users in their entirety, including notably also business and public sector users.** That is where competition for electronic communications networks and services needs the greatest improvement, given incumbents' large market shares (often more than 60% and is some cases above 70%), i.e. well above the prima facie SMP thresholds. Looking forward, especially to 5G and IoT and fixed-mobile integration, the B2B (and B2B2C) dimensions is where electronic communications can help European businesses and sectors to succeed in their digital transformation and help them releasing their innovation potential which is essential for their future competitiveness and indeed their survival, and European socio-economic welfare.

28. ecta **considers that competition should be explicitly recognised by BEREC as a driver of end-user empowerment.** ecta therefore asks BEREC and NRAs to continue to focus on what is truly important to enable and improve competition at the network and service levels of electronic communications markets for business-to-consumer markets (B2C) and business-to- business markets (B2B), including business-to-business-to-consumer markets (B2B2C) and Internet of Things (IoT).

BEREC's proposed Mission Statement

29. ecta welcomes BEREC's **new Mission Statement** *(cover page of the consultation document).* Independent and high-quality regulation is not only a pre-requisite to solve the remaining market failure and more particularly in the B2B markets, to avoid re-monopolisation of some markets but also to cure not competitive outcomes of oligopolistic market structures.

30. ecta would therefore suggest to fine tune it by:

    (a) Embeding BEREC's statutory role as the body in charge of electronic communications networks and services.

    (b) Completing the reference to citizens by a clear reference to enterprises and the public sector.

    ecta **considers it** *imperative* **that electronic communications feature in BEREC's Mission Statement, reflecting the legal basis for BEREC's existence.**

4. Institutional Co-Operation and Stakeholder Engagement

31. ecta supports BEREC's proposals relating to institutional (and international) co-operation (chapter 4 of BEREC's consultation). Two points are worth reiterating here. These concern **consultation on BEREC Opinions addressed to the European Commission** and the **spectrum peer review**, given that they concern institutional co-operation and have long-term strategic importance for the regulation of electronic communications markets.

32. Specifically, ecta **considers that *all* of BEREC's Opinions to the European Commission should be subject to two-stage public consultations**, i.e. an early call for input and a consultation on the precise text of the draft Opinion.

33. ecta welcomes BEREC's intended involvement in spectrum peer review processes. However, there are serious concerns that this will be a closed process. At the very least, **industry stakeholders should be able to receive information (about BEREC's policy line and reports on the positions taken by BEREC in peer reviews and their outcomes)**.

34. In the midst of this unprecedented pandemic, ecta wishes to emphasize that its members are all hands on deck working around the clock watching out for the networks, services, and their users. It is their dedication and determination that preserves network resilience and redundancy to assure service continuity for citizens and enterprises, large and small, as well as durable connectivity for data centres and health actors on the frontline.

35. Faced with very high expectations and additional pressure to shape, and respond to, ad hoc crisis interventions, our members must prioritise the activities required for Europe to function, while paying particular attention to the safety of their employees and workers. With these operational challenges, the lockdown also makes it more challenging for ecta to coordinate with its members. As these challenges apply to the sector in its entirety, and with special weight on smaller and challenger operators, ecta **would welcome BEREC extending or otherwise providing a certain flexibility with its consultation deadlines as a positive contribution to the collective effort in the fight against this pandemic.**

5. Concluding remarks and points on the COVID-19 crisis

36. ecta reiterates its requests (see chapter 2 above, and as well in our response to the draft BEREC Work Programme 2021) to **BEREC to be attentive to technological developments enabling improved competition while serving end-user interests** (e.g. wavelength division multiplexing, network virtualisation and network slicing (on wireless networks as well as on fixed networks)). ecta **requests BEREC to initiate a specific workstream on this topic in 2021**, with a target for completion of a BEREC Report by the end of 2021. Evidently, ecta would expect to be involved at the earliest opportunity as a key stakeholder.

37. ecta re-emphasises that it considers it justified for BEREC to examine the links between electronic communications network/services markets and the **digital ecosystem**. However, this **must not distract BEREC and NRAs from fully exercising their statutory duties, notably taking all actions necessary to fulfil their duties to promote competition on**

electronic communications markets (see chapter 1 and elsewhere above).

38. ecta wishes to emphasise again that **two-stage consultations**, consisting of a call for input, and a consultation on precise BEREC text proposals, are clearly required in all cases when BEREC consults stakeholders.

39. ecta **considers that all BEREC input to the European Commission should be subject to public consultation, or at least be published in a manner allowing stakeholders to rely on it** in their representations to the European Commission and other EU institutions during the EU decision-making process, especially when BEREC has not consulted or otherwise offered market participants the opportunity to provide feedback. ecta recalls here that BEREC precedent, with positive effect, exists. This is important, especially in view of the European Commission's track record of not publicly consulting on the actual text of iterations of the Recommendation on Relevant Markets as well as on the Implementing Regulation on Fair Use Policy.

40. ecta has observed that the **COVID-19 crisis** has in some Member States led to the **adoption of measures harmful to competition and to end-user interests** (e.g. unduly restricting number portability and operator switching where no human intervention is required, postponing margin-squeeze control) **and/or failure to act against anticompetitive operator practices** (e.g. increasing retail data bundles but not extending this to their wholesale customers). ecta **calls upon BEREC** to closely monitor these developments, to exchange internally and with stakeholders and include these developments in its reporting activities so as **to stop anticompetitive practices in a time of need and prevent adoption of measures with similar effects** that run counter to BEREC's mission statement and strategic priorities.

41. In closing, ecta **and its members extend their best wishes to all BEREC, BEREC Office and NRA staff and their close ones in the trying circumstances of the COVID-19 crisis, trusting that good co-operation will remain the norm**.

Annex

ecta's response to the Stage-1 Call for Input (6 November 2019) is attached for reference; it contains further details on ecta's expectations and underlying motivations.

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In case of questions or requests for clarification regarding this contribution, BEREC and NRAs are welcome to contact Mr Oliver Füg, Director of Competition & Regulation at ecta.