



ecta RESPONSE

TO THE PUBLIC CONSULTATION BY BEREC

ON THE

GUIDE TO THE BEREC 5G RADAR

AND THE BEREC 5G RADAR

BOR (20) 110

31 July 2020

Introduction

1. **ecta**, the **European competitive telecommunications association**¹, welcomes the opportunity to comment on the draft “*Guide to the BEREC 5G Radar 2020-2026, Regulatory aspects in the 5G ecosystem*”, BoR (20) 110 (hereinafter ‘draft Guide to the BEREC 5G Radar’).
2. **ecta** welcomes the broad scope of the draft Guide to the BEREC 5G Radar, including BEREC’s statement that it aims to anticipate any changes to regulation that may be required to keep pace with innovation (**page 1, para 4**), and BEREC’s graphical representation (**Annex 2**).
3. The draft Guide to the BEREC 5G Radar presents a useful overview of essential points to be addressed to ensure a successful European 5G ecosystem, and also for EU-level co-legislators (European Commission, European Parliament and Council) which may be looking into future changes to EU legislation.
4. **ecta** considers that **BEREC needs to revise its document** to unequivocally identify, and fully distinguish the areas in which:
 - (a) BEREC intends to act as the Body of European Regulators for Electronic Communications, based on its own mandates enshrined in EU law.

This includes possible BEREC proposals, within BEREC’s mandate, to enhance the EU Toolbox on 5G Cybersecurity. The Report issued on 24 July 2020² is relevant in this regard.
 - (b) Potential joint action of National Regulatory Authorities (hereafter ‘NRAs’), agreed within BEREC, based on NRAs’ mandate enshrined in EU law, considered necessary. Any such actions need to be clearly identified as joint actions by NRAs based on their mandate established in EU law.
 - (c) BEREC cannot be expected to act, unless there are new EU-level legislative changes in the future entrusting BEREC (and/or National Regulatory Authorities) with new responsibilities.

ecta understands that BEREC may urgently be requested to / exercise its advisory role to the EU institutions / may wish to propose actions in several areas relating to 5G. Transparency from BEREC in this regard is very important to **ecta** and its members, which are key BEREC stakeholders. Therefore, **ecta** expects that BEREC will consult on all of BEREC’s own initiative opinions and/or responses to EU institutional stakeholders.

¹ <https://www.ectaportal.com/about-ecta>

² <https://ec.europa.eu/digital-single-market/en/news/report-member-states-progress-implementing-eu-toolbox-5g-cybersecurity>

Key points

5. **ecta** submits **key points** in this response as follows, ordered in sequence of the items listed in BEREC's consultation document.
6. It is premature for BEREC to consider harmonised information requirements on 5G coverage and QoS. We agree with BEREC's statement (*page 2, para 1*).
7. Ensuring effective competition for the full range of 5G-based services is essential, in business-to-consumer markets (B2C), business-to-business markets (B2B) (including services to public administrations), and services to industries and to the public sector that are ultimately to be taken up by citizens/consumers (B2B2C) and so-called 'verticals', be they industrial, connected mobility, smart city, etc. Ensuring competition for connectivity for all forms of Internet of Things (IoT) is part of this. Enabling specialist intermediary parties to serve the connectivity needs of a specific 'vertical' is also highly relevant (*page 2, para 2*).

For 5G to be really transformational, it cannot be expected to be about increased mobile download speeds on smartphones or other devices (which is already happening and will be useful), but mostly about B2B/B2B2C/IoT use cases, and Fixed-Wireless Access (hereafter ('FWA')), supporting the digitalisation of Europe's economy and public services.

Ensuring that all these dimensions are addressed in a pro-competitive manner is essential for Europe to serve its citizens, public administrations and businesses, and for Europe's global competitiveness.

The benefits of 5G will be materialised *only if* 5G is provided competitively in national markets. Europe will not be competitive globally if it does not support effectively competitive markets at national level inside the EU.

8. Lora, Sigfox, Wi-Fi, etc. are relevant, but the use of these technologies is mostly not intended or expected to substitute for nation-wide 3GPP standardised 5G networks (*page 4, para 1*). NRAs/BEREC should nevertheless keep a close eye on the coverage and performance (and QoS), and market relevance, of these alternative technologies. BEREC and NRAs should not draw disproportionate conclusions. BEREC and NRAs should be realistic about the impact of these technologies on markets. As BEREC recognises (*page 4, para 1*), 5G should not be seen in isolation, especially as in the context of IoT, LTE-M, NB-IoT; Even technology generations all the way back to 2G GPRS will remain relevant for many years to come to support low bandwidth mobile data/IoT.
9. A review and reformulation of BEREC's Common Position on Infrastructure Sharing - BoR(19) 110³ - is necessary in the light of 5G, including as regards electrical power to base stations (*page 6, para 1*). BEREC's reformulation of this Common Position should address, as a minimum: sharing towers/masts/any supporting structures, electrical

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https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/common_approaches_positions/8605-berec-common-position-on-infrastructure-sharing

power, spectrum pooling, RAN sharing, national roaming, specifics on small cells, backhaul, network slicing (including cross-border QoS on network slicing), etc.). BEREC's work on these topics, as well as on coverage obligations, needs to be fully cognisant of the implications for competition, and continue to promote competition of national markets, for the benefit of all categories of users, be they end-users (consumers), business users (businesses and public administrations) and including wholesale relationships, including IT system integration for pan-European IoT. In particular, it needs to be ensured that the companies holding less complete radio spectrum portfolios, and/or those companies that are new entrant 5G-relevant spectrum holders, are able to participate effectively in any sharing and national roaming agreements, to ensure effective competition. Promotion of national roaming is essential to ensure effective competition and enable new entrants to enter the market. National spectrum managers, supported by NRAs, need to ensure that roaming obligations to this end facilitate the emergence of sustainable competition in mobile services. In particular, deals between the two (or three) largest spectrum holders (5G-relevant – which means essentially all spectrum bands going forward) in EU Member States need to be subject to particular scrutiny, to ensure that such deals do not foreclose competition. Unequivocal obligations of openness of deals between the two (or three) largest spectrum holders to any others' participation are necessary, to ensure that there is no exclusion of smaller or new spectrum holders.

10. FWA is a key 5G use case for several [ecta](#) members both in the 3.4-3.8 GHz band as well as in mmWave bands, ranging from 24 GHz to 100 GHz as soon as 2020 (**pages 5 & 6**). Not only in a first stage, or solely for existing mobile network operators, but especially for existing FWA operators that have invested to deploy optical fiber up to the base station (i.e. fibre-to-the-antenna). They will be able to easily upgrade their networks to new bandwidths and deliver Gigabit performance as soon as spectrum and technology become available. It is therefore essential to ensure that these operators, who are already making important contributions to connecting underserved regions, will be given due and equitable consideration when allocating 5G bands to give them a clear development perspective for their business. 5G FWA is valuable to the achievement of Gigabit Society objectives wherever it is not economically viable to have a fibre connection up to the target site. [ecta](#) members' deployments already today contribute substantially towards achieving the EU Gigabit Society targets. Nevertheless, BEREC should not in any way pre-judge substitutability of mobile networks with fixed networks, also not under a heading of 'convergence' in BEREC's draft 5G Radar. The speed and QoS of networks continuously evolves over time. The objective capabilities of wired networks can legitimately be expected to structurally outperform mobile networks by far. This is expected to be applicable in the short, medium and long term.

[ecta](#) therefore specifically requests that:

- (a) Point 21 of the draft Guide to the BEREC 5G Radar be amended, removing the title 'Convergence', and to be entitled instead 'Fixed-Wireless Access'.
- (b) The green circle entitled 'Convergence' at the bottom right (2024-2026) be removed from the draft 5G Radar diagram. This is too speculative, it would unduly pre-empt NRAs' market analyses.

Related to points (a) and (b) above, **ecta** requests that where BEREC discusses FWA and 'Convergence', BEREC adds in the main body text of the draft BEREC document, that detailed national market analyses are essential, and are to be conducted by NRAs, subject to full national public consultations, and notification requirements to the European Commission and other NRAs, as is required by EU law.

11. Improving local authority (and other authorities') permitting procedures for rights-of-way, and antenna siting requirements, is key for 5G, to support macro antenna sites, and increasingly micro antenna sites (**page 6, para 2**), and indeed fibre networks providing the essential backhaul/midhaul/fronthaul supporting wireless networks. **ecta** would support BEREC taking a structured initiative, with National Regulatory Authorities, to provide guidance to Member States, aimed at ensuring that Member States' local/regional/road/motorway/railway etc. authorities' antenna siting requirements are amended to not impede the development of 5G, including 5G for FWA. The same is relevant for end-to-end fibre network deployment supporting mobile/wireless networks. This should be done as soon as possible. Subsequently, it can be linked with the European Commission's review of the Broadband Cost-Reduction Directive 2014/61/EC which has recently been initiated. In that context, BEREC could advise the EU institutions, and NRAs could seek national support, to improve Article 7 of the directive, entitled 'Permit Granting Procedure'. **ecta** responded to the European Commission's initial feedback request on the review of this directive on 17 July 2020⁴.
 12. **ecta** recognises BEREC's indication that tailor-made services using a special slice of a 5G network may be confronted with challenges concerning switching or interoperability going forward, as a potential competition problem (**page 6, para 4**). Therefore, this aspect should be put under careful monitoring.
 13. Relations to wider ecosystem aspects (e.g. privacy, electromagnetic fields, the data economy (sharing of end-user data, 'private information as a cost'), environmental sustainability, etc.) have been addressed by BEREC in its recent work, even where the foundation in law for BEREC to examine these issues is questionable. **ecta** is of the view that issues outside BEREC's remit need to be examined from the vantage point of their relevance to competition and end-user interests in electronic communications markets and their interaction with wholesale and retail markets upstream and downstream in the digital value chain (B2C, B2C, B2B2C).
- The consideration of these wider ecosystem aspects is welcome, but it should not distract BEREC and National Regulatory Authorities from fully exercising their statutory duties and implementing actions to fulfil their pro-competitive priorities on electronic communications markets.
14. **ecta** would nevertheless welcome explicit BEREC statements on electromagnetic fields, to encourage Member States and regions within Member States to promote connectivity, where rules in place on electromagnetic fields impede 5G development, and notably

⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12463-Review-of-the-Broadband-Cost-Reduction-Directive-Directive-2014-61-EU-/feedback?p_id=8014157

where national/regional/local rules impede a competitive national market for mobile/wireless communications. BEREC statements, based on scientific evidence, to counter disinformation, are also welcome.

BEREC's proposed timing for the 5G Radar

15. **Annex 2** of BEREC's proposed 5G Radar indicates proposed timing, ranging from 2021 to 2026.
16. ecta's key points put to BEREC are covered above. They indicate timing and urgency; these are the matters of substance of the utmost importance. In addition, ecta briefly provides its views on the prioritisation of the draft BEREC 5G Radar, as follows.
17. **ecta** recognises that BEREC's members are not immediately responsible for regulation on electromagnetic fields. Nevertheless, the situation in this regard is an issue for all radio frequency-based network operators, and their suppliers of backhaul/ midhaul/fronthaul. This issue is relevant right now (2020). **ecta** recommends that it needs to be prominently on BEREC's radar permanently (2021-2026 - see also our comments in paragraph 14 above).
18. Similarly, State aid for broadband networks needs a more coherent EU-wider regulatory approach. BEREC could use its role as an advisor to EU institutions to favour genuinely transformational networks, moving away from subsidising network upgrades from legacy technologies. Attention in the context of State aid is also needed to ensure that backhaul/fronthaul/midhaul is fibre-based.
19. 5G national network sharing/roaming is key to ensuring a competitive market. This needs to be at the front-end of BEREC's proposed timing. Indeed, issues in this regard need to be comprehensively solved in 2020-2021. A pro-competitive approach is needed, including where it comes to setting a clear framework for site/network/RAN sharing, and wholesale access (national roaming, MVNO access) where justified. Delaying decisions ensuring national roaming for 5G could damage competition. **ecta** submits timing points as follows:
 - (a) The majority of **ecta** Mobile Network Operator members are participants in some/several forms of national site/antenna sharing, RAN sharing, and national roaming agreements. Several of these agreements are based on spectrum licensing conditions, and/or competition law decisions, regulatory decisions, national government decisions, or agreements, notably to cover less dense areas. The advent of 5G should not lead to the exclusion of challenger Mobile Network Operators to the advantage of the largest Mobile Network Operators. Non-exclusion of challenger Mobile Network Operators in the context of 5G needs to be structurally ensured. No-one can be left behind in the transition to 5G.

- (b) Several **ecta** members are also participants in existing agreements, or are pursuing, agreements, in their capacity as (potential) beneficiaries of specific national roaming obligations, obligations to negotiate national roaming, MNVO access, or are seeking MVNO access. This includes IoT-focused MVNOs pursuing wholesale network access. This is relevant for 5G networks right now in 2020. For example, IoT deals for connected mobility going forward are being negotiated in 2020 for a contract duration until 2025. Challenger operators, specialist MVNOs, and indeed any BC2, B2B, B2B2C providers, cannot be left behind where it comes to 5G. Therefore ensuring roaming and wholesale access for 5G cannot be delayed, and needs to be addressed in 2020/2021.
 - (c) Deals between the two (or three) largest spectrum holders (5G-relevant – which means essentially all spectrum bands going forward) in EU Member States need to be subject to particular scrutiny, to ensure that such deals do not foreclose competition. Unequivocal obligations of openness of deals between the two (or three) largest spectrum holders to any others' participation are necessary, to ensure that there is no exclusion of smaller or new spectrum holders.
20. International 5G roaming is key to all **ecta** members, and clearly needs to be assured for all market participants immediately (2020-2021), notably to enable competitive wholesale and retail mobile markets, including the enablement of successful pan-EU IoT markets. **ecta** will further address these aspects in its response to European Commission's consultation on the review and prolongation of the Roaming Regulation⁵.
 21. Enabling 5G network slicing to work for specific use cases cannot be delayed by regulatory impediments. These aspects therefore need to be brought forward (2021, not 2022).
 22. Enabling small cells is also a matter of priority, including in the context of FWA, and thus its consideration should not be delayed (2021, not 2022). FWA and some small cells are being rolled-out by **ecta** members right now, therefore this also needs more immediate attention.
 23. FWA is a key 5G use case for several **ecta** members. Specific modifications to BEREC's proposed point 21 are put forward above (our paragraph 10). In terms of the proposed timing on the Radar, **ecta** requests that consideration of FWA and small cells is moved forward to 2020-2021.

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⁵ <https://ec.europa.eu/digital-single-market/en/news/public-consultation-review-and-prolongation-roaming-regulation>