



Liberty Global position paper on BEREC's draft report on the regulatory treatment for fixed and mobile backhaul

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Liberty Global commends BEREC's thorough draft report on the regulatory treatment for fixed and mobile backhaul. The report finds a broad variety of national practices, and the evolution of backhaul uses and needs. Whilst national circumstances diverge and may merit different approaches, there is still a need for a harmonized application and interpretation of applicable rules, specifically as regards methods of analysis and potential remedies. Liberty Global supports BEREC's intention to continue monitoring the regulatory treatment for fixed and mobile backhaul in coming years and to organise stakeholder workshops and to draw up a common position on applicable rules in an early stage. Such a position can ensure the coherence of future decision-making on the national level – as well as its adherence to the principles appropriateness, proportionality and of technology neutrality.

The transition to open, competitive markets through (de)regulation

The introduction of *ex ante* regulation of telecommunications networks served to

facilitate the transition from state-owned monopolies to open, competitive markets — reflecting well-established competition law principles and ensuring legal certainty. *Ex ante* regimes sought to make markets competitive on a sustainable basis, by improving efficiency and increasing innovation within the telecoms sector to a point at which *ex post* competition law could take over. This approach has been remarkably successful over the past two decades and resulted in a gradual reduction of the number of markets listed in the Commission's Recommendation on Relevant Markets (Recommendation).¹ This list of pre-defined markets helped regulators to regulate markets in a consistent manner, and provided market participants with legal certainty.

The three criteria test remains central to the application of *ex ante* regulation

As BEREC recognises in its draft report on the regulatory treatment for fixed and mobile backhaul (draft report),² national regulators have different tools at their disposal to address potential issues identified in the provision of fixed or mobile backhaul. Typically, such access remedies can be imposed on the basis of either *ex ante* regulation under the European Electronic Communications Code (Code) in combination with the Recommendation,³ or under the Broadband Cost Reduction Directive (BCRD).⁴ Depending on the issues identified at retail

¹ Commission Recommendation (EU) 2020/2245 on relevant product and service markets within the electronic communications sector susceptible to *ex-ante* regulation, OJ L 439, 29.12.2020, (Commission Recommendation).

² BEREC, Draft Report on the regulatory treatment for fixed and mobile backhaul, BoR (21) 129 (Draft Report).

³ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December

2018 establishing the European Electronic Communications Code, OJ L 321, 17.12.2018 (Code).

⁴ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications network, OJ L 155, 23.5.2014 (BCRD).



level, regulation of mobile/fixed backhaul is possible under reviews of market 1/2020 (local access provided at a fixed location or market 2/2020 (dedicated capacity) of the Recommendation.⁵ For the identification of a market outside those identified in the Recommendation, the three criteria test applies. Liberty Global applauds BEREC's recognition of this closed system foreseen by the current regulatory framework, as the legal certainty it provides is instrumental in incentivizing innovation and investment.

Measures should be appropriate and proportionate

As BEREC also notes, the Commission takes the view that mobile retail markets are in general competitive on a Union-wide level. Regulators are urged to exercise restraint. This is in line with the key regulatory principles of appropriateness and proportionality – applicable to potential remedies adopted under the Code or BCRD and as regards backhaul for fixed as well as mobile networks. Liberty Global welcomes BEREC's recognition of these principles in its call to national regulators to prevent 'false positive (Type I) errors, which might lead to excessive regulation or insufficient deregulation, but also avoid false negative (Type II) errors, which might result in insufficient regulation or excessive deregulation, when assessing backhaul in the different market reviews [...]'.⁶

Outlook and follow-up

Diverging national regulatory approaches, which may be attributed to national

circumstances, as found by the Draft Report, are no issue in and of themselves. However, in line with the objectives of the Code – which foresees a high level of harmonization – any regulatory fragmentation as regards the methods of analysis and potential remedies is undesirable and potentially harmful. Therefore, Liberty Global welcomes BEREC's initiative to describe the 'lay of the land' in the current Draft Report, as well as its intention to closely monitor national decisions and corresponding Commission input in the wake of its adoption. Liberty Global recommends BEREC to consider the adoption of a common position, on the methods for analysis as well as on potential remedies, in an early stage. As Liberty Global held in its contribution on the Recommendation, it is key all regulatory interventions are consistent and coherent, particularly in their adherence to the principles of appropriateness, proportionality and technological neutrality.⁷

About Liberty Global

Liberty Global is a world leader in converged broadband, video and mobile communications services. We deliver next-generation products through advanced fiber and 5G networks that connect over 85 million subscribers across Europe and the United Kingdom. Our businesses operate under some of the best-known consumer brands, including Virgin Media-O2 in the UK, VodafoneZiggo in The Netherlands, Telenet in Belgium, Sunrise UPC in Switzerland, Virgin Media in Ireland and UPC in Eastern Europe. Through our substantial scale and commitment to innovation, we are building Tomorrow's

communications product and service markets subject to ex ante regulation.

⁵ Draft Report, p. 49.

⁶ Draft Report, p. 53.

⁷ Liberty Global response to Questions related to the public workshop: Future electronic



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