



## **GSMA response to the BEREC public consultation on the BEREC Work Programme for 2022**

November 2021

The GSMA, which represents the interests of mobile operators worldwide, welcomes the opportunity to comment on BEREC's draft Work Programme for 2022. 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**

#### **1.1. Report on a consistent approach to migration and copper switch-off**

The GSMA supports BEREC in promoting a consistent and flexible approach to migration and copper switch-off. It is important that proper procedures, transition plans and approaches are put in place to facilitate the migration from copper networks to fibre networks and ultimately to switch off copper networks.

We believe operators should plan and communicate migration plans sufficiently in advance to ensure that all stakeholders are allowed to address migration or switch off issues, but it is important to avoid the imposition of long prior notification period that would unjustifiably delay operators' (voluntary) switch off with consequent increase of operators' costs due to the need to manage two networks in parallel. This includes establishing a dialogue with relevant stakeholders and to define possible solutions for identified challenges. BEREC's role should be to support the process with best practice specifications, and they should consider that operators require flexibility to effectively manage complex migration processes and thus must not be prescriptive.

#### **1.2. Report on regulatory treatment for backhaul**

Even though the GSMA recognizes the importance of backhaul for 5G connectivity, we restate our view that we consider it premature that BEREC has issued a consultation on this topic given that for the time being, the Recommendation on relevant markets emphasizes that wholesale *ex ante* regulation should only be applied where competition problems at retail level exist, specifically in this case, in the retail mobile markets. EU mobile markets are competitive and therefore do not require any ex-ante regulation, in line with the conclusions of the Recommendation. Additionally, NRAs already have at their disposal different regulatory tools to address potential issues related to backhaul, i.e., market 1 and

market 2 susceptible to ex ante regulation and the BCRD framework.

The GSMA already expressed its concerns on this item in response to the consultation on the BEREC strategy 2021-2025. Despite this GSMA will review the consultation published on the regulatory treatment of backhaul for fixed and mobile networks.

### **1.3. Report on the 5G Value Chain**

5G is a priority for the EU and the GSMA welcomes the important role which BEREC can play in this, namely by clarifying certain aspects related to 5G deployment through stakeholder engagement and studies. We note the work completed BEREC to date and welcome BEREC's continued engagement on the 5G ecosystem.

### **1.4 Report on wholesale mobile access connectivity**

The GSMA supports the view that 5G will be a source of innovative services and opportunities for new services and improved connectivity. GSMA's Mobile economy report for 2021 predicts that by 2030 5G will drive additional contributions to the European Economy underpinned by operator investment of €145 billion by 2025, with 90% of this going to 5G.

A challenge for all investing MNOs and operators is the need to avoid fragmented policy frameworks and fragmented spectrum assignments. There is a challenge for all stakeholders committed to the effective roll out of 5G to address these issues, considering the very ambitious targets set up by the European Commission Digital Compass to provide 5G coverage in all populated areas of the EU by 2030. Therefore, it is alarming for BEREC to recommend if spectrum awards in the future would add access obligations such as price caps and cost orientation. GSMA believe the approach to be taken needs to be evidenced based and within the telecom's regulatory framework and the SMP process. GSMA notes that no regulator to date has notified these concerns through a market analysis process, the mobile market being historically competitive and currently excluded from the list of the relevant markets, so it is surprising to see these concerns raised by BEREC.

GSMA notes that in all EU markets a choice of access partners is commercially available to third parties. Therefore, GSMA believes there is no need for BEREC to investigate this market in which so far, no competitive problems have arisen.

### **1.5. Workshop on Open RAN**

The GSMA fully supports BEREC's aim to promote discussion on Open RAN and welcomes its commitments to a workshop on the topic in 2022

### **1.6 Report on satellite connectivity for universal service**

The GSMA supports BEREC's work in this area and looks forward to the report on SATCOM.

#### **1.7 Workshop to share experience on the implementation of Article 22 EEC**

The GSMA welcomes the work to date by BEREC on Article 22 and welcomes the recent workshop with stakeholders on identifying broadband capacity indicators. GSMA at the workshop highlighted the need for BEREC to support NRAs using existing broadband coverage data and avoiding additional burdens on operators. Also, there is a need for clarity on the extent and use of forecast data and the confidentiality of data supplied to NRAs for this purpose.

#### **1.8. BEREC Report on competition amongst multiple operators of NGA networks in the same geographical region**

The GSMA support the continued focus by BEREC on geographical market definition and ensuring market analysis is evidence based and focuses SMP and remedies on genuine bottlenecks.

#### **1.9. Business services**

##### **1.9.1. BEREC Report on the regulatory treatment of business services & 1.9.2. External study on evolution of business services**

The GSMA notes BEREC work programme and commissioning of an external study on business services. These markets are evolving and wholesale access regulation needs to adapt to evolving wholesale access needs within the context of the existing regulatory framework

## **Strategic priority 2: Thriving sustainable and open digital markets**

#### **2.1. Report on the Internet ecosystem (carry-over, before named: Report on the Internet Value Chain)**

The GSMA supports BEREC's aim to build its knowledge and expertise in the digital economy to ensure that technological, economic, legal, and user protection perspectives are integrated in the design and practice of regulation.

#### **2.2. BEREC Report(s) for an effective enforcement of the regulatory intervention on digital**

## **gatekeepers**

The GSMA notes the recent report on digital gatekeepers from BEREC and workshops hosted by BEREC in 2021 on this topic. GSMA supports BEREC in this work and agrees that BEREC should take a more prominent role in this field. The new power granted by the EECC to collect data from stakeholders not directly bound by the Code's rules is key to feed the NRAs wider analysis of the digital market and assessment of the interplay between different actors.

The GSMA believes that the distribution of powers and the identification of bottlenecks in the distribution of digital services – including electronic communications services – are crucial topics that are rightfully undergoing broad discussions both at the EU and national level, both from the regulatory and competition standpoints.

Keeping in mind the general need to assess the crucial role of digital gatekeepers, we welcome relevant public authorities' efforts to evaluate how the digital economy has evolved and restate the importance of the identification of new potential bottlenecks (i.e., devices, Operating Systems, App stores, digital platforms). Most importantly, this analysis requires the assessment on how market power is distributed in the digital market, the existence of competition failures and how these can be best addressed, taking into consideration the role of data in the market dynamics

### **2.3 Report on challenges and benefits of Artificial Intelligence (AI) solutions in the telecommunications sector (including use cases)**

The GSMA believes AI has the potential to radically alter and improve the way governments, organisations and individuals provide services, access information, and improve their planning and operations. However, AI adoption is still at an early stage at EU level in general and within the telco sector in particular, and discussions on the regulatory approach to be adopted are still ongoing at an institutional level. GSMA believes it is therefore premature for BEREC to undertake specific activities on the topic.

## **2.4. Open internet**

### **2.4.1. Collaboration on the Net Neutrality Measurement tools and evolution of the regulatory assessment methodology (carry-over)**

The GSMA welcomes the fact that BEREC aims to rely on best practices. It is important that this workstream includes testing and feedback with operators to ensure that the tool is accurate.

### **2.4.2. Implementation of Regulation (EU) 2015/2120 and the BEREC Guidelines on the implementation of the Open Internet (OI) Regulation**

The GSMA welcomes the work of BEREC in continuing to monitor the implementation of the open

internet regulation

#### **2.4.3. Update to the BEREC Guidelines on the Implementation of the Open Internet Regulation**

The GSMA welcomes BEREC's engagement on this topic and appreciates the call for input BEREC has opened seeking initial views on the ECJ judgments. GSMA also welcomes the commitment to consult further in 2022 on revisions to the guidelines.

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

#### **3.1. Workshop on the application of rights of end-users in the EECC**

The GSMA welcomes BEREC's focus on end-user rights in the context of the EECC and the obligations under Article 123 and general objectives under Article 3. BEREC needs to ensure it balances the objectives of connectivity for all users through price choice and quality with the need promote efficient investment which ultimate ensures connectivity for all users.

The GSMA would ask BEREC to ensure the scope of end users rights also considers the internet value chain and the wide range of products and services which form part of the value chain for end users and not only the access, connectivity or switching aspects of end users' rights.

#### **3.2. Report on best practices for ensuring equivalence of access and choice for disabled end-users**

The GSMA welcomes this report and the engagement with stakeholders which is planned. GSMA looks forward to contributing to such interactions with BEREC

#### **3.3 Workshop on the digital divide**

The GSMA notes the commitments by BEREC to a heads workshop on this issue and looks forward to the planned report in 2022

#### **3.4. Report on Comparison Tools and Accreditation**

The GSMA welcomes the report due in 2022 on this topic

#### **3.5. BEREC Report on Member States' best practices to support the defining of adequate broadband internet access service (IAS)**

The GSMA welcomes the work completed by BEREC on this subject to date and looks forward to the public consultation in 2023

## **Cooperation with EU institutions and institutional groups**

We encourage BEREC to continue following the existing and ongoing work carried out by other competent authorities and to continuously strengthen cooperation with them, to provide useful insights when required. In particular BEREC can become a reference for Regulators across the world on the analysis of the evolution of digital markets and the internet value chain which is critical to understand the competitive dynamics in converged markets and also to identify the new bottlenecks and digital gatekeepers that need to be addressed to ensure that citizens can enjoy an Open Internet along the whole value chain.

## **BEREC other tasks**

### **5.1.2. Update of criterion four of the BEREC Guidelines on very high capacity networks**

The GSMA believe that the proposed review of criterion 4 is premature. BEREC could update criterion 4 taking into account 5G developments in 2025, which is the review deadline provided for in Article 82 EECC.

### **5.1.3. BEREC Input to the European Commission regarding the evaluation and potential review of the EU State Aid Guidelines**

The GSMA supports BEREC's work in this field.

### **5.1.4. BEREC Opinion on the review of the Access Recommendations (carryover)**

The GSMA note the forthcoming opinion of BEREC on the revision to the Access recommendation

### **5.1.5. Peer review process**

We support BEREC's participation in the Peer Review Forum. The collaboration, cooperation, and critical exchange of good practices between Member States cannot be understated and this is an area where

the GSMA believes further progress can be made.

Understanding the sensitivities, limiting the peer review process only for Member States does have merits. At the same time, including the concerned market players in an open, transparent, and honest discussion about the immense impact that spectrum awards have on the market for decades and consequently on the feasibility to offer a cost-effective connectivity to all EU citizens in due time, is essential.

The GSMA notes, based on peer reviews conducted to date, that the competitions selected have not been ones where specific issues around the management or the outcome of the spectrum assignment has been contentious. GSMA would encourage peer reviews to focus also on those member states where spectrum assignments have been the subject of debate or criticism or with outcomes not expected. Only through an open peer review process can policy makers and regulators understand areas for change and areas where learnings can be adopted.

The GSMA firmly believes that an open and frank discussion between spectrum policy makers and the market players directly concerned would be not only be in the spirit of what Europe stands for, but the only way to find common solutions to the challenges Europe is facing whilst avoiding repeating past mistakes.

#### **5.1.6. Ad hoc work relating to network security and cybersecurity**

The GSMA supports BEREC in this work. The GSMA is looking forward to future cooperation with BEREC on this important topic and stands ready to continue sharing industry's knowledge and expertise.

### **5.2. BEREC mandatory tasks in line with EU legislation**

The GSMA acknowledges that BEREC carries out many mandatory tasks under EU legislation and supports its work.

#### **5.2.2 Delegated act(s) concerning emergency communications.**

The GSMA notes BEREC will be consulted in relation to '112' delegated act. GSMA will be responding to the initial consultation by the Commission and further consultations on this topic in 2022.

#### **5.2.3 International roaming benchmark data Report**

The GSMA welcomes confirmation of the upcoming 28<sup>th</sup> Roaming benchmark report.

#### **5.2.4 Inputs to any legislative proposals of the European Commission on roaming, 5.2.6. Update of BEREC retail Guidelines on the Roaming Regulation & 5.2.7. Update of BEREC wholesale Guidelines on the Roaming Regulation**

The GSMA has been closely monitoring and responding to the recast of the roaming regulation. Concerns remain for mobile operators in relation to proposals on quality of service, intra EU

communication costs, VAS and emergency services. GSMA supports measures to improve transparency for roamed customers but concerns remain with interventions on quality of service which technically cannot be achieved without significant disruption to roamed customers.

If the expected guidelines on quality of service are agreed in the approved final version of the recast of the roaming regulation GSMA would expect BEREC to engage with industry on practical workable measures on quality of service which respect the need to ensure competition is protected in the market and that quality of service is ensured through technically feasible means.

### **5.2.5 Intra-EU communications Benchmark Report**

The GSMA welcome the commitment to a 3rd Benchmark report on intra-EU communications and note that this continues to be a declining market for the operators due to significant substitution with over the top services. BEREC is no doubt aware that the recent outage from a number of online platforms led to an increase in voice and SMS intraEU traffic which is further evidence of the substitutability and competitiveness of the Intra EU communications markets.

### **5.2.8. VAS database. & 5.2.9. Emergency communications database**

The GSMA welcomes BEREC's approach to the potential obligations from the recast of the roaming regulation and looks forward to working with BEREC on the development of these databases.

### **5.3.1. Implementation of the EECC and the BEREC Regulation**

The GSMA is monitoring the implementation of the EECC and notes the large number of member states who have yet to transpose the code. GSMA is aware of a number of instances where in transpositions obligations on operators differ from the directive and other member states and GSMA would encourage BEREC to ensure harmonised obligations across the internal market in line with the general objectives of the EECC.

### **5.3.2. Developing BEREC's basic knowledge about the different aspects of sustainability in the digital sector (carry-over)**

The GSMA would like to congratulate BEREC for initiating the work in this important area.

The GSMA supports the efforts to achieve the Paris agreement climate objectives. The consistent use of the latest mobile technologies and the decisions of mobile operators to transition to green energy have been a testament to the importance of the industry to reduce its carbon footprint and eliminate it by 2050<sup>1</sup>.

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<sup>1</sup> [www.gsma.com/newsroom/press-release/ict-industry-agrees-landmark-science-based-pathway-to-reach-net-zero-emissions/](http://www.gsma.com/newsroom/press-release/ict-industry-agrees-landmark-science-based-pathway-to-reach-net-zero-emissions/)



The GSMA offered several reports in our last contribution to the 2021 BEREC work programme consultation<sup>2</sup> and as this issue is evolving GSMA will share other relevant reports to BEREC to aid its deliberations.

#### **5.3.3. Indicators to measure environmental impact of ECNs**

The GSMA welcomes work in this area and will be happy to support BEREC developing indicators in this important area.

#### **5.3.4. Study on NRAs' institutional features and relevant BEREC evaluations**

The GSMA welcomes this study and considers the independence of NRAs in member states an important aspect of the EU telecommunications framework.

#### **5.3.5. Article 32/33 Phase II process**

No Comments from GSMA

#### **5.3.6. Internal workshop on relevance of maintaining BEREC Common Positions on best practice remedies (WLA, WBA, WLL)**

The GSMA believe the maintenance of BEREC CPs in this area should be combined with the work stream related to the work on the Access recommendations from the EU Commission. Operators appreciate one source of recommendations which can assist in terms of compliance.

#### **5.3.7. Report on Regulatory Accounting in Practice**

No Comments from GSMA

#### **5.3.8. Weighted Average Cost of Capital (WACC) parameters' calculation according to the European Commission Notice**

No comments from GSMA

#### **5.3.9. Report on the monitoring of the termination rates for mobile and fixed voice calls**

No Comments from GSMA

#### **5.3.10. Report on the business and revenue models of NI-ICS and update on NRAs data collection practices on NI-ICS**

The GSMA believes this is important work for BEREC to conclude and aligns with work being conducted on the internet value chain. GSMA believe more focus should be given to the substitution effect of OTT on traditional voice, data and SMS activities. Revenue from these services provide the profits from the industry to support investment in infrastructure both in fixed and mobile networks. The sooner policy makers recognise the challenge increasing regulation on these traditional services at a time when they

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<sup>2</sup> [www.gsma.com/newsroom/press-release/mobile-technologies-enabling-huge-carbon-reductions-in-response-to-climate-emergency/](https://www.gsma.com/newsroom/press-release/mobile-technologies-enabling-huge-carbon-reductions-in-response-to-climate-emergency/)

are already under challenge creates a perfect storm which challenges the return on investment for operators.

The GSMA also notes BEREC continuing work in relation to stakeholder engagement and thanks BEREC for hosting plenary debriefings, stakeholder forums and numerous workshops throughout the pandemic. We thank BEREC for the opportunity to comment on its draft Work Programme for 2022 and look forward to working with BEREC on these important topics.