



## **Liberty Global response to draft BEREC Report on Sustainability**

Liberty Global welcomes the opportunity to provide feedback on the draft BEREC Report on Sustainability: Assessing BEREC's contribution to limiting the impact of the digital sector on the environment. Liberty Global strongly supports the European Commission's goals of reducing Europe's emissions and achieving a green and digital transition of the economy. We recognise the role that the ICT sector must play in achieving this transition and have invested heavily in upgrading our infrastructure, resulting in energy savings and reduced emissions. We also work to reduce waste through recycling and refurbishment. We are founding members of the European Green Digital Coalition, committing to the development of green technologies and to the creation of new tools to measure environmental impact.

The regulatory instruments used to support sustainability should be appropriate, proportionate and abide by the principle of technology neutrality. Also, they should preserve legal certainty. This will in turn enable technology to support the green transition. Sustainability initiatives must also account for other key regulatory aims. We support BEREC's work in relation to sustainability but believe it is important that BEREC can demonstrate a clear legal basis to avoid legal uncertainty.

### **BEREC to demonstrate legal basis for BEREC's role in sustainability regulation**

Sustainability is a key regulatory and policy priority across the globe. BEREC identifies several policy initiatives which provide the impetus for this report, including the European Commission's green and digital transition and United Nation's Sustainable Development Goals (SDGs) and 2030 Agenda. These have influenced the inclusion of sustainability in the BEREC work programme. Liberty Global recognises the importance of these policy initiatives and, as outlined previously, are engaged in various initiatives to reduce our environmental impact.

However, neither these policy initiatives nor the BEREC work programme provide a legal basis for BEREC's role in sustainability regulation. It is key that any actions which BEREC undertakes are supported by the correct legal framework to ensure legal certainty - for the national regulators (NRAs) in their national decision practice following BEREC's advice, as well as for operators subject to such decisions. A clear outline of the existing legal basis – not just BEREC's own work programme – in addition to any proposed expansion of this basis, is required.

Several legal tools are identified which may be used by BEREC to advance sustainability goals, including the upcoming BCRD, the State Aid Guidelines currently under review and the potential use of Article 44 of the European Electronic Communications Code (the Code). Several of these tools are used by multiple regulatory agencies e.g. the European Commission grants permission for state aid projects. We urge BEREC to further explore these legal tools and make transparent the way it believes they can be used to advance sustainability goals. Also, the process of cooperation between BEREC and other regulatory authorities when utilising these legal tools should be made clear to avoid regulatory overlap and to ensure that decisions are proportionate and appropriate.

The outline of BEREC's future work on sustainability issues must be rooted in a clear legal basis. In particular, it would be useful to understand if BEREC sees itself playing a role in the enforcement of



any of the proposed regulatory instruments currently under discussion and what the nature of that role might be.

Liberty Global recognises that BEREC has expertise in data collection related to electronic communications networks. However, any data collection that is carried out relating to sustainability must be carried out under a clear legal basis. Also, it is also important the relationship between BEREC and other bodies, including any data sharing, is underpinned by a firm legal basis. In addition, it must be proportionate and appropriate and avoid duplicating the work of other regulatory bodies.

As noted in the draft report, there is divergence in the powers and mandates of NRAs to act in the area of environmental sustainability. A comparative overview of the powers and actions of NRAs, including their basis in EU or national law, would be very useful for operators. Liberty Global believes that BEREC is best placed to carry out such an overview. The case studies referenced in the draft report are useful illustrations of the type of activities being carried out by NRAs – a more complete overview would afford operators further legal certainty which in turn will enable technology to support the green transition.

As sustainability rises higher on the political agenda, it is likely that there will be initiatives to change and expand the role of NRAs in this area. A regular update by BEREC on these changes would be very valuable to afford operators further legal certainty. It would also be useful to have an overview on how NRAs are working with national governments and with other regulatory authorities at national level to advance sustainability goals, as this will differ across Member States. We urge BEREC to ensure that sustainability actions are underpinned by a clear legal basis, which is regulatory communicated, to ensure legal certainty is upheld.

### **Principles of proportionality and appropriateness at the root of innovation and sustainability**

The principles of appropriateness and proportionality underpin European regulation, creating a stable regulatory environment and enabling innovation. It is important that these principles form the basis of any action BEREC takes relating to sustainability.

The overview of the ICT sector provided under section 1.1 provides a useful breakdown of contributions to Green House Gas (GHG) emissions across the sector. This overview highlights the high level of contributions private networks make to GHG emissions. Figure 1 gives the impression that data centres fall under BEREC's remit. In practice, BEREC does not regulate the activities of non-public ECN/ECS, as they are exempt from notification. Therefore, BEREC is not currently best placed to carry out data collection related to non-public networks, nor to advise on how these should be regulated. If BEREC should intend to include such ECN/ECS, it will have to rely on their voluntary contribution. If BEREC does not intend to include them, it should be noted that any data collection it carries out relating to the ICT sector's contributions to GHG emissions will be less complete due to the exclusion of these networks. Regardless, data centres should not be held to lower sustainability standards than public networks, particularly given their growing role.

Public networks are subject to extensive regulation with different societal objectives, including resilience, coverage, net neutrality, security and provision of emergency services. As public operators, we are not in control of when our networks are used and how extensively. This is illustrated by changes in internet usage during the COVID-19 pandemic – our networks were able to handle the unplanned



shift and increase in usage due to our investments, which in turn facilitated the continuation of many key economic and social activities. Sustainability initiatives must account for the varied social purposes which networks fulfil. We urge BEREC to ensure that the principles of appropriateness and proportionality underpin its actions relating to sustainability.

### **Balanced approach to infrastructure sharing as competition improves network efficiency**

Infrastructure sharing is identified in the draft report in section 5.3, and in the external report by WIK, as a practice which may reduce the environmental impact of networks. Infrastructure sharing may, in certain circumstances, contribute to reduced environmental impact through resource efficiency. However, this must be balanced against the importance of infrastructure competition to improve overall network efficiency. As recognised in the draft revised Horizontal Guidelines infrastructure sharing can reduce infrastructure competition.

This distortion of competition can reduce the incentive to invest in new, innovative networks. Without the competitive pressure to improve network efficiency, the energy efficiency of networks may be adversely impacted, in addition to negative impacts on pricing and quality for customers. Negative impacts on speed, quality of service and prices could also have a negative impact on the ability for transformative technologies, which contribute to the green and digital transition, to be scaled effectively.

As outlined in the draft revised Horizontal Guidelines, any network sharing agreements must be done on a case-by-case basis, with limitation of the distortion of competition. We urge BEREC to adopt this approach to infrastructure sharing.

### **Resource sustainability**

Liberty Global supports the finding of the report that resource depletion must also be accounted for when assessing the environmental impact of the ICT sector. This is important both to reduce environmental harm and to ensure the long-term viability of the sector, as access to resources is essential to enable innovation. We recognise the importance of re-using and recycling to avoid resource depletion and reduce waste. As part of this, we operate a rental model for our customer premises equipment, such as modems and set-top-boxes. This puts us in charge of recycling and refurbishment, meaning no customer premises equipment is disposed of without oversight. When rented equipment is returned it undergoes a comprehensive refurbishment and can be deployed anew, reducing waste and limiting resource depletion. We urge BEREC to do further work supporting resource sustainability.

### **About Liberty Global**

Liberty Global (NASDAQ: LBTYA, LBTYB and LBTYK) is a world leader in converged broadband, video and mobile communications services. We deliver next-generation products through advanced fibre 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 Connections Today, investing in the infrastructure and platforms that empower our customers to make the most of the digital revolution, while deploying the advanced



technologies that nations and economies need to thrive. Our consolidated businesses generate annual revenue of more than \$7.5 billion, while the VodafoneZiggo JV and the VMO2 JV generate combined annual revenue of more than \$19 billion.\* Liberty Global Ventures, our global investment arm, has a portfolio of more than 75 companies and funds across content, technology and infrastructure, including strategic stakes in companies like ITV, Univision, Plume, Lionsgate and the Formula E racing series.

\*Revenue figures above are provided based on full year 2021 Liberty Global consolidated results (excluding revenue from the UK JV Entities) and the combined as reported full year 2021 results for the VodafoneZiggo JV and estimated US GAAP full year 2021 results for the VMO2 JV. For more information, please visit [www.libertyglobal.com](http://www.libertyglobal.com).