



# **ecta RESPONSE**

**TO THE PUBLIC CONSULTATION BY BEREC  
ON THE  
DRAFT BEREC WORK PROGRAMME 2023**

**BOR (22) 143**

**7 NOVEMBER 2022**

---

## 1. Introduction

1. **ecta**, the **European Competitive Telecommunications Association**,<sup>1</sup> welcomes the opportunity to comment on the draft BEREC Work Programme, BoR (22) 143, which covers workstreams to be delivered by BEREC in 2023 (hereafter ‘draft WP2023’) and potential work for 2024 and beyond.
2. **ecta** appreciates that BEREC is offering stakeholders the possibility to contribute to refining the draft WP2023 prior to its final adoption.

## 2. Important comments on the draft WP2023 and remarks on BEREC’s introduction and background sections

3. **ecta** expresses its **explicit support for most of BEREC’s draft WP2023**. In this response, **ecta** provides **constructive suggestions** for improvement of the WP2023.
4. **ecta** also wishes to express its sincere thanks to BEREC for including in the introduction (*page 4, para 3*) and in Section 5.3.3, a “BEREC report on national experiences of the implementation of the EECC”. This meets a long-standing **ecta** request for BEREC to consider the effects of the EECC in terms of achieving its stated objectives. **ecta** does regret that this workstream is planned to be largely BEREC-internal during 2023, with a public workshop only to follow in 2024. **ecta** advocates that:
  - i. This work should include an **assessment as to whether the EECC provisions themselves, and – separately – their national implementation – have increased or decreased competition** (for business-to-consumer (B2B), business-to-business (B2B) and business-to-business-to-consumer (B2B2C) markets), in which direction end user prices and quality have evolved, what the impact has been on take-up (incl. affordability) of VHCN connectivity, 5G, etc.
  - ii. **Extensive substantive exchanges with industry stakeholders should be accelerated, and already occur in 2023.**
5. **In a context of spiking inflation**, **ecta** urges BEREC to take good note that Article 3 (2) (d) EECC, which concerns the promotion of citizens’ interests, provides for the following: “*[...]enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, [...]*”. **ecta** agrees wholeheartedly with this provision of the EECC, and emphasises that **affordability is not solely a matter of special measures for specific groups, and/or potentially a matter in the context of universal service, but is mainly achieved by actively promoting competition**. This is the best way to ensure that the electronic communications sector as a whole plays a positive role in combating inflation. Conversely, any measures or decisions, that might have the effect of fuelling inflation, be they considered at EU-level or by National Regulatory Authorities (such as interim reviews of market analyses or accelerated market analyses) should be carefully assessed. **In the same vein, the forthcoming BEREC Opinion on the European Commission**

---

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

---

**Recommendation replacing the EC's 2010 and 2013 recommendations should be ruthless in rejecting any proposal that would directly or indirectly fuel inflation.**

6. As always, **ecta** appreciates BEREC's aims to foster and promote independent, consistent and high-quality regulation of digital markets (*page 4, paragraph 1*) and open and sustainable European digital markets (*page 5, paragraph 2*). **ecta** wishes to ask BEREC to modify the text of these paragraphs, to replace 'digital markets' by 'electronic communications and digital markets', or to add statements to the effect that BEREC's expression 'digital markets' encompasses electronic communications networks and services markets.
7. As has also been the case previous years, BEREC's draft WP2023 does not always reflect the full balance of objectives contained in the EECC. This is a transversal issue, occurring in the introduction (*page 4, paragraph 5*) and background section (*page 6, paragraph 1*), and throughout the document. BEREC often takes shortcuts in describing the EECC and its own priorities, thereby omitting the take-up and competition dimensions, which are contained in Article 3 (2) (a) and (b) EECC. **ecta asks BEREC to revise its text to ensure that those omissions are removed, and take-up and competition are systematically included.**
8. **ecta's** experience with BEREC Reports is that these do not necessarily result in tangible guidance or agreed common approaches shared by NRAs, and in several cases end-up representing snapshots which reveal problems or divergences which are not justified by national specificities, while not triggering any follow-up. **ecta** is of the opinion that **BEREC can and should do more to define and promote Regulatory Best Practices**, and **ecta** considers that **clear subjects for BEREC Regulatory Best Practices include:**
  - i. **Migration from copper to fibre, and the eventual shut-down of copper networks** (follow-up to BoR (22) 69)).
  - ii. **Regulatory treatment of business services** (follow-up to report that is forthcoming at Plenary 2 2023).
  - iii. **Implementation of Equivalence of Inputs** (follow-up on a potential work item for 2024 and beyond).

Note: **ecta** hereby explicitly thanks BEREC for including Equivalence of Inputs in its Work Programme (*point 7.5*), but regrets that this is pushed to 2024 and does not involve tangible deliverables. It would have been far preferable for BEREC to work on Equivalence of Inputs upstream from the European Commission's work on revising the 2010 and 2013 EC recommendations.

Please allow **ecta** also to reiterate (see **ecta** response to the consultation on the WP2022) that Common Positions on best practice remedies (such as the one on **WLA, WBA, WLL**) remain highly relevant (even if in need of updating) in ensuring suitable wholesale inputs required by challenger operators. **Letting such Common Positions lapse is not an option.**

Overall, **ecta** considers that BEREC's mandate, as contained in Regulation (EU)2018/1971, concerns actions to be pursued towards the achievement of Article 3 EECC. The BEREC Regulation specifically includes, in Article 4 (1) (k):

---

*“to issue recommendations and common positions, and disseminate regulatory best practices addressed to the NRAs in order to encourage the consistent and better implementation of the regulatory framework for electronic communications;”*

9. Finally, **ecta** thanks BEREC for continuing to engage actively with industry stakeholders, including invitations to **ecta** to speak during workshops and at the stakeholder forum. This should clearly continue in 2023. However, **ecta** considers that:
- i. Workshops where participants are allocated 5 or 10 minutes for sequential presentations, and workshops held separately with different categories of stakeholders, do not enable the in-depth substantive discussion of important topics that is necessary, and crucially do not enable genuine exchanges and reply comments, resulting in an absence of contradictory debate on key policies and regulatory approaches. **ecta encourages BEREC, in 2023, to organise longer workshops, with sufficient time allocated for active substantive discussions among stakeholders**, in particular enabling participants to react to the statements made by other participants, and to engage directly with Working Group co-chairs and NRA representatives.
  - ii. **ecta** intends to continue taking an active role as a stakeholder in the context of the review of European Commission’s 2010 and 2013 recommendations, also with regard to a BEREC Opinion on this topic. The same holds true for any legislative proposals that may be forthcoming from the European Commission in late 2022 and during 2023. In this context, **ecta considers it very important for BEREC Opinions to be subject to substantive (pre)consultations with stakeholders.**
10. Overall, **ecta expects 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). **ecta** noted that the IRG organised a Senior Directors’ Workshop 2022 on the strategy of internet platforms and ecosystems. Similar high-intensity meetings, as well as in-depth workshops enabling real discussions with stakeholders, are justified to address key themes within BEREC’s remit.

### 3. Comments on Chapter III: BEREC Work in 2023

#### 3.1. Strategic Priority 1: Promoting full connectivity

11. **ecta** recognises that BEREC’s introductory reference to *“expansion and take-up of secure, competitive, and reliable high-capacity networks (both fixed and wireless) across Europe, while ensuring a smooth transition from legacy infrastructures”* is well-intended but asks for it to be boosted for more positive effect, i.e., the **text could usefully be revised to explicitly include also ‘access’ and ‘citizens’ interests’, reflecting the full scope of Article 3 EECC.** With regard to the transition to VHCN, **ecta** is on record in stating publicly that no-one can be left behind, and that shutdown of copper must mean shutdown of copper for everyone,

including self-supply by operators with Significant Market Power. As indicated in Section 2 above, **ecta** considers that **BEREC should conduct work in 2023 following up on BoR (22) 69, by preparing BEREC Best Regulatory Practices on migration from copper to fibre, and the eventual shut-down of copper networks.** **ecta's** detailed positions on the matter were presented in its response<sup>2</sup> to the BEREC consultation.

12. Section 1.1: Report on the regulatory treatment of business services (carry-over). **ecta** thanks BEREC for holding a workshop on this topic in 2022 and understands that this work item will consist of *both* an external study (focused on the evolution of business services) and of BEREC's own work, in the form of a BEREC Report addressing retail and wholesale dimensions, and notably including the regulatory treatment of wholesale products of operators with Significant Market Power. **ecta particularly welcomes that BEREC will include case studies of good practices used by NRAs to encourage effective and sustainable competition, as well as investment and innovation.**

Whilst it is certainly the case that there are **new concerns on business markets**, notably around market power and **restrictions to switching** between providers of retail unified communications solutions and switching between providers of retail cloud computing, **BEREC should not lose sight of the core concerns regarding competition for electronic communications networks and services required by business customers.**

In this context, **ecta** would like to reiterate that, despite claims made by some stakeholders that these markets would function fine without regulatory intervention, Business-to-Business (B2B) electronic communications services remain characterised by Significant Market Power in the hands of the incumbent telecommunications operator in many EU Member States (large and small). Indeed, the **incumbents often enjoy market shares exceeding 60 or even 70%**, i.e. far above the prima-facie threshold for Significant Market Power, and this more than two decades after the introduction of full competition. **It is high time for this situation to be addressed determinedly.**

**ecta** wishes to add (both with regard to the external study and BEREC's own work) that the retail B2B market needs to be analysed carefully, for instance examining the needs of business customers (and public administrations and other socio-economic drivers having similar needs) that are local, regional, national, and multi-country, distinguishing entities that have one site from entities that are multi-site, e.g. distinguishing the large central locations such as headquarters, from smaller and satellite offices, factories, dealerships, etc. The growing trend of working from home and the resulting needs must also be taken into consideration. Account also needs to be taken that some very small businesses can have very high bandwidth and/or QoS requirements, whereas some large businesses can have more modest requirements at some locations, including sites that could be served with asymmetric connections, with or without enhanced QoS.

---

<sup>2</sup> Response to BoR (21) 171:

[https://www.berec.europa.eu/sites/default/files/files/document\\_register\\_store/2022/6/BoR\\_PC\\_02\\_%2822%29\\_05\\_ECTA.pdf](https://www.berec.europa.eu/sites/default/files/files/document_register_store/2022/6/BoR_PC_02_%2822%29_05_ECTA.pdf)

Repair times for all B2B connections are clearly a very important theme, as are backup solutions. Migration from copper to fibre is also particularly sensitive for B2B connections. Any mandated migration must be pre-announced, pre-agreed, and executed in a manner that is predictable and secure for the B2B customers and their chosen operators, avoiding rushed processes and inadequate or discriminatory processes that could result in driving B2B customers back from the B2B operator of their choice to the incumbent.

Wholesale markets also need full attention, in particular to verify whether fit-for-purpose wholesale products are made available commercially, and whether there is a need for regulatory intervention, and whether it is appropriate to do so geographically, or not. Relevant dimensions include suitability of wholesale access to the purpose, in particular QoS, and related SLAs and SLGs, as well as applicable one-off and recurring pricing. Here again, especially where regulation is concerned, the wholesale product repair times are absolutely crucial, as they make or break sustainable access-based competition.

ecta welcomes BEREC's intention to hold a public consultation, and to adopt a final Report at Plenary 2 2023. ecta considers that alternative operators must continue to be deeply involved in BEREC's work on business services.

**Follow-up on the forthcoming BEREC Report, with formal Regulatory Best Practices relating to B2B wholesale inputs, in the form of a BEREC Common Position or Guidelines, is highly desirable from ecta's perspective.**

13. Section 1.2: BEREC study on the evolution of the competition dynamics of tower and access infrastructure companies not directly providing retail services. ecta welcomes the addition of this topic to BEREC's WP2023, given that transferring mobile and fixed assets to dedicated infrastructure companies is undoubtedly an important development. In addition, the fact that some infrastructure companies are expanding from purely passive access to also providing active transmission services is a matter requiring careful consideration.

It must be noted, however that several ecta members have entered into very long term contracts with infrastructure companies of this type. These contracts anchor long-term business strategies and business plans, and any disruption thereto should be studiously avoided.

ecta welcomes BEREC's intention to organise a workshop on the topic and asks explicitly to be invited to participate.

14. Section 1.3: Report on practices and challenges of the phasing out of 2G and 3G. ecta is aware that concerns have emerged, notably relating to VoLTE-based emergency calling while roaming and eCall, in the context of planned shut-downs of 2G and 3G networks. BEREC's attention to the topic is welcome, as is the fact that a public consultation will be held on a draft BEREC Report as soon as Plenary 2 2023.

However, ecta wishes to emphasise that the answer to certain challenges is not to delay shut-downs. The answer is to decisively ensure:

- i. VoLTE interoperability, and notably to require all handset manufacturers to support VoLTE-based emergency calling by default.

- 
- ii. That companies that embed mobile connectivity in hardware (e.g. in the connected mobility sector) include forward-looking technology in their products and carry out the upgrades to 4G/5G that have been known to be necessary for a decade (eCall, M2M/IoT).
  - iii. That mobile network operators, customers, and society at large are not held back from reaping the benefits from a long-planned transition to more efficient technologies, including in terms of improvements to environmental sustainability.
15. Section 1.4: BEREC-internal workshop on the migration to VHCN networks and copper switch-off, with a focus on the needs of end-users. **ecta** appreciates that BEREC is conducting some follow-up to the BEREC Report on a consistent approach to migration and copper switch-off – BoR (22) 69. Attention to end-user interests is certainly relevant. **ecta** considers it absolutely essential that this not only concerns consumers, but also all types of business users, and that the role of alternative operators providing B2C and B2B services is fully considered. **ecta asks BEREC to amend the description of this work item in the final WP2023 to reflect the role and requirements of alternative operators.** In addition, as indicated in Section 2 above, **ecta** considers that **BEREC should conduct work in 2023 following up on BoR (22) 69, by preparing BEREC Best Regulatory Practices on migration from copper to fibre, and the eventual shut-down of copper networks.**
16. Section 1.5: Update of criterion 4 of the BEREC Guidelines on very high capacity networks (carry-over). **ecta** is of the view that the inclusion of 5G in criterion four of the guidelines will certainly become relevant going forward, but cautions against prematurely updating criterion four on too prospective a basis, which could result in unexpected consequences, and possible undue distortions, in various policy areas. A BEREC public consultation, as planned by BEREC for Plenary 1 2023, is therefore most welcome. Whether modified guidelines are to be adopted at Plenary 3 2023 is a matter for consideration and debate.
17. Section 1.6: BEREC external workshop on secure and reliable connectivity in Europe from low earth orbit satellite fleets. **ecta** has expressed its position on satellite communications in response to BoR (22) 99 and agrees that understanding and identifying the challenges and potential impacts on the communications market is relevant. However, as indicated in that response, **ecta** cautions against presenting the services provided by LEO constellations as being “*one-to-one comparable with terrestrial networks.*” It is important from the **ecta** perspective that the BEREC external workshop planned for Q1 2023 will involve not only satellite companies and organisations, but also others, including **ecta**.
18. Section 1.7: BEREC Report on the authorisation and related framework for international connectivity infrastructure. **ecta** welcomes this new workstream, but questions whether there are truly regulatory problems in need of solving in this area, and in particular whether licensing/authorisation/registration constitutes a substantial cost factor when taking the total cost of an undersea cable system into consideration. The sharing and colocation issues at/near submarine cable landing stations seem more relevant, because these are known to have caused problems in the past. Security and resilience issues are
-

clearly gaining in importance, although it is not readily evident whether there are meaningful solutions to these, other than diversifying supply on routes where supply is limited. A public consultation is therefore of interest, and **ecta** intends to participate.

19. Sections 1.8 and 1.9: Support in reinforcing EU's cybersecurity capabilities and Report on BEREC's activities to support initiatives for secure 5G networks. **ecta** takes note of these two work items, and understands that they cannot be subject to public consultation. This does not prevent BEREC from publishing reports on its actions, and on the results thereof, and **ecta** is satisfied that this appears to be BEREC's intention.
20. Section 1.10: Report on competition amongst multiple operators of NGA-networks in the same geographical region (carry-over). **ecta** wishes to register its **serious concerns about the wording** "*The networks of different operators may, for example, partly overlap in some areas or might be very close to each other and could easily be expanded in near areas. In addition, network operators may use different business strategies – to differentiate (or not) prices across their networks dependent on presence of other operators [...].*" (page 16, paragraph 2). This wording is very similar to that which was employed in the draft WP2022, but it remains highly suggestive that the existence of local/regional competitors, and the commercial reaction to their existence by the operator with Significant Market Power, may in future be invoked to inappropriately define separate geographic markets, and inappropriately deregulate a dominant undertaking on account of it engaging in strategic behaviour and possible regulatory gaming. **ecta continues to question whether this workstream is appropriate and will lead to welfare-enhancing outcomes and urges BEREC to be very cautious in not triggering NRAs into proceeding to misinformed premature deregulation of operators with Significant Market Power**, leaving them free to seriously damage the businesses of emerging competitors. **ecta** also urges BEREC to **caution NRAs against declaring fledgling new entrant operators as holding Significant Market Power in sub-national markets, e.g., where they have led the development of fibre networks and provide fit-for-purpose wholesale access in response to demand**. Finally, **ecta** asks BEREC to be mindful of situations where two fully-fledged parallel infrastructures exist (e.g. the incumbent operator and a HFC cable operator, even if it is deploying FttH) and where the retail market does not deliver the benefits to end users that would be expected in a competitive market and/or fit-for-purpose wholesale access is not delivered without the imposition of regulatory obligations.
21. Section 1.11: BEREC Report on NRAs' annual reporting on the implementation of Article 75 of the EECC. **ecta** urges BEREC to not make this Report a simple listing of NRAs' reports stating that the EC Delegated Regulation has been successfully implemented, but to provide added value by identifying relevant divergences between NRAs' decisions and practices. A clear set of themes springs to mind:
  - i. Impact on Market Analyses of Markets 1&2/2014. NRAs have adopted divergent approaches, ranging from total deregulation to maintaining detailed ancillary remedies on co-location, non-discrimination, aspects of non-traffic related wholesale pricing, etc.



- ii. The treatment of freephone, shared cost and premium-rate calls, as well as other call types, such as M2M.
- iii. The treatment of interconnection ports, colocation space and related matters.
- iv. Definitions or practices validated by the NRA relating to Recital 15 of the EC Delegated Regulation, in particular to address, in an agreed manner, the notion of a 'valid CLI', and the notions of 'calls if the CLI is missing, invalid or fraudulent'. In this context, the manner in which SIP headers are labelled is causing difficulties in many Member States. Overall, these issues are causing serious headaches to many operators, and interpretations and implementations differ, both between operators within countries and between countries. This area is thus a clear candidate for BEREC-led harmonisation.

Related to this, there are increasing practices of blocking certain calls and call types, based on the type of CLI, the interpretation of the CLI (point above), some of these mandated or encouraged by NRAs. The NRA and industry practices differ widely. Again, this area is worthy of investigation, taking a harmonisation perspective.

Based on the comments made above, **ecta believes that it would be highly relevant for BEREC to open the topic, in particular BEREC's Report planned for Plenary 3 2023, to public consultation.**

22. Section 1.12: Report on cloud services and edge computing. **ecta** considers that cloud and particularly edge computing is closely related to electronic communications networks and services, and thus is a relevant topic for BEREC to look into. Retail B2B services consisting of bundles of electronic communications services and cloud and edge computing are also relevant. However, focus is needed. This should not be another wide-ranging BEREC internet ecosystem report, or speculate too much about metaverses, etc. – it should firmly focus on B2B services closely related to electronic communications. **ecta** looks forward to BEREC's work in this area and asks BEREC to bring it forward into 2023 if possible.

### 3.2. Strategic Priority 2: Thriving sustainable and open digital markets

23. **ecta** reiterates a point made on previous occasions, which is that **BEREC's and NRAs' interest in digital markets/wider digital ecosystems, artificial intelligence, etc. should not result in diminished attention and shifting resources away from dealing with the very real competition problems that continue to characterise electronic communications network and services markets.** That being said, **ecta** considers it appropriate for BEREC to examine the links between electronic communications network/services markets and the digital ecosystem, and **ecta** recognizes that BEREC has been given a role in the High-Level Group referred to in Article 40 of the Digital Markets Act, and, relating to reference offers for NI-ICS interoperability, in Recital 64 of the Digital Markets Act. As stated in paragraph 6 above, **ecta** would welcome that the introductory section of the description the work to be conducted under Strategic Priority 2 encompasses electronic communications networks and services.

- 
24. Section 2.1: BEREC Report on interoperability for number-independent interpersonal communication services (NI-ICS) (carry-over) and Section 2.2: BEREC’s role in supporting sustainable and open digital markets. **ecta** has no comment other than to welcome these workstreams.
25. Section 2.3: BEREC Report on Indicators to measure environmental impact of electronic communications networks and services (carry-over) and Section 2.4: Potential ad-hoc work on ICTs sustainability in the frame of the European Green Deal implementation. **ecta** welcomes the fact that BEREC has launched work which may lead to improving the comparability of environmental commitments made by operators. As stated before, and in addition, **ecta** believes that:
- i. BEREC is well-placed to give public recognition to the genuinely substantial efforts engaged voluntarily by the electronic communications industry, and notably many **ecta** members which have already committed to meeting science-based environmental sustainability targets.
  - i. BEREC should not only focus on the negative environmental impact of the industry, but actively highlight and help with communicating the message that the electronic communications industry is in an exceptional position to help other sectors improve their environmental performance, and that this is a factor to take into account.
  - ii. Informing and motivating end-users to take their own share of responsibility, is also of key importance (see also paragraph 35 below).
26. Section 2.4.1: BEREC Report on the entry of large content and application providers into the markets for electronic communications networks and services. **ecta** wholeheartedly welcomes the addition of this workstream to the draft WP2023. It will certainly be helpful for BEREC to document the segments of electronic communications markets (both networks and services) in which CAPs have become active and are expanding, and to clarify how ECNS regulation applies to them. The role of Content Delivery Networks (CDNs) is also well-worth investigating and documenting. **ecta** does note that this workstream would only lead to a draft report by mid-2024. Given ongoing policy discussions, it appears worthwhile for BEREC to seek to accelerate this work. As a side note, the number 2.4.1 given to this workstream is strange, and presumably results from a late addition to the draft WP2023. Giving it a number at the same level as other workstreams would seem logical.
27. Section 2.5: BEREC Report on M2M and permanent roaming. **ecta** agrees that several types of M2M/IoT devices will increasingly be in a state of ‘permanent roaming’, be they (quasi) immobile or moving very frequently across borders. Clearly, some parts of the M2M/IoT market have pan-European or even global dimensions, and some legitimate use cases may face obstacles. Bringing to light where potential problems occur, drilling down to the origin of potential problems, and identifying potential solutions (be they commercial, regulatory, or legislative) may prove valuable, also in the light of the upcoming 2025 review of the 2022

---

Roaming Regulation. **ecta** therefore supports this workstream and looks forward to contributing and seeing the output.

28. Section 2.6: Report on the impact of Artificial Intelligence (AI) solutions in the telecommunications sector on regulation (carry-over). **ecta** understands that this workstream is already well advanced and urges BEREC to be modest when addressing this subject. For instance, where BEREC states that *“This insight will help anticipate the effects of AI on the Digital Single Market and the regulation of electronic communications”, and “[...]the possible impact of these solutions on regulation” (page 25, paragraph 3)*, there seems to be an assumption that electronic communications (regulation) will be (deeply) affected. Whilst **ecta** understands the emergence of Software-Defined Networking as an important trend, including in terms of provisioning services across networks, and that AI can help with preventive maintenance of networks, facilitating corrective maintenance, saving energy, etc. this does not readily imply that electronic communications regulation has to be affected, or would somehow need to be adjusted. **ecta** urges BEREC to take stock of the situation, and once the report is published, to assess whether further BEREC work is justified.

29. Section 2.7: Assessment of the IP interconnection ecosystem and impact of the potential sending party network pays principle on Internet ecosystem and on end-users (carry-over). **ecta** appreciates that BEREC has had to re-orient its 2022 agenda to address this topic, and that, depending on how European Commission consultations or proposals address the topic going forward, BEREC work in 2023 may need to go in additional or different directions than what can be planned concretely today.

Whilst **ecta** was invited for a speaking slot in one of the BEREC workshops in September 2022, for which we thank BEREC, **ecta** cannot be satisfied with the way this workstream has been conducted so far, because there has been no opportunity for real in-depth discussion and debate, not to mention the possibility to discuss arguments and rebut them where necessary. BEREC organized several distinct closed workshops, with distinct stakeholder communities, thereby preventing any substantive exchanges. BEREC did not publish any reports on what was said in the closed workshops. Even within the workshop for ISPs/Access Providers, the only one we were allowed to attend, the workshop consisted mostly of brief unilateral statements of positions, with barely any opportunity for debate. This needs to change in 2023, in the form of workshops open to all interested parties, longer time allocations to speakers, room for Q&A to speakers, and a minimum of 2 hours for open debate, where the arguments made by stakeholders can actually be discussed.

30. Section 2.8: Implementation of the Open Internet Regulation and the BEREC Open Internet Guidelines and Section 2.9: Collaboration on Internet access service measurement tools. **ecta** has no particular comments to make on these workstreams, but follows them with interest.

31. Section 2.10: External study on the trends and policy/regulatory challenges of cloudification, virtualisation and softwarisation in telecommunications. **ecta** welcomes this proposed BEREC initiative and asks to be included in the list of interviewees, given that

---

several [ecta](#) members are leaders in Software-Defined Networking. By analogy with our comment about Artificial Intelligence, [ecta](#) asks BEREC to be modest when addressing this subject, notably when referring to identifying possible regulatory and policy challenges (*page 28, last para*). These trends do not readily imply that electronic communications policy or regulation has to be affected. A public consultation on the contents of the forthcoming study would also be most welcome.

32. Section 2.11: BEREC workshop on the perspectives and regulatory/competition challenges of Internet of Things. [ecta](#) agrees that it is worthwhile for BEREC to organize a workshop on this topic and [ecta](#) hereby asks to be invited. It is essential that the work on Internet of Things is not limited to consumer products/services, but also addresses the business-to-business (B2B) and business-to-business-to-consumer (B2B2C) dimensions. If BEREC intends the workshop to primarily address consumer products/services, [ecta](#) would like to suggest that two separate workshops are organized, one on consumer-related issues, and another on business-related issues. In any case, it would seem logical to closely associate or combine this with the workstream on M2M and permanent roaming (Section 2.5), as there will likely be substantial overlap.
33. Section 2.12: BEREC's input to the EU institutions on the Data Act. [ecta](#) agrees that the Data Act is an important piece of draft legislation, which may deeply affect electronic communications (e.g., the status of ECNS providers with regard to data generated by M2M/IoT devices), and because this is the draft legislation which contains proposals on switching between cloud providers. [ecta](#) has worked on the topic with its members, and has information and proposals to share, notably with a view to making the draft Data Act clearer in key areas, which is necessary for legal clarity and certainty. [ecta](#)'s understanding of the timeline for the Data Act means that BEREC organizing a workshop during Q2 2024 will almost certainly be far too late to have impact. **It is imperative for BEREC to bring this forward to Q1 2023.**

### 3.3. Strategic Priority 3: Empowering end-users

34. [ecta](#) asks BEREC to be systematically mindful, when referring to end-users and their empowerment, to the differences between consumers (B2C) and business users (B2B), in particular to avoid that NRAs impose undue obligations on providers that are only serving B2B customers.
35. Section 3.1: BEREC contribution to empowering end-users through environmental transparency on digital products and services. [ecta](#) very much welcomes the fact that BEREC has taken-up [ecta](#)'s suggestion that informing and motivating end-users to take their share of responsibility for the environmental impact of their behaviour is of key importance. A workshop on end-users' empowerment is therefore most welcome. The workshop should not be limited to representatives of consumer organizations but be open also to industry. As regards a suggested BEREC communications campaign on key facts about the environmental impact of devices and services, [ecta](#) believes that this could be

---

welcome, but it seems difficult to see how this is part of BEREC's mandate as contained in Regulation (EU)2018/1971.

36. Section 3.2: BEREC Report on Member States' best practices to support the defining of adequate broadband Internet access service (carry-over). **ecta** agrees that this work is relevant, and that an update of the first report from 2020 may be justified, given that a greater number of Member States have implemented the EECC and taken measures in this area. A public consultation, as is planned, is welcome, for stakeholders, because there are cases where the national provisions are debated, and cause implementation difficulties.
37. Section 3.3: Report on comparison tools and accreditation (carry-over). **ecta** considers this a low priority item, and, given the descriptive nature of the draft Report, not one that will require follow-up other than publication of the Report.
38. Section 3.4: BEREC Guidelines detailing Quality of Service (QoS) parameters. **ecta** is of the view that the inclusion of 5G QoS will certainly become relevant going forward but cautions against prematurely updating BEREC Guidelines on too prospective a basis, which could result in unexpected consequences, and possible undue distortions, in various policy areas. A BEREC public consultation, as planned by BEREC for Plenary 3 2023, is therefore most welcome. Whether modified guidelines on all topic areas are to be adopted at Plenary 1 2024 is a matter for consideration and debate.

#### 4. Comments on Chapter 4: Cooperation with EU institutions and institutional groups

39. **ecta** simply wishes to comment that it can be observed, from BEREC's frequent Chair and Vice-Chair statements at BEREC debriefings and stakeholder events in the past few years, that BEREC appears to be seeking to extend its areas of activity well beyond electronic communications, including on the international stage. This may result in unjustified de-prioritisation of the activities that are core to BEREC and NRA mandates under the applicable EU legislation.

#### 5. Comments on Chapter 5: BEREC's other tasks

40. **ecta** provides selective but important substantial comments and suggestions below.
41. Section 5.1.1: Ad hoc input to the EU/NRAs. **ecta** agrees that BEREC is likely to be called upon to support the EU institutions with regard to important (legislative) proposals, such as the review of the Broadband Cost Reduction Directive, the Data Act, the implementation of aspects of the Digital Markets Act, etc. and possible EC proposals that could affect the regulatory framework for electronic communications or the electronic communications market more generally. **ecta** relies on BEREC to ensure that the fundamentals of the EU regulatory model, and in particular the promotion of competition (through wholesale access regulation where justified) and the defence of citizens'

interests are not undermined. BEREC is uniquely placed to articulate the continued importance of regulatory predictability, and the need to be able to apply ex-ante regulation where justified, which is what has led to an EU electronic communications sector which delivers clear benefits to end-users of all types (consumers, businesses and public administrations).

42. Section 5.1.2: Peer review process. The RSPG-led peer review process on radio spectrum assignment has continued to occur only very occasionally, when Member States ask for it. When it did happen, it was in a closed forum. **ecta takes issue with the statement:** *“BEREC’s participation in the Peer Review Forum contributes to the objective of promoting full connectivity by enabling relevant exchanges with the RSPG on the market-shaping aspects of spectrum assignment. This activity is therefore aligned with the first strategic priority set out in BEREC’s Strategy 2021-2025” (page 36, paragraph 4).* The fact that BEREC does not mention the competitive dimension, or that it also pursues its Strategic Priority 2 (e.g. by means spectrum assignments that are aimed at promoting competition, for instance by ensuring that all operators can obtain a proper spectrum portfolio, notably including <1 GHz spectrum and equal quantities of mid-band spectrum) is worrisome and should be corrected. **ecta therefore asks BEREC to modify section 5.1.2, to underscore its commitment not only to promoting full connectivity, but also to competition.**
43. Section 5.1.3: BEREC participation in the High-Level Group envisaged by the DMA Regulation. **ecta** notes that BEREC is preparing to carry out its new duty in the context of the Digital Markets Act, but expresses its surprise that the focus of BEREC is entirely procedural, i.e. about Rules of Procedure. In **ecta’s** opinion, BEREC should also prepare itself as regards the substance of its role, while not losing sight that its core mandate concerns the regulatory framework for electronic communications.
44. Section 5.2.2: BEREC Opinion on Article 123. **ecta** welcomes this workstream, being aware that BEREC is required by Article 123 of the EECC to provide an Opinion, which will serve as input to the European Commission to publish a Report and potentially submit a legislative proposal to amend Title III of Part III of the EECC, potentially boosting consumer protection and possibly enhancing other end user rights. **Overall, given the delays in many Member States in transposing the EECC, it seems doubtful that sufficient experience has been gained to give serious consideration to modifying the EECC shortly after its implementation in the Member States. The focus should rather be on effectively applying its provisions in a manner which is non-disruptive.**
45. Section 5.2.3: International roaming benchmark data Report. **ecta** requests that the scope of the recurring BEREC report includes IoT, permanent roaming for IoT, 5G, roaming for industry verticals, and for network slices if applicable.
46. Section 5.2.4: BEREC input to the Commission on the Review of the Intra-EU Communications Regulation. **ecta** wishes to urge BEREC to not simply support the continued application of this regulatory instrument, and not to support reduced retail

price caps. The direct application of retail price caps by means of legislation is an anomaly, which is inconsistent with the fundamentals of the EU regulatory framework (focus of economic regulation on wholesale markets). This should be made clear to the EU institutional stakeholders.

47. Section 5.2.5: BEREC input to the Commission on the Review of the Commission Implementing Regulation on the Fair Use Policy and Sustainability of the Roaming Regulation. **ecta** emphasizes that this Implementing Regulation **is of immense importance, because it directly and substantially affects the economics of all mobile operators. Any modification to this Implementing Regulation could have outsized effects**, and can only be considered with a firm eye on the big picture, including the level of wholesale roaming caps, the level at which wholesale roaming is traded commercially, the behaviour of roaming users, etc. Therefore, **ecta considers that (pre-)consultation with stakeholders is absolutely essential, before the adoption of BEREC's Opinion which is scheduled for March 2023.**
48. Section 5.3.1: BEREC reflections on features of NRAs' independence, and Section 5.3.2: BEREC Opinion on the functioning of BEREC and BEREC Office. **ecta** welcomes these new BEREC workstreams and understands that they will be carried out internally at the initial stage. However, it would be most welcome if BEREC could subsequently open the items to stakeholder participation. This is important because the perspective of industry stakeholders may not be exactly the same as that of NRAs, or of the consulting firm conducting the study on NRA independence for BEREC. In both workstreams, it will be important not to focus solely on the legalistic aspects, but also to examine and discuss the consequences of the manner in which NRAs and BEREC (and if applicable the BEREC Office) carry out regulatory duties entrusted to them.
49. Section 5.3.3: BEREC Report on national experiences of the implementation of the EECC. As already highlighted at the outset of this **ecta** response (paragraph 4 above) **ecta wishes to express its sincere thanks to BEREC for including this work item in the draft WP2023.** This meets a long-standing **ecta** request for BEREC to consider the effects of the EECC in terms of achieving its stated objectives, and notably assessing whether the EECC's provisions are in actual fact effective (also compared to the 2002-2009 regulatory framework) in terms of: (a) promoting VHCN connectivity, access and take-up, (b) promoting competition, (c) contributing to the development of the internal market, and (d) promoting citizens' interests. **ecta** does regret that this workstream is planned to be largely BEREC-internal during 2023, with a public workshop only to follow in 2024. **ecta advocates that:**
- i. This work should include an **assessment as to whether the EECC provisions themselves, and - separately - their national implementation - have increased or decreased competition** (for business-to-consumer (B2B), business-to-business (B2B) and business-to-business-to-consumer (B2B2C) markets), in which direction end user prices and quality have evolved, what the impact has been on take-up (incl. affordability) of VHCN connectivity, 5G, etc.

ii. **Extensive substantive exchanges with industry stakeholders should be accelerated, and already occur in 2023.**

50. Section 5.3.4: Article 32/33 Phase II Process. **ecta** reiterates its request, made in previous contributions to BEREC Work Programme calls for input and consultations, for BEREC to involve stakeholders in this workstream. Experience has shown that the Phase II process leading to a BEREC Opinion is a black box for stakeholders, with BEREC actively resisting stakeholder input. A moment of self-reflection by BEREC, and taking input from stakeholders, is appropriate as the EECC is by now transposed into the national law of nearly all Member States, and notifications are effectively be made in application thereof. In addition, **ecta** expects that BEREC's guidelines on how it works on Phase II cases should not be internal and confidential, but instead be public and open to comments from interested stakeholders. **A workshop with industry stakeholders, for stocktaking purposes, and examining potential improvements to how BEREC carries out this duty, would therefore be most welcome in 2023.**
51. Section 5.3.5: Report on Regulatory Accounting in Practice. **ecta** appreciates the value of this recurring report. It should definitely continue to be published annually and continue to be improved. **ecta** also wishes to express that there should be **no weakening of its contents**. A particular concern is that BEREC suggests that the 2023 RA report will be based on the EECC list of remedies, will take into account the list of relevant markets susceptible to ex-ante regulation, by limiting it to M1/2020, M2/2020 and M3b/2014 (*page 42, para 2 and para 3*). **ecta** finds this **deeply concerning**, as it means that the report may no longer cover areas that are in fact subject to regulation and regulatory accounting obligations that continue to be in place in many Member States, and which deserve to continue to be documented and compared. **ecta therefore formally asks BEREC not to abandon monitoring and reporting on topics that have been covered well in one of its most useful regular reports.**
52. Section 5.3.6: Calculation of Weighted Average Cost of Capital (WACC) parameters calculation according to the European Commission Notice. **ecta considers that it is absolutely imperative that this Report becomes subject to public consultation.** This is the case because BEREC will make choices, for instance in the companies eligible for the peer group. Such choices will affect the outcomes of WACC calculations in Member States, and thus should be open to contradictory debate.

## 6. Comments on Chapter 6: Stakeholder engagement

53. **ecta** thanks BEREC for continuing to engage actively with industry stakeholders, including invitations to **ecta** to speak during workshops and at the stakeholder fora. This should clearly continue in 2023. However, **ecta** considers that:
- i. Workshops where participants are allocated 5 or 10 minutes for sequential presentations, and workshops held separately with different categories of stakeholders, do not enable the in-depth discussion of important topics that is



necessary, and crucially do not enable genuine exchanges and reply comments, resulting in an absence of contradictory debate on key policies and regulatory approaches. **ecta encourages BEREC, in 2023, to organise longer workshops (also by foreseeing whole day workshops), with sufficient time allocated for active substantive discussions among stakeholders**, in particular enabling participants to react to the statements made by other participants, and to engage directly with Working Group co-chairs and NRA representatives.

- ii. **ecta** intends to continue taking an active role as a stakeholder in the context of the review of European Commission's 2010 and 2013 recommendations, also with regard to a BEREC Opinion on this topic. The same holds true for any legislative proposals that may be forthcoming from the European Commission in late 2022 and during 2023. In this context, **ecta considers it very important for BEREC Opinions to be subject to (pre)consultations with stakeholders.**

54. As regards the BEREC Communications Plan 2023, **ecta** evidently welcomes that BEREC intends to take initiatives to strengthen the perception of BEREC as an impartial, independent, European, forward-looking expert body. However, **ecta takes issue with the statement “[...] BEREC will continue to communicate around the day-to-day activities of BEREC’s work, especially regarding the most relevant topics for BEREC and its members, such as BEREC’s work on digital platforms, sustainability, and 5G related issues”. (page 44, para 4). BEREC’s mandate, as contained in Regulation (EU)2018/1971, is focused squarely on the regulation of electronic communications markets, with reference to precise Directives and Regulations that constitute this framework. BEREC’s priorities, even if just in terms of communications, cannot be different.** This statement is made in the knowledge that BEREC has been given a role in the High-Level Group referred to in Article 40 of the Digital Markets Act, and, relating to reference offers for NI-ICS interoperability, in Recital 64 of the Digital Markets Act. **ecta** respectfully submits that these new duties, while important, are in addition, and not in replacement, of BEREC’s core mandate.

## 7. Comments on Chapter 7: Potential BEREC work for 2024 and beyond

55. Section 7.1: Report on best practices for termination of contracts and switching provider. **ecta** welcomes BEREC’s suggestion of this 2024 workstream. Whilst each Member State has had its own trajectory and set of experiences with regard to number portability and other aspects of switching between providers which should not be unduly disrupted, there is an opportunity for sharing information and experience, and for identifying what works well, and what does not work as well (as elsewhere). 2024 is a good timeframe for taking stock on the impact of the changes triggered by EECC transposition and practical implementation, and an opportunity to verify whether this has resulted in improvements for operators and for users, but also to check whether there may have been regulatory overreach, undue new complexity, etc.
56. Section 7.2: Implementation report on the BEREC Guidelines on Geographical surveys of network deployments. **ecta** agrees that it is a good idea for BEREC to take stock of national

experiences with geographical surveys. It seems likely that important differences exist between Member States, and that while the trajectories are national, there may be opportunities for learning and adjustment to ensure that the burdens on operators are kept to a reasonable level, and that the output is genuinely useful and leads to substantive improvements in light of the objectives pursued.

57. Section 7.4: Experience sharing in relation to Articles 76, 79 and 80 EECC. **ecta** considers this a **highly relevant potential workstream, which definitely should be confirmed**, notably to **help ensure that NRAs which implement these articles do so in full accordance with the requirements of the EECC and taking utmost account of BEREC Guidelines**, where applicable. **ecta** also greatly appreciates that BEREC mentions that “[...] NRAs could discuss the experiences and the consequences as regards implementation of these tools” (page 47, para 4). Indeed, this is particularly important, including to **verify whether implementation increases or decreases competition** (for business-to-consumer (B2B), business-to-business (B2B) and business-to-business-to-consumer (B2B2C) markets), in which direction end user prices and quality have evolved, what the impact has been on take-up (incl. affordability), etc.
58. Section 7.5: Implementation of Equivalence of Inputs (EoI) by NRAs. **ecta** explicitly thanks **BEREC for including this point** in its Work Programme, but **regrets that this is pushed to 2024 and does involve tangible deliverables**. It would have been far preferable for BEREC to work on EoI upstream from the European Commission’s work on revising the 2010 and 2013 EC recommendations. **Whatever BEREC can do to accelerate this workstream and move it into 2023 would be much appreciated.**

## 8. Important additional points: BEREC Opinion on the Review of the 2010 and 2013 EC Recommendations (Access Recommendation), and work on non-discrimination on wholesale QoS

59. The draft WP2023 refers to the forthcoming BEREC Opinion on the review of the 2010 and 2013 EC recommendations (pages 11, 36, 47), but it is not listed as a specific work item. **ecta** understands that this is based on the expectation that the BEREC Opinion will be requested in 2022. Given the possibility that BEREC’s delivery of its Opinion could be carried into 2023, please allow **ecta** to emphasize that this a topic of paramount importance to **ecta** and its members. Stakeholder involvement is essential, given that **ecta** has very serious objections to the contents of the Visionary Analytics study prepared for the European Commission. Now that there is perhaps still more time than previously expected, **ecta** expects BEREC to:
- i. **(Pre-)consult with stakeholders on the contents of its Opinion.**
  - ii. **Take a firm stance on the need for NRAs to be able to conduct market analyses without undue new constraints going beyond the EECC.** It needs to be ensured that the forthcoming EC Access Recommendation implements the EECC rather than extending an agenda focused on granting regulatory relief to operators with

Significant Market Power in the hope that this will trigger them to invest in fibre. Investment in VHCN is not subject to the risks which were perceived in 2010 and 2013; operators are rolling-out; management teams have gained experience and a good understanding of the techno-economic situation; solvable demand is unquestionably present and here to stay; financial investors (old and new) have integrated the economic picture in their assessments and forecasts, etc. Co-investments are possible and are happening without the need for regulatory concessions to dominant operators, removal or replacement of cost-orientation, risk premia over and above the WACC, or granting other 'upside benefits', 'fair bet' or other regulatory concessions to operators with Significant Market Power. Alternative operators are investing massively in fibre, fixed-wireless access and 5G; they are the competitive engine. The dominant operators are racing to catch-up, with some still holding out for regulatory relief because it has been put on the table.

- iii. Be ruthless in rejecting any proposal that would directly or indirectly fuel inflation.
60. **ecta** wishes to express for a second time its disappointment that an envisaged BEREC work item on non-discrimination in terms of quality of service of the wholesale inputs required to be provided by operators with Significant Market Power has been removed altogether from BEREC's work programme. This is a serious cause for concern. This work item should be reinstated.

## 9. Closing observations

61. In closing, **ecta** wishes to emphasise that two-stage consultations, consisting of a call for input, and a consultation on precise BEREC text proposals, have worked well. Therefore, **ecta** would welcome that these be used more regularly as the format for BEREC consulting stakeholders, not only on the work programme for the subsequent year but for other subject matters as well.
62. Adequate time – at least 6 weeks – is the minimum needed for associations representing multiple stakeholders to respond to public consultations with solid content. In particular for consultations initiated in Q4 of the year, adequate time should be granted to take due account of the periods leading up to Christmas and including end-of year holidays.
63. In case the European Commission launches a major call for information and/or public consultation affecting the EU regulatory framework for electronic communications near the end of 2022 or during 2023, **ecta** would like to ask BEREC to take this into account in its own planning and consultation schedule, to ensure that stakeholders have the means and time to study and respond and would not be forced to prioritize one over the other.

\* \* \*

In case of questions or requests for clarification regarding this contribution, BEREC and NRAs are welcome to contact Mr Luc Hindryckx, [ecta](#) Director General or Ms Pinar Serdengeçti, [ecta](#) Regulation and Competition Affairs Director.