

Public debriefing plan

First part

- BEREC contribution to the EC exploratory consultation;
- BEREC Opinion on draft Gigabit Recommendation;
- BEREC analysis of EC legislative proposal on the Gigabit Infrastructure Act;

Q&A session

Second part

- Draft BEREC Report on practices and challenges of the phasing out of 2G and 3G;
- BEREC Report on interoperability for number-independent interpersonal communication services (NI-ICS);
- BEREC Report on the monitoring of the Joint Statement between EU-UA operators;
- BEREC updates

Q&A session



BEREC's input to EC's exploratory consultation on the future of the connectivity sector

**BEREC Chair 2023
Kostas Masselos (EETT)**

BEREC's input to EC exploratory consultation

BEREC's Response comprises of:

- a) 10-page document (following the structure of the Questionnaire)
- b) Answers to some questions
- c) 2 Annexes

Key general messages:

- Welcome the consultation and the further data sharing by EC
- Data will allow quantitative further assessment
- Many work items in WP2023 on the topics of the consultation
- Regular data collection is deemed useful
- BEREC could have a role as a DRB between CAPs and ISPs

S.1 – Technological and market developments

Tech Developments & New Market Models

- Service and infrastructure traditional boundaries are blurring
- Advantages and challenges for ECN/S

Sustainability

- BEREC encourages to adopt a holistic approach on sustainability
- Need more standardised environmental data and a clearer mandate for NRAs

Business transformation

- Growing importance of cooperation between actors in ecosystem
- Residential and business services main source of revenue for operators to finance investments
- Non-profitable areas -> expected to grow in importance (funding mechanisms)

S.2 – Fairness to Consumers

Universal Service

- Prices might change, but aim to maintain the % spent for ECS
- US varies among MS but should be maintained as a flexible possibility for MS

Funding outside universal service

- US regime covers only basic broadband needs for digital/societal inclusion
- USO not to be confused with instruments intended to achieve DDPP goals
- Legislative and Regulatory tools available to bridge digital divide
- BEREC's post-Covid study proposes other options for funding
- Specific EU-wide fund outside USO - dependent on the defined goals & clear definition of beneficiaries

S.3 – Barriers to Single market

Single market for ECN/S & Digital Services

- No technical/regulatory obstacles to providing pan-EU services – No barriers by GA regime
- Supra-national VHCN deployments
- ECN/S very different from digital services that rely on CoO principle
- Cross-border consolidation needs careful consideration – impact on competition

Radio spectrum

- No spectrum market - Integration can be supported through existing tools
- Spectrum awards tailored to national circumstances
- Smaller states' requirements maybe underserved by “more integrated market”
- Harmonization on technical level is key to making any use case a success
- Benefits of an EU-level award vs an equitable access to spectrum at national level

S.4 – Fair contribution by all digital players

- Meeting the DDPP objectives will cause a growth of data traffic
- Previous BEREC analysis: limited relationship between growth of data traffic volume and level of investments to be made to reach a gigabit society
- Access network deployment is greatest costs – recovered through access subscriptions
- No (seen) structural IC problems in relation to growing volumes of traffic attributed to CAPs
- Further analysis with new data from consultation
- Assessment of competition, end-users, innovation for SPNP mechanism
- More general assessment of Open Internet and Sustainability
- Any regulatory intervention requires a proper justification
- Other funding mechanisms cannot be assessed before their proper definition

BEREC Opinion on the draft Gigabit Recommendation

**Remedies and Market Monitoring Working Group
Annegret Groebel (Bnetza), Marco Benacchio(AGCOM)**

Opinion follows the chapters of the Draft Gigabit Recommendation (DR)

Chapter titles	Recitals	Recommendations (pp. 16)
Aims and Scope	1 – 11	1 – 13
Non-discriminat. obligations	12 – 17	14 – 30 (plus Annex I)
Access to CEI (incl. monitoring)	18 – 23	31 – 38 (plus Annex II)
Pricing flexibility (incl. ERT)	24 – 38	39 – 44 (plus Annex III)
Price control + costing methodologies	39 – 58	45 – 60
Long-term pricing + volume discounts	59	61 (plus Annex IV)
Adequately rewarding the investment risk (WACC)	60 – 67	62 – 74
Migration	68 – 74	75 – 81

GENERAL COMMENTS:

- The Gigabit Recommendation should foresee an **appropriate transitional period** before its full application.
- At least, all formally open proceedings may be finished on the basis of the 2010 NGA and the 2013 NDCM Recommendations.
- As a general remark, BEEC considers that the highly detailed and prescriptive provisions of the Draft Gigabit Recommendation risk to unduly limit the discretion given to NRAs by the Code which should prevail.

The following slides focus only on main critical points

Main comments on the role of competition

1. BEREC appreciates the Commission's work on promoting gigabit connectivity, which is one of the general objectives of Directive (EU) 2018/1972. However, the other objectives of the Code, namely promoting sustainable competition, contributing to the development of the internal market and protecting the interests of end users, should be equally considered in the DR.
 - As a consequence, BEREC would like to remark (addressed more in depth in the “pricing flexibility” and “Long-term pricing + volume discounts” sections) that in order to evaluate the possibility for relaxing or even abolishing regulatory obligations it is always essential to **verify the existence of the competition safeguards.**
 - *Recital (193) of the Code mentions that “National regulatory authorities should be able to decide to maintain or not to impose regulated wholesale access prices on next-generation networks if sufficient competition safeguards are present.”*

Main comments on the hierarchy between the Code and the Recommendation

2. BEREC would like to point out that the DR is not always in line with the Code (**risk of overwriting, going beyond, the Code**).
 - DR puts the existence of **commercial (access) agreements** (concluded outside the EECC framework for commitments) on the same level as specific provisions that have been carefully negotiated by the EU legislators such as commitments under arts. 76 or 79 EECC, that have a specifically designed regulatory process before deciding to deregulate on this basis.
 - DR (Point 39) also exceeds the provision of Article 74 of the Code. The latter states that the NRAs “**shall consider** not imposing or maintaining obligations (...)” whereas the DR limits the flexibility left to the NRAs in the wording “the NRA **should** not impose or maintain (...)”.

Main comments on the role of asymmetrical regulation

3. While asymmetrical ex ante regulation of an SMP operator aims to remove barriers to market entry, and thus only imposes obligations on the dominant operator, the BCRD obligations are not designed to address competition issues, and apply to all operators controlling CE infrastructures, including the SMP operator (when applicable).
 - In principle access obligations to physical infrastructure resulting from the BCRD are likely not to be sufficient to address the competition problems identified in market analyses carried out under articles 64 and 67 of the Code.
 - Statements related to BCRD obligations would better fit in the GIA.

Main comments on the role of NRAs in choosing remedies

4. BEREC would like to remark that NRA's flexibility in the choice of remedies should be consistent with the Code and not narrowed down:
 - Therefore rejects DR statement at point 39 “**The NRA should not impose or maintain regulated** wholesale access prices on VHCN wholesale inputs...” while art 74 of the Code states “**NRAs shall consider not imposing or maintaining obligations**”.
 - BEREC aims at pointing out that circumstances that justify the non-imposition of regulated wholesale access prices on VHCNs **cannot be just “emerging or prospective “** (point 39)
 - Potential competition alone doesn't lead to a “demonstrable” retail price constraint;
 - BEREC is concerned that the threshold of a “demonstrable retail price constraint” is lowered to an extent that there would no longer be an effective competitive safeguard;
 - This could lead to withdrawing regulation where it is needed – with all negative consequences.

Main comments on the Adequate Rewarding of the Investment Risk

5. BEREC suggests to clearly separate the two issues:
 - Dealing with the temporary increase of inflation
 - Estimation of a VHCN risk premium for new investment network projects
- For the first, BEREC suggests to deal with it by adjusting **Point 62** as follows:
 - “Where NRAs consider price control obligations to be appropriate, they should allow the undertaking an **efficient** rate of return on capital employed, taking into account the investment-specific risks **and ensuring that it reflects current macroeconomic parameters (for instance a high inflation rate)**”
 - BEREC suggests removing provisions that introduce a deviation from the WACC Notice by default, which is not needed as the current WACC Notice already provides NRAs with the flexibility to deviate from the WACC Notice when justified
- With regard to the **VHCN risk premium** BEREC recalls that according to the Code this applies to **new** investment network projects only and strongly recommends that the Commission aligns **Point 65** of the DR to **Art. 74 of the Code**
- Generally, BEREC urges the Commission to remove provisions that are not helpful guidance for NRAs but rather making life more difficult for them (such as a so-called “sensitivity check” or applying provisions retrospectively)

BEREC analysis of the European Commission legislative proposal for a Gigabit Infrastructure Act

**Fixed Network Evolution Working Group
Wilhelm Schramm (RTR), Alexander Thelen (BNetzA)**

Introduction and main points (i)

- The European Commission published its legislative proposal for a Gigabit Infrastructure Act (GIA) on 23 February 2023
- BEREC welcomes this initiative and regards it as an important building block to achieve the 2030 EU connectivity targets
- BEREC hopes that it can be further improved based on the suggestions in the BEREC analysis

Main points of the BEREC analysis

Type of legal document

- BEREC wants to point out that if certain provisions are not removed in the final GIA, it is important that the GIA is a directive and not a regulation

Measures going beyond the GIA

- BEREC considers it is necessary to ensure that Member States have without any doubt the possibility to maintain or introduce such measures
- BEREC believes that this is best ensured through an article in a directive

Main points (ii)

European Commission guidance

- BEREC sees neither the need for further guidance by the European Commission nor would BEREC consider such guidance advisable

Scope

- BEREC considers it important to reduce the costs not only of VHCN deployment but also of
 - All State aid funded ECN deployments in order to ensure that public funds are used as efficiently as possible
 - The deployment of network elements which can contribute to VHCN deployment e.g. fibre roll-out in general

Access to existing physical infrastructure (PI)

- BEREC welcomes that the scope of access to existing PI now also includes public sector bodies and agrees with the conditions for refusal of access and the scope of PI
- BEREC is concerned about overly prescriptive provisions concerning the determination of prices and suggests to remove the conditions laid out in Article 3(2) lit (c)

Main points (iii)

Coordination of civil works (CW)

- BEREC agrees that an obligation to meet all reasonable requests for coordination of CW should apply to fully or partially publicly financed CW
- BEREC welcomes that this now also explicitly applies to associated facilities

Access to in-building physical infrastructure (PI)

- BEREC agrees that access to in-building PI is important to reduce the cost of ECN deployment
- BEREC considers that Member States should have the possibility to maintain or introduce the obligation to provide access also to in-building cabling

In-building physical infrastructure and in-building fibre wiring

- BEREC welcomes in principle that certain buildings shall be equipped with fibre-ready PI and fibre wiring
- BEREC suggests that the Member States should have the possibility to decide on the national standards or technical specifications and to remove the list of minimum requirements (Art. 8(4))

Main points (iv)

Transparency on PI and planned CW

- BEREC welcomes the revised transparency regime for information on existing PI and planned CW
- BEREC suggests envisaging earmarked EU-level funding for SIPs, as the tasks of the SIPs will increase
- BEREC is of the view that the proposed wording of Article 4(1) and 4(2) should be authoritative and part of Recital 25 should be revised accordingly
- BEREC considers the deadline of 12 months for making the minimum information concerning existing PI available via the SIP (Article 4(2)) to be too short

Dispute settlement

- BEREC agrees with Article 12(2) on the independence of the dispute settlement body (DSB)
- BEREC is severely concerned regarding the reduction of the DSB's deadlines to issue a binding decision to resolve a dispute and proposes to keep DSB's deadlines of the 2014 BCRD

Main points (v)

Dispute settlement (contd)

- BEREC welcomes that the DSB(s) and SIP(s) shall have adequate technical, financial and human resources to carry out the tasks assigned to them

Permit-granting procedure

- BEREC suggests to delete Art. 7(3), except the provisions regarding electronic format, and to replace it with an obligation on permit granting authorities to inform the applicants directly on the status of their application upon request
- BEREC proposes not to include the following provisions in the final GIA, as these provisions would likely have significant negative impacts and may result in a slower rather than faster approval of rights of way
 - Mandatory tacit approval of rights of way (Art. 7(7))
 - That applications for rights of way are deemed complete if deadlines are not met (Art. 7(5))
 - Compensation in case of non-compliance with deadlines (Art. 7(11))

Draft BEREC Report on practices and challenges of the phasing out of 2G and 3G

**Wireless Network Evolution Working Group
Joe Lynch (Comreg), Sietse van der Gaast (ACM)**

Goal

- To explore if and how the switch-off of those technologies may have potential consequences with regard to:
 - Continuity of service for end users
 - Wholesale access
 - Coverage issues
 - Impact on use of IoT / M2M devices
 - Possible impact on interoperability and coverage issues affecting emergency calls

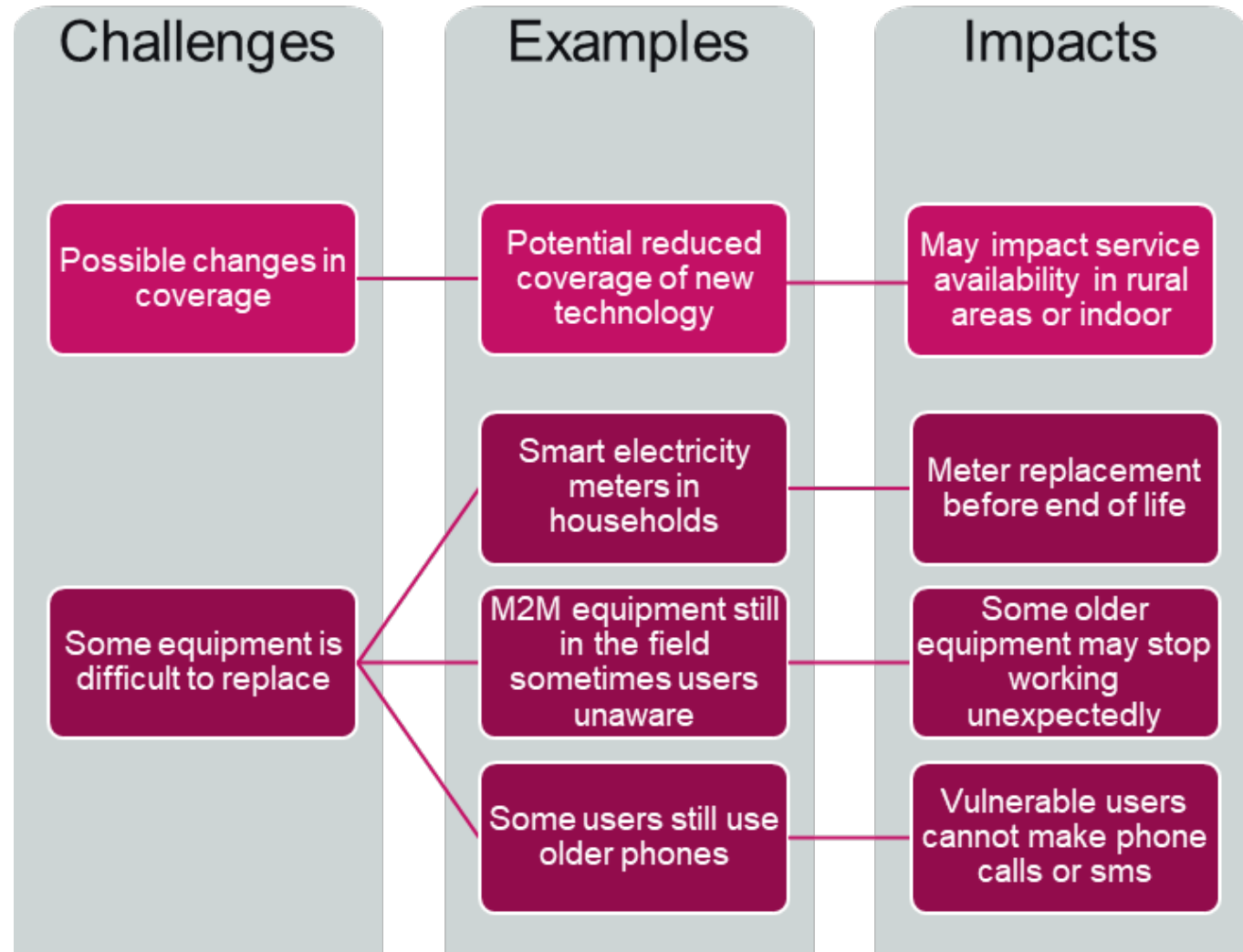
Process

- Identified and summarized previous work of other organisations (RSPG)
- Conducted a survey to NRAs
- More specifically described practices in:
 - France
 - Switzerland
 - Sweden
 - United Kingdom
 - Hungary
- Summarized high level impacts
- Identified stakeholders and analysed stakeholder engagement
- Presented draft report to the CN and processed received comments and some additional input

Challenges, examples, impacts (1)

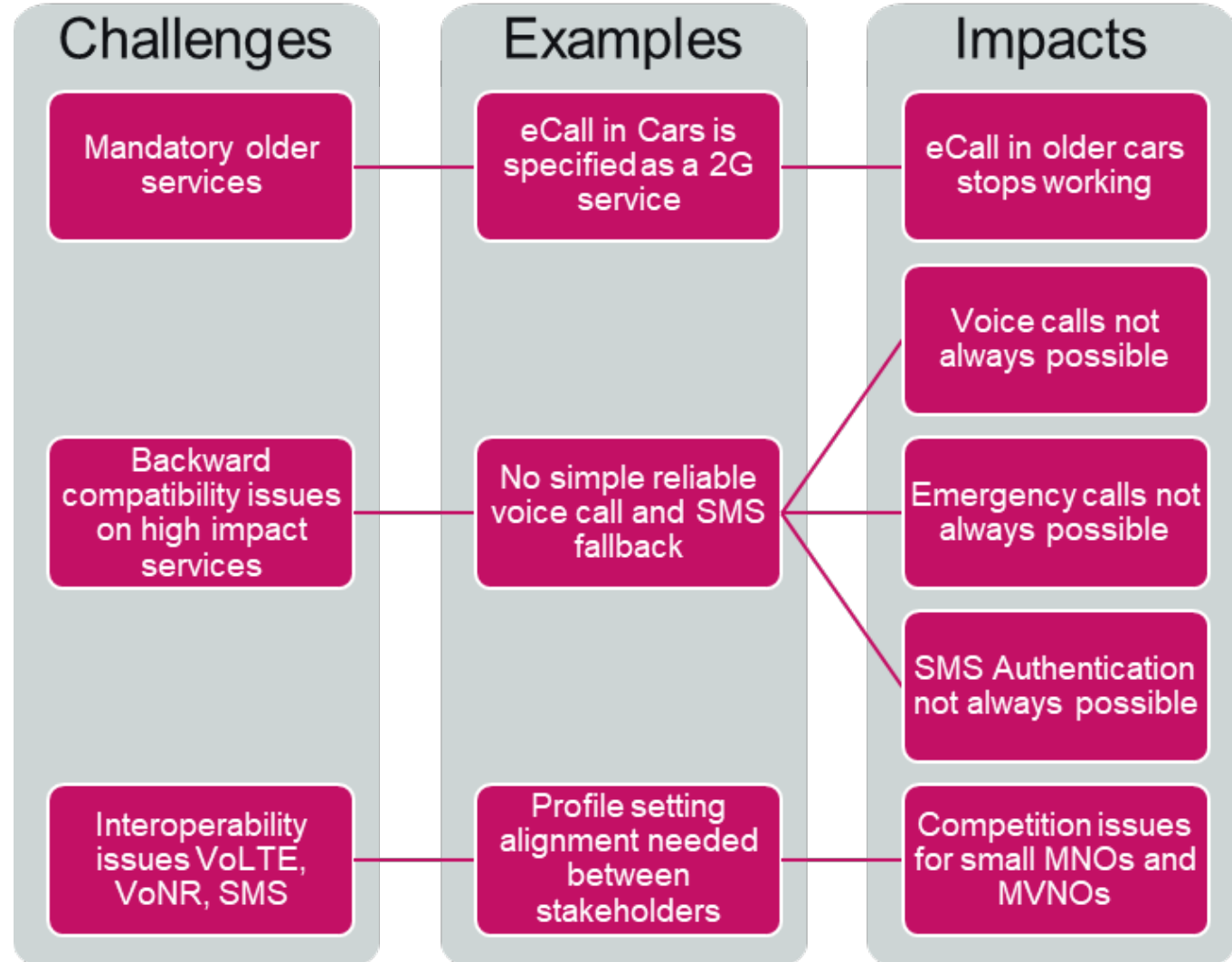
More efficient spectrum use:
stop inefficient technology

Better efficiency, reliability,
security and sustainability:
decommission older equipment

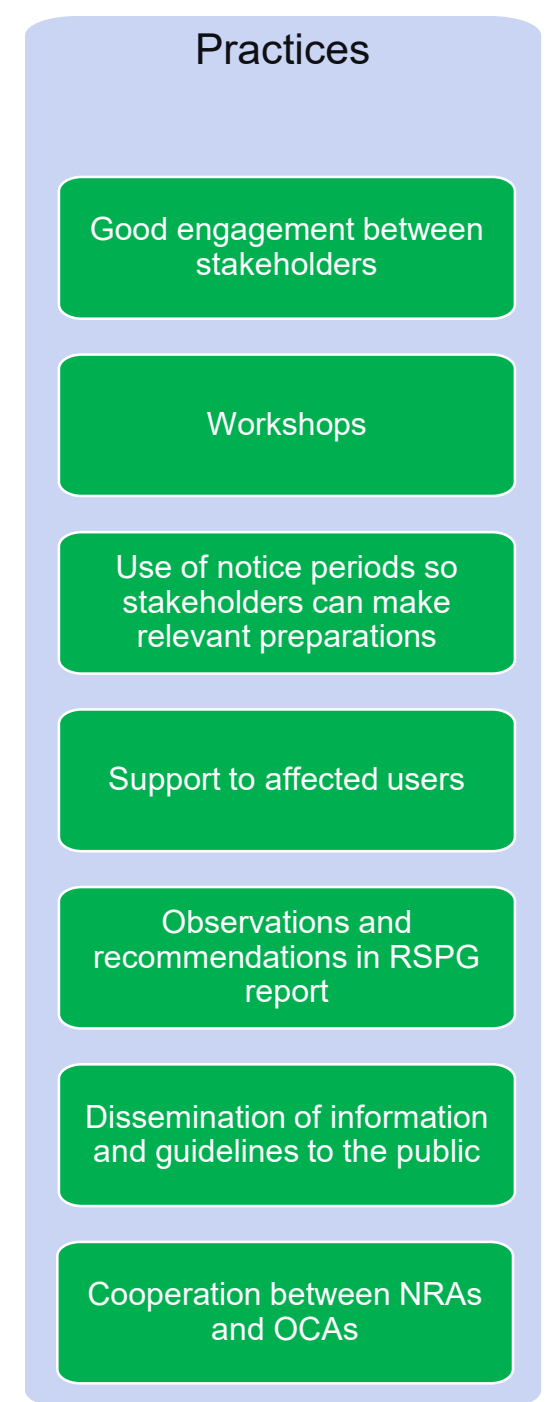
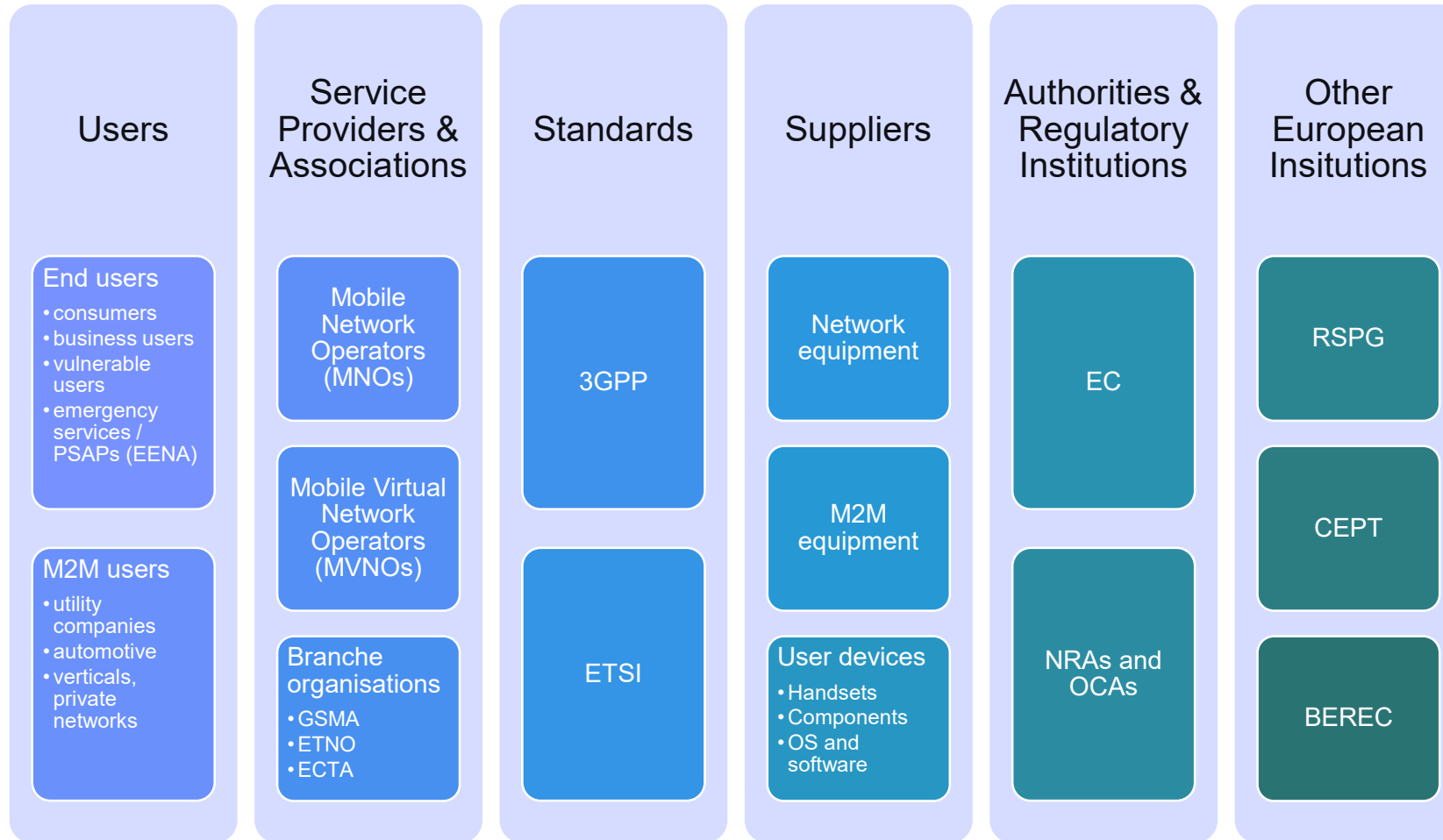


Challenges, examples, impacts (2)

Focus on new services:
better quality, choice, flexibility



Stakeholders & practices



Consultation until 15 August 2023

- Questions:
 - Which other potential challenges/impacts would you identify?
 - How urgently do you think the different challenges/impacts need to be addressed
 - Time, priority
 - What challenges / impacts have already been solved or can be considered minor?
 - What stakeholders should initiate (more) efforts to meet the challenges/impacts?
 - What stakeholders should be involved in efforts to meet the challenges/impacts?
 - How should they contribute?

BEREC reports on interoperability of NI-ICS and on the outcome of the public consultation

**Digital Markets Working Group
Chiara Caccinelli (Arcep), Margarida Melo Santos (ANCOM)**

Context

- Interoperability obligations for NI-ICS providers under Article 61(2) EECC and Article 7 DMA, under different conditions and different objectives
- Report analyses the obligations under both frameworks, potential technical approaches and the implementation challenges and the interplay between EECC and DMA
- Couple of workshops organised with experts
- Public consultation open from 13 December 2022 to 3 February 2023

Public consultation: respondents

10 respondents

- **Digital platforms providers:** Google, Meta
- **Stakeholders' associations:** ECTA, ETNO
- **National consumer association:** Federation of German Consumer Organisations (VZBV)
- **Organisation:** International Center for Law & Economics (ICLE)
- **Individual contributor**
- **Three confidential contributors**

→ Generally positive, useful insights on details to improve the report, no major changes

Public consultation: general position *(selection)*

- **General support for BEREC's involvement** in the implementation of interoperability obligations and in the DMA High-Level Group
- **Contributor 3 and Meta** stress the difficulties of interoperability implementation especially concerning data protection and security; consider the market to be dynamic and competitive; are not in favour of the definition of standards
- **Google** highlights the relevance of defining common standards and is willing to contribute to their development; interoperability does not hinder innovation; considers the market to be highly concentrated
- **Contributor 2** agrees with BEREC's analysis and stresses the need for prompt and easy implementation of interoperability
- **Contributor 1** proposes the set-up of different organizational structures for quicker decisions on disputes and certifications (e.g. certification body), monitoring of compliance with requirements for interfaces (e.g. multi-stakeholders process)
- **ETNO and ECTA** support BEREC's analysis and criteria for the reference offer. **ETNO** highlights the need for a futureproof approach concerning the regulatory treatment of NB- and NI-ICS
- **VZBV (German consumer association)** supports a standard uniform encryption protocol to ensure a higher level of protection and data security and communication confidentiality

Public consultation: input and adaptations

Input received	Treatment
Support about BEREC's list of minimum criteria for the reference offer, minor suggestions to be added	Minor additions to the list; Several paragraphs added to share NRAs' experience with reference offers and need for a structured regulatory dialogue
Need for clarification on the definition of NI-ICS, or business and end users	Refer to definitions in EECC and DMA
Need to delve in deeper into RCS	Some text integrated
Technical details, also coming from the discussions at the EC interoperability workshop	Integrated
Other details and clarifications	Integrated, sometimes with adaptations

Future work

- The EC can consult BEREC to determine whether the reference offer that the gatekeeper intends to implement ensures compliance with Article 7 DMA
- As a member of the DMA High-Level Group, BEREC will continue to provide its expertise on any general matter of implementation or enforcement of the DMA (Article 40 DMA)

Monitoring of the Joint Statement agreed between UA and EEA operators

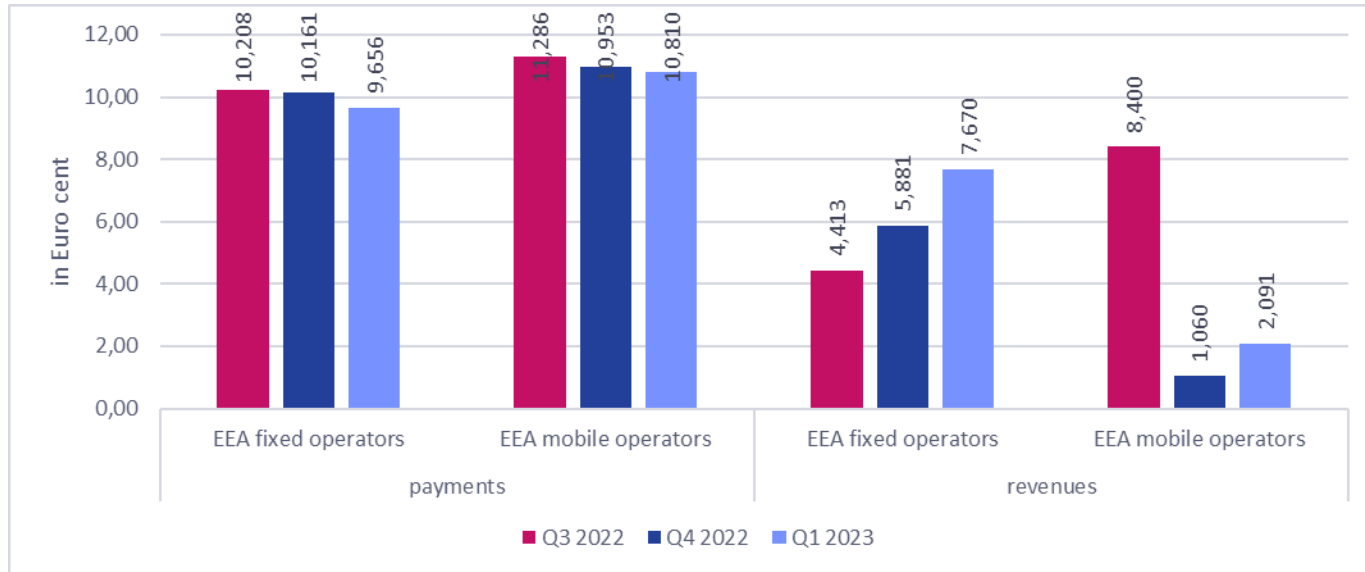
BEREC analysis

**Roaming Working Group
Elisabeth Felber (RTR), Ioanna Choudalaki (EETT)**

3rd Monitoring/ 2nd Report - Questionnaire

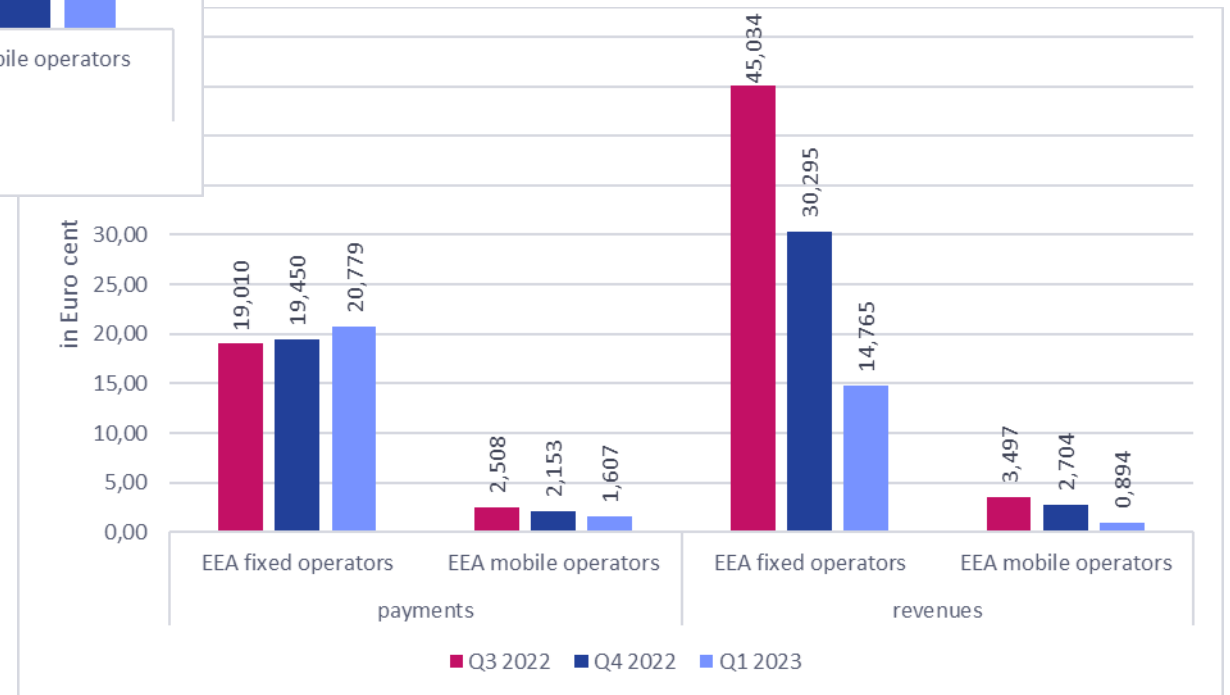
- Addressed only Joint Statement signatories
 - 52 EEA mobile and 33 EEA fixed operators
 - 4 UA mobile operators and 3 UA fixed operators
- Covers
 - Termination
 - Transit
 - Roaming
 - Qualitative questions

Termination rates – EEA operators

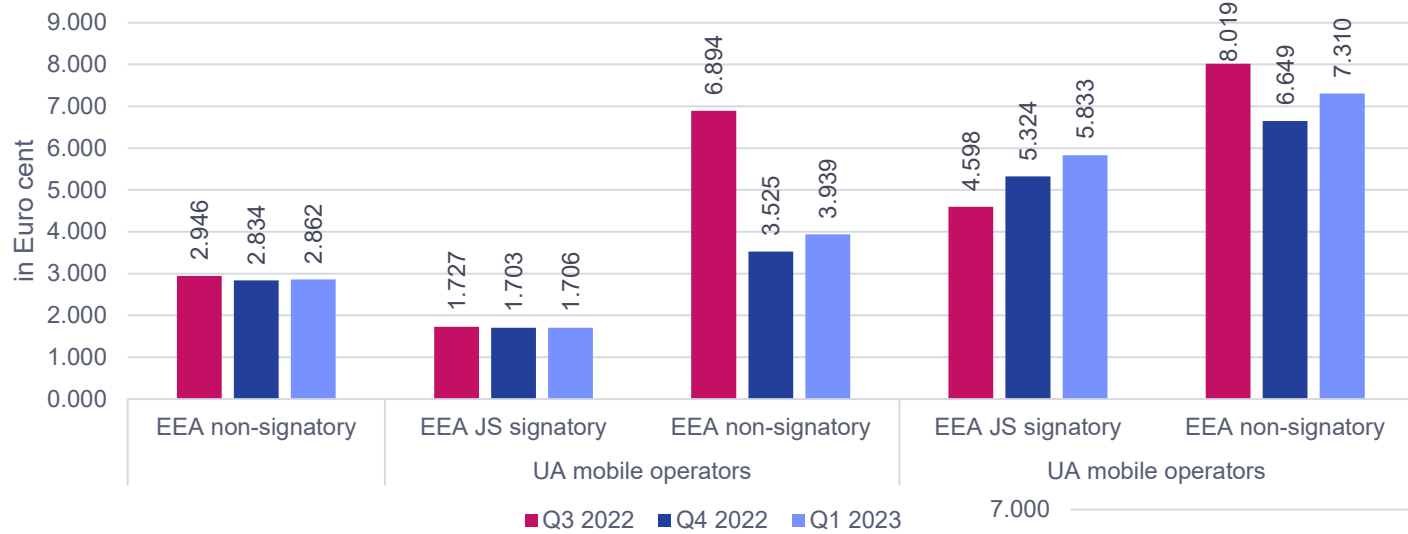


To/from fixed UA operators

To/from mobile UA operators

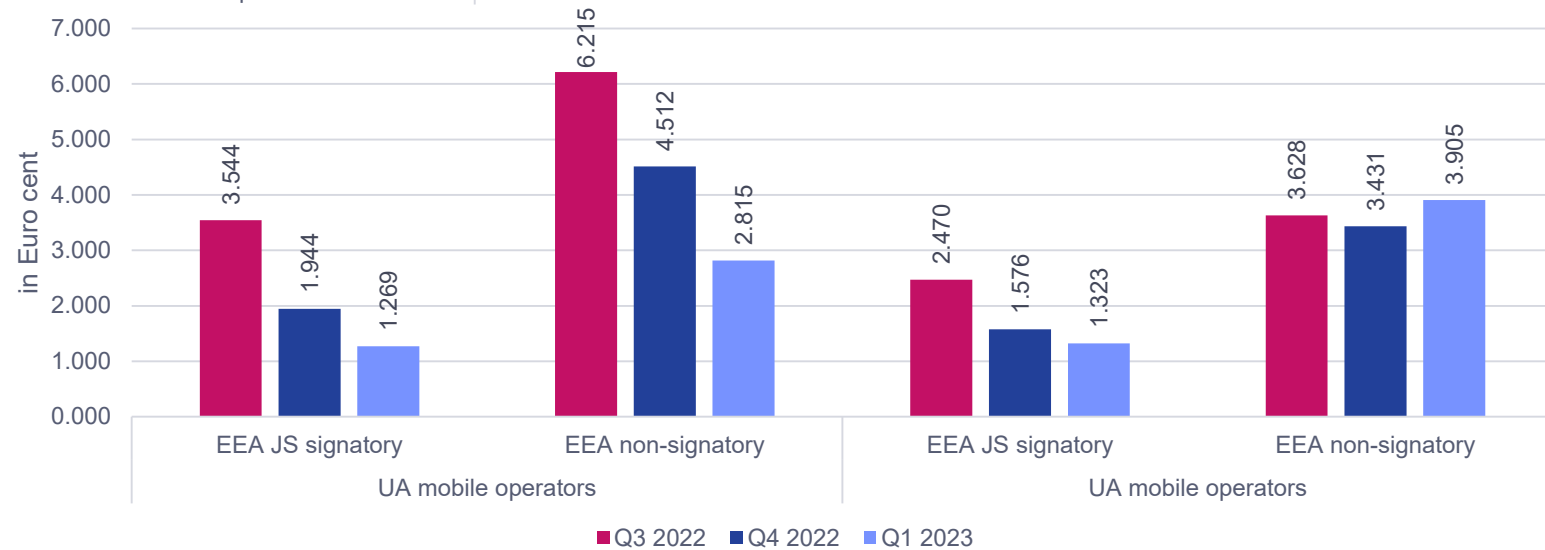


Termination rates – UA operators



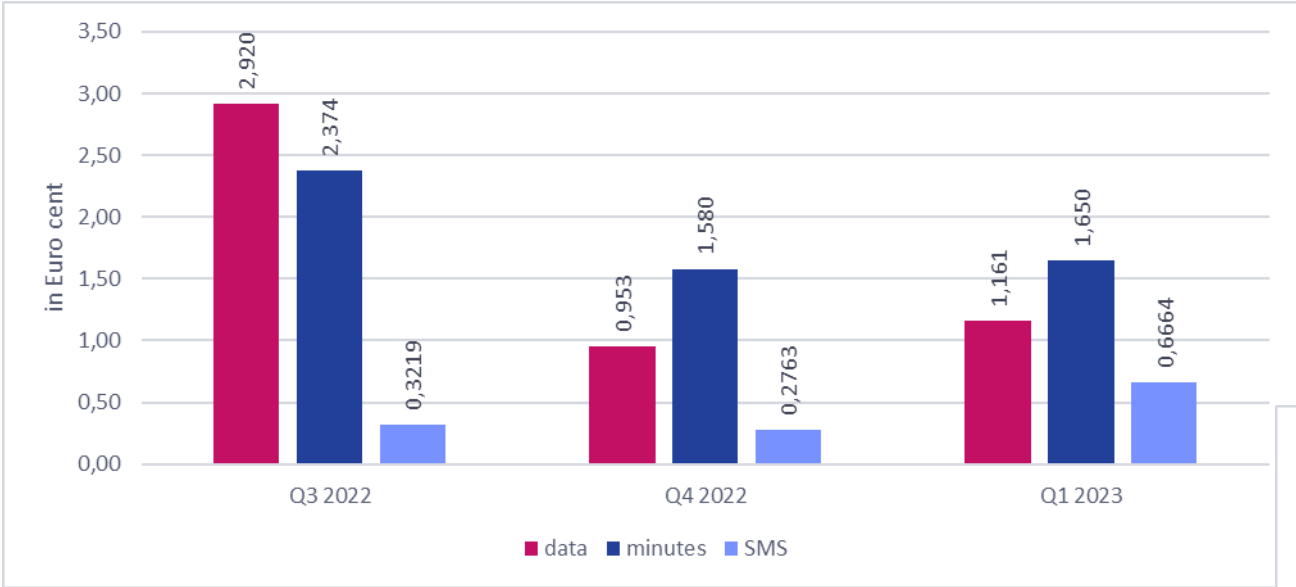
To/from mobile UA operators

To/from fixed UA operators

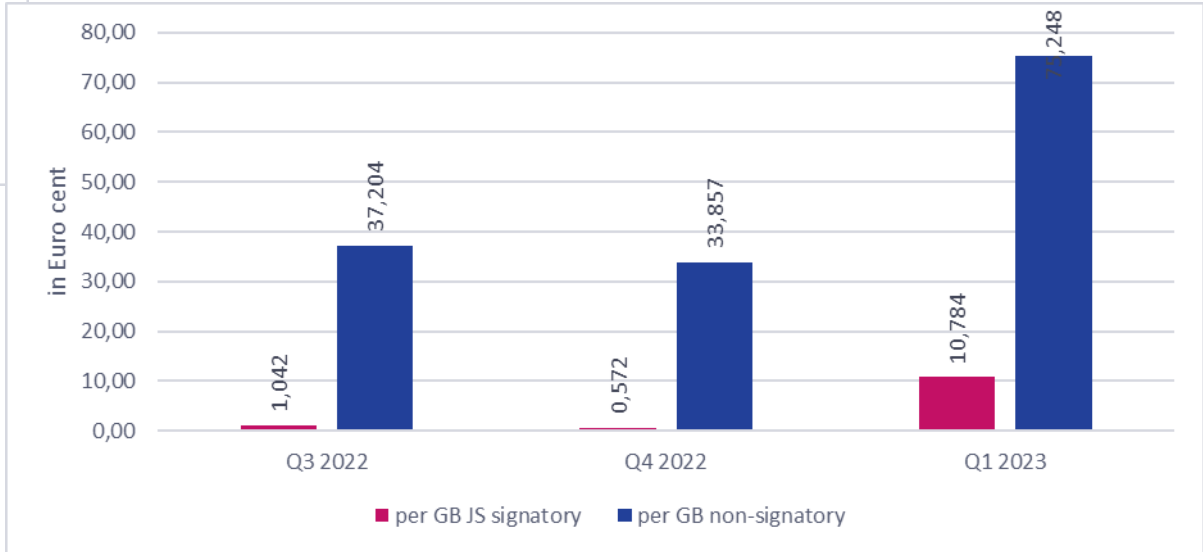


Wholesale roaming rates

EEA operators

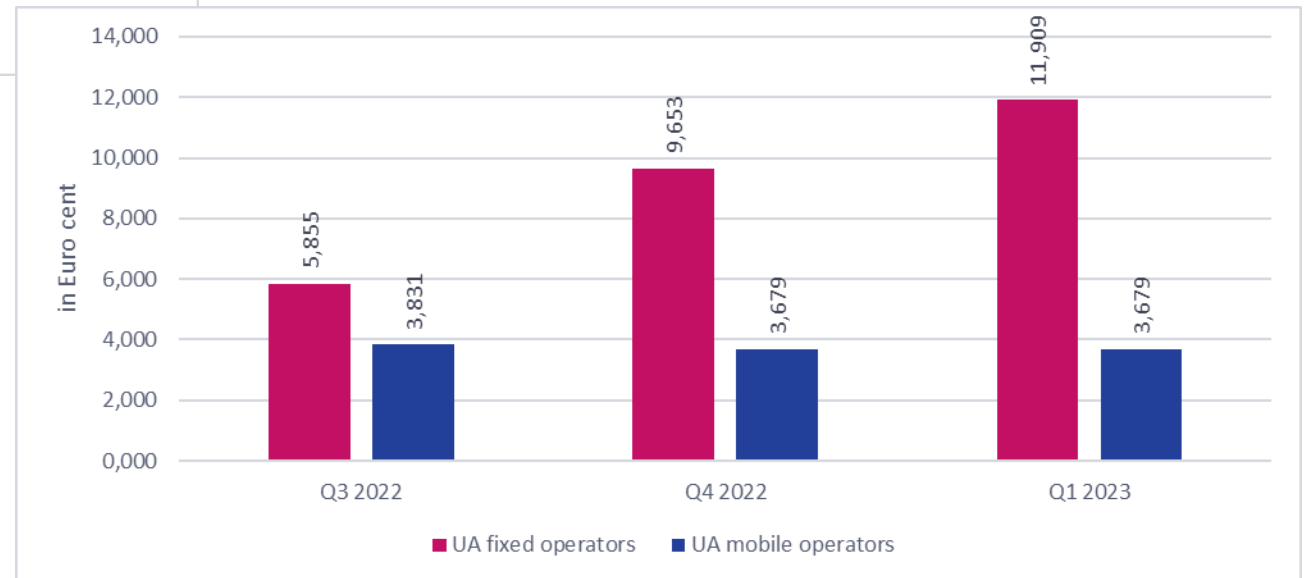
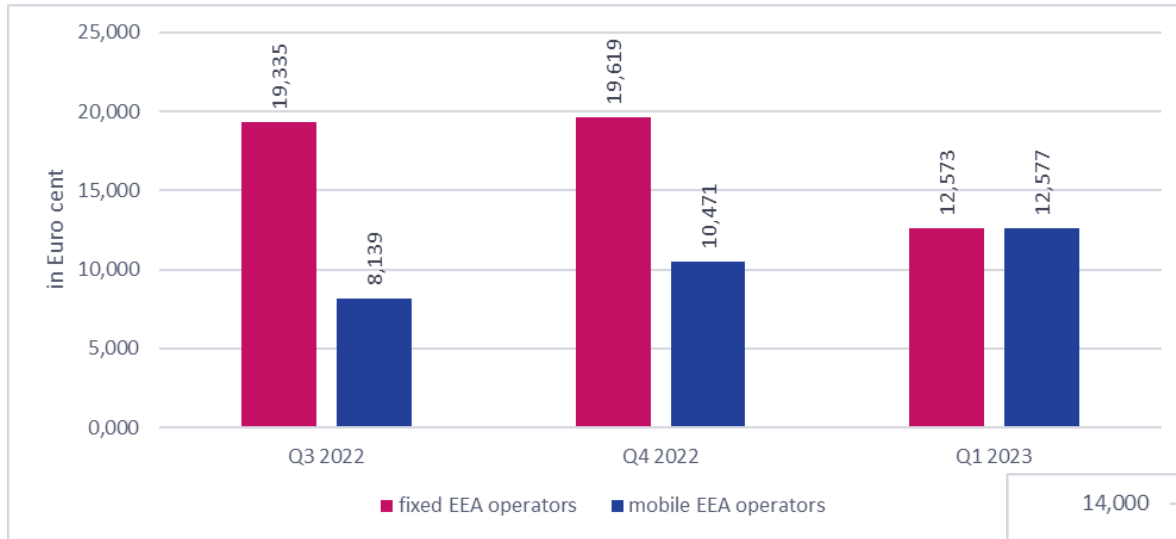


UA operators



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EUconnectivity

Transit Rates



Comments raised by operators

- Fraud
 - Only few fraud cases mentioned (lots of preventive measures implemented)
 - Simbox fraud or inflated SMS and calls, roaming arbitrage
- Obstacles to implement JS
 - Some mention that the lack of direct interconnection agreements leads to difficulties in lowering rates
 - Transit rates
- Further improvements
 - Increase of transparency
 - Aligment of TR with Eurorates
- Retail Measures
 - EEA Operators
 - Free Sim cards, calls/SMS to Ukraine
 - Other measures: free laptops, power banks, smartphones, etc.
 - UA operators
 - Low wholesale rates passed on to retail level
 - Affordable/free roaming for refugees



BEREC updates

BEREC Chair 2023
Kostas Masselos (EETT)

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BEREC Study Trip (South Korea)

Key insights:

- 6G: Will allow a fusion of the physical and digital world with an increasing role of AI
- AI and innovation: AI is the most important future development and change making ingredient for services
- IP IC Policy: different views were expressed

General updates

- BEREC participated in the 1st DMA HLG meeting
- Reports on two recent workshops (LEO satellites and Data Act)
- Workshop on the evolution of the competition dynamics of tower and access infrastructure companies: 20 June 2023
- New WA with WB NRAs approved for signature. Procedure followed the decision of the ECJ that annulled EC's decision

Public consultation

Document title	Deadline
Draft BEREC Report on practices and challenges of the phasing out of 2G and 3G	15 August 2023

See you soon

- **Next BEREC public debriefing on 11 October 2023 in Brussels**