

Liberty Global response to BEREC draft Guidelines on VHCN – update of criterion 4

Liberty Global welcomes this opportunity to provide feedback on BEREC’s draft Guidelines on Very High Capacity Networks (VHCN). We strongly support regulatory policies that facilitate private deployment of VHCN and see ourselves as having a key role in the investment and deployment of VHCN in Europe. Liberty Global has invested significantly and continue to invest in upgrading our networks, including investing in new equipment, backend capacity and technology improving the reliability of our services.

All regulatory solutions should respect the principles of appropriateness, proportionality as well as technology neutrality. Regulation favouring any specific technology is likely to chill investment. A mixed technology approach – both mobile and fixed – will not only maximize scope for innovation and infrastructure competition, but can also serve as the most cost-effective means to achieve the 2030 connectivity goals.

Criterion 4

BEREC’s guidelines on VHCN set four alternative criteria that must be met by a network in order to qualify as a VHCN. More specifically, for wireless networks that do not automatically fall under criterion 2, they will be considered a VHCN if they are capable to meet under usual peak-time conditions the 7 cumulative quality of performance thresholds listed under criterion 4 (performance thresholds 2). In the new draft Guidelines, BEREC has focused on updating such thresholds to take into account deployment of 5G networks.

Liberty Global has some concerns regarding BEREC’s approach to setting the performance thresholds 2 in criterion 4 – especially in relation to the increase of the downlink data rate from 150 Mbps to 350 Mbps. In our footprint we already anticipate that part of our networks will not be able to reach such threshold in the short term. More specifically, in Belgium ca.35% of the footprint will not adhere to the requirement of 350Mbps, whereas in the Netherlands the whole network is likely to be affected. As explained below, this is mainly due to national regulatory policies which hinder 5G network deployment.

Methodology

According to the Guidelines, a network will meet criterion 4 if it is capable of delivering, under usual peak-time conditions, services to end-users with certain parameters set out under the performance thresholds 2. BEREC clarifies that, to qualify as a VHCN, it is sufficient that a network is ‘capable’ of providing a service that meets these thresholds, and that it is neither necessary that the operator offers a commercial service that meets these criteria, or that all services provided by the operator meets these thresholds. In this case the proof of whether performance thresholds are met may be based e.g. on measurements with test implementations in the network.

In Annex 2 section 2, BEREC explains that the performance thresholds 2 have been established based on data collected in May 2022 through a questionnaire distributed by national regulators to 5G mobile network operators. The questionnaire was filled in by 44 operators in total and only the questionnaires of 19 operators of 13 Member States were taken into account, mainly due to lack of data and delay in 5G deployment. This accounts for less than 50% of the responses received. A year has also passed between data collection and the adoption of the draft Guidelines. In this context, we question BEREC’s decision to adopt the statistical median in a situation where only a few data points were available. We wonder whether the data collected only from a restricted number of mobile operators was enough to set thresholds that should be met by all mobile operators across the EU to qualify as a VHCN, or rather BEREC should have sought more information from mobile operators, even on a rolling basis, and undertaken a more detailed analysis. This would have probably yielded a more sound, realistic and justifiable outcome, allowing stakeholders to provide more information, while progressing with the rollout of 5G networks, and BEREC to rely on a broader and updated data set. The reporting by mobile operators on such parameters in May 2022 could prove to be statistically premature given the early stage of 5G network rollout in certain Member States at the time.

Regulatory policies at the national level

We understand that the performance thresholds 2 take into consideration a possible decrease of the data rates to reflect the increase of 5G availability in the next two years. BEREC specifically says “5G is also a new technology currently rolled out by the mobile network operators. Overall, it follows that considerable variation in the data rates can be expected and is plausible”. However, what is not taken into account enough, in our opinion, is the regulatory framework in which operators are active and which may risk to slow down 5G rollout. For instance, in Belgium strict radiation norms have hindered the rollout of 5G in certain areas, also generating a social push-back from the public against 5G technology, considered harmful for a long time. In the Netherlands, spectrum auctions have been long overdue and, as long as the 3.5GHz band is not auctioned, operators will be limited in rolling out high capacity 5G. Such national policies have already today a huge impact on the achievement of criterion 4 of the BEREC Guidelines in our footprint and we don’t anticipate any improvement in the short term. We believe that the national regulatory framework should be factored in when setting criterion 4 of the BEREC Guidelines, in the same way as the increase of 5G availability is taken into account, and may justify a reduction of the downlink data rate in performance thresholds 2.

Possible implications

BEREC states that its criteria should not be interpreted as a view on the appropriateness of such criteria for any other policy instrument, including public funding. Rather, it states that the criteria are relevant only to the qualification of a network as a VHCN for the application of the Code. However, it is important to recognise that the definition of — and ability to qualify as — a VHCN will have a number of implications. For example, in addition to the potential effect on future investment, there are a number of potential regulatory flow-on effects for VHCN under the Code in respect of regulatory pricing, state aid, national broadband plans and the “designation” of non-VHCN areas under article 22(3) of the Code, eligibility for co-investment and related regulatory relief. The terminology may also be adopted in a wider range of regulatory instruments at both EU and national level.

Given the wide range of implications the qualification as VHCN may have for mobile network operators, we invite BEREC to take into account comments received from stakeholders in this round of consultation and consider undertaking another round of data collection. 5G rollout at the time of data collection was not mature enough to justify an update of Criterion 4. Given the fast-changing environment in which 5G networks are being rolled out, BEREC could also consider collecting data on a rolling basis or establish multiple touch points over the year to connect with operators and ensure that the dataset used in the Guidelines is appropriate and reliable. We also urge BEREC to duly factor in the impact of national regulatory framework on 5G network rollout when setting the performance thresholds 2. Only in this way BEREC can ensure Guidelines are appropriate and proportionate to the scope they want to achieve.

About Liberty Global

Liberty Global is a world leader in converged broadband, video and mobile communications services. We deliver next-generation products through advanced fiber and 5G networks that connect over 86 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 Slovakia. 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 billion, while our joint-ventures in the U.K. and the Netherlands generate combined annual revenue of more than \$17 billion.

Liberty Global Ventures, our global investment arm, has a portfolio of more than 50 companies across content, technology and infrastructure, including strategic stakes in companies like Plume, ITV, Lions Gate, Univision and the Formula E racing series. Revenue figures above are provided based upon 2022 results and on a combined Virgin Media and O2 UK basis. For more information, please visit www.libertyglobal.com.