



## ETNO comments to the BEREC Work Programme 2024

### General remarks

ETNO welcomes the opportunity to provide input towards BEREC's Work Programme 2024. We believe that BEREC should in general focus on the ongoing tasks as mandated by EU legislation, as defined in the EECC, the BEREC Regulation, the Open Internet Regulation, the Roaming Regulation, Digital Markets Act for example. BEREC should also perform its activities aligned with the accomplishment of the targets of the Digital Decade Policy Program 2030. We support BEREC's commitment to establish structured cooperation mechanisms with EU institutions and other competent authorities.

While the introduction of the BEREC Work Programme 2024 acknowledges alignment with EU objectives, it is noted that this alignment is more selective in the actual work programme.

The objectives of the Work Programme for 2024 are found to be in sync with the BEREC Strategy 2021-2025, emphasizing three high-level priorities: promoting full connectivity, supporting sustainable and open digital markets, and empowering end-users.

However, a notable concern is the limited emphasis on promoting efficient investment within the Work Programme. This aspect should be more prominently featured, given the challenges faced by the sector. This absence is particularly evident in the relatively low frequency of the term 'investment' in the document. We expand on this issue below.

### 1. Strategic priority: Promoting full connectivity

#### Network investment

While we appreciate BEREC's continued focus on promoting full connectivity, we find there is a general lack of emphasis on promoting investment within the context of the European Electronic Communications Code (EECC). Among the mentions of investment, most pertain to co-investment, regulatory conditions, and commitments. Only a few references relate to investment in submarine cables and monitoring key performance indicators (KPIs) for the Report on Connectivity Indicators.

Similarly, significant resources are allocated to reporting on Physical Infrastructure Access (PIA) in contrast to the limited attention given to promoting investments in very high capacity networks (VHCN). VHCN is often referenced in context rather than as a standalone policy item. There is a lack of focus on investment in VHCN networks.

Among the forthcoming BEREC activities in 2024, we see opportunities to put more focus on network investment, for example, in the external workshop scheduled for the second quarter, which builds upon the NRA (National Regulatory Authority) workshop conducted in 2023. This event aims to facilitate an exchange of perspectives with various stakeholders regarding the effectiveness of the EECC thus far. We believe this exchange should include a deep-dive into the impact of the EECC on network investment levels in Europe, especially in light of the Digital Decade 2030 targets for connectivity.

In this regard, we support the analysis of commercial agreements between the operators as a trend gaining momentum in the context of regulatory reviews, and an opportunity to explore further the way in which those have been taken into account in the market analyses. In the same vein, we consider it necessary that fully-fledged public consultations are conducted on the topics “Regulatory experience concerning commitments, wholesale-only undertakings and commercial agreements review” and “managing copper network switch-off”, giving justice to complexity and the novel nature of both of those topics. We are convinced that stakeholder workshops followed by reports, let alone reports alone, would be sufficient or suitable to consolidate and properly reflect on all relevant inputs and views.

We support BEREC engagement with RSPG on peer review process and future of radio spectrum policies (section 5.2.4), especially from the perspective of supporting investments. Spectrum licensing and radio spectrum policy are in the core of ensuring investments in the mobile networks. In practise, we have not yet seen evidence on that peer review process had contributed to harmonizing spectrum licensing processes within EU by spreading “best practises”.

Additionally, we suggest to reevaluate the approach to Weighted Average Cost of Capital (WACC) and to open a stakeholder dialogue on this topic.

In conclusion, there is a need to elevate the focus on promoting effective (co-)investment in very high-capacity networks. ETNO calls for the inclusion of an objective dedicated to this aspect, along with regulatory measures to ensure the profitability and long-term viability of such investments.

### **Fibre Roll-Out**

Furthermore, the draft Work Programme 2024 has a limited focus on fibre roll-out, with only four mentions of 'fibre' or 'FTTP'. These mentions predominantly concern copper switch-off, regulatory accounting practices, and physical infrastructure. Similarly, 'Gigabit' is only mentioned once in the context of PIA, not receiving substantial attention in its own right.

With regards to the Digital Decade Policy Programme (DDPP) and the proposed connectivity KPIs, we agree with BEREC on a technologically neutral approach. However, instead of simply monitoring data on investments in networks, in our view, it would be also important to monitor the policy measures to promote investments. For instance, the approach towards geographical segmentation of markets and/or remedies should lead towards consideration of impact on investment of using segmentation to relieve regulatory obligations instead of focusing on how to transpose the SMP regime at subnational market level.

We would hence urge BEREC to take a more forward looking approach and consider adjusting relevant work items to truly promote connectivity and fibre roll-out in line with BEREC’s strategic objectives and with the general policy and regulatory goals as stipulated in the DDPP and the EECC.

### **Evolution of private and public 5G networks in the Europe**

In our view, a factual overview on the extent of the use of private and public 5G networks in Europe would be helpful for the discussion on the spectrum decisions related to local networks. So far, we

have not seen analysis e.g. on demands or cost-benefits to justify plans to harmonize 400 MHz in 3.8-4.2 GHz band for local networks in EU. Also, national decision to reserve mobile spectrum for local/private networks have not been backed by such analysis. In countries which have reserved spectrum for local/private networks we have not yet seen very high demand for local licenses. Spectrum is a valuable resource, and we support factual analysis on demands and socio-economic benefits to ensure its efficient use.

This work should recognize that private solutions are to be provided also within public networks and in spectrum awarded for MNOs. We believe that when 5G stand-alone networks expand, network slicing solutions becomes a popular and efficient method to serve private network demands.

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

### Role of large CAPs in ECN/ECS markets

As previously expressed, ETNO agrees that there is a need to analyse existing actors in the ECN/ECS market and notably conditions in the IP interconnection market. Considering that large CAPs are increasingly entering into the IP interconnection market through investments in CDNs by offering dedicated capacity, bypassing transit and as a consequence segments of the internet architecture, it will be crucial to rethink what elements are covered in the market scope. A more detailed analysis into these aspects would help bring insights into the market dynamics and the competitive conditions in the IP interconnection market and more widely in the internet ecosystem.

We also welcome BEREC's report on the entry of large content and application providers into the markets for electronic communications networks and services. We would urge BEREC to consider the connectivity ecosystem at large, including international undersea connectivity, CDNs and new or expected connectivity services by large CAPs. We believe it is paramount to reflect on the ongoing market developments in the context of the current EU regulatory and policy framework for the telecom sector and thoroughly analyse any regulatory asymmetries for digital networks to make sure that the market conditions are fair for all. We also believe that the analysis should take into account the emerging technology trends such as the Metaverse, which is likely to change the connectivity ecosystem in many ways.

We welcome the fact that the report will provide insights on how the current electronic communications regulatory framework (in particular the EECC and the OI Regulation) applies to CAPs to the extent that it may reflect on how these players are currently at the core of the restrictions on users to access any content of their choice through any device and running any software of their choice.

### 3. BEREC ad hoc work

#### **BEREC Report on national experiences of the implementation of the EECC**

ETNO supports BEREC's intention to take stock of national experiences of the implementation of the EECC and to exchange good practices in this regard. As suggested during the early call for input on the work programme 2023, we would also encourage BEREC to include stakeholders in this exercise to capture different perspectives in the initial assessment or at the very least make the outcomes of the exchange public. In that regard, we welcome BEREC workshop with stakeholders planned on Q2 2024.

#### **Roaming Regulation Report**

We also call for a fully-fledged public consultation on the future BEREC Roaming Regulation Report, tentatively scheduled for 2025. The rules that apply to EU roaming, wholesale and retail levels, over the last decade have grown to be a separate branch of EU rules for electronic communications services. BEREC's inputs into their possible review should be based on a properly consulted analysis of the market circumstances, and reflect the broader perspective, namely, to which extent the EU roaming rules may stifle the competitiveness and the innovation potential of the EU electronics communications industry and the ecosystems it enables. Otherwise, the risk that BEREC suggestions will focus on particularities and secondary aspects and miss the big picture will be too high.

Concerning intra-EU calls and the benchmark mentioned in the 5.3.9 section, it could be valuable to integrate in the analysis the influence of the OTT applications used as substitutes of traditional telco services. Also, it could be useful to evaluate the share of population impacted by the regulation on intra-EU calls, taking notably into consideration that the population not using intra-EU calls may represent a larger part of the targeted population.

### 4. Stakeholder engagement

Finally, we would like to raise a general point to enhance transparency and stakeholders' involvement through more effective dialogue and consultation processes.

First, ETNO thinks that BEREC's functioning can greatly benefit from more transparency on its processes and a more open debate on its internal work, including at its earliest stages. This could be supported by increased interaction between BEREC and industry members.

In our view, the inconsistent dialogue between BEREC and stakeholders is also partially an unintended consequence of the way of working of the office, planning only four plenaries a year to release all its output. The third plenary that is typically in June automatically brings a lot of workload for the stakeholders during the summer break. We believe that a better planning of plenaries or a different process with in between approvals and launches of consultations would remedy this.

Second, we believe that longer consultation periods, avoiding periods of holidays would enhance the quality of the responses to the BEREC consultations. At the same time, this should enhance the output and credibility of the consultation of stakeholders.

ETNO has long been advocating for more transparency in the BEREC processes. We welcome the increase in the number of stakeholder events and the possibility to engage, but this is neither a prevailing nor standard practice across the different BEREC EWGs. The current BEREC arrangements leave a vast amount of discretion especially for the EWG co-chairs regarding the transparency of their work. As a result, we have seen consultations on the draft outputs with relatively minor significance, while e.g. on the BEREC Opinion on the draft EC Gigabit Connectivity Recommendation, an output which has the potential to shape the market for decades, the level of transparency was unacceptably low.

The integration of comments gathered during the consultations is also questionable, it is rather rare to see modifications of the proposed drafts without any explanation.

If BEREC wants to reinforce its dialogue with civil society, it should be taking care of the possible short term and long-term views of the different parties consulted that could be in conflict and could lead to a complicated equilibrium, for example VHCN deployment and the related investment, retail prices levels and Quality of Service.

Some subjects are very technical and stakeholders' experts could be of help with their input. It is the case for example of the report on Open Internet that will assess a very complex technical matter that is DNS. The fact that experts are not involved in this work at least through a consultation is questionable.

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