



## Liberty Global response to BEREC's draft Work Programme 2024

### Introduction

Liberty Global appreciates the opportunity to provide input on BEREC's Work Programme outline for 2024 (WP2024) and supports BEREC's commitment to engage with stakeholders and examine relevant topics. We appreciate that input provided to this call will be considered in drafting the final Work Programme in December 2023.

Liberty Global acknowledges that BEREC's upcoming work, as set out in the outline of the WP2024, includes multiple carry over items from previous years or items that are part of its regular activities. In regards to this, Liberty Global refers to and reiterates its responses to previous work programmes. In the following sections of this response, Liberty Global addresses specific initiatives identified in the WP2024, referring to specific paragraphs of the WP2024. Liberty Global may respond in more detail when the initiative in question is consulted upon by BEREC, also in regard of initiatives Liberty Global does not comment on as part of this response.

### I. BEREC work in 2024

#### High-level strategic priorities

We note that in outlining its work streams, BEREC will consider the three high-level priorities contained in the BEREC strategy 2021-2025 i.e., promoting full-connectivity, supporting sustainable and open digital markets, and empowering end-users.

The 2018 European Electronic Communications Code (Code) aims to ensure wide-spread high speed connectivity by promoting private investment in very high capacity networks (VHCN) and infrastructure-based competition. In this regard, the Code promotes consistency of rules (and their application), regulatory certainty, harmonisation across the EU single market and a level playing field for all players – adhering to the principles of appropriateness and proportionality. Its correct implementation will contribute to the achievement of the 2030 connectivity targets as outlined in the European Digital Decade.

In this context, BEREC has played a key role in the creation of various Code-related guidelines and a significant portion of BEREC's role in the future will be to monitor how the Code functions and continues to be implemented. This includes how BEREC's guidelines work in practice and whether changes are required. Liberty Global supports BEREC's proactive approach and once again urges BEREC to involve stakeholders at all times in these activities.

With regards to digital markets, Liberty Global recognizes that there are varying perspectives across the EU on how to address new challenges associated with the rise of new digital services and technologies. Any new policy measures should be appropriate and proportionate to the harm sought to be addressed, built upon existing concepts, and consistent and not overlapping with other legislative instruments.



Furthermore, we support BEREC's contribution to the achievement of a green and digital transition under the European Green Deal. Any assessment of the ICT sector's environmental impact must take into account its varied nature and the multitude of actors within the sector. In this context, we urge BEREC to maintain a nuanced approach, and continue to abide by the principles of appropriateness, proportionality and technology neutrality when assessing environmental impact.

Having digitally skilled citizens is crucial for Europe to strengthen its global competitiveness and to become an inclusive digital society. As a technology, media and telecoms company, we believe that access to education that allows for the acquisition of basic digital skills should be a right for all EU citizens. We also note that end-user rights are significantly fragmented across the EU. One of the goals of the Code is to create more consistency in the application of consumer protection legislation, through modified full harmonisation of the end-user rights provisions. BEREC therefore has a crucial role in promoting regulatory best practices and consistent application of these Code provisions across the EU.

Finally, with regards to BEREC's tasks under EU legislation, we would like to take this opportunity to reiterate once more that the powers and obligations of BEREC are assigned by the Code – where BEREC provides opinions around legislative proposals and undertakes any work, we urge BEREC to remember that it's duties and responsibilities are defined in the Code – anything beyond the Code may be outside BEREC's remit.

### **Strategic priority 1: promoting full connectivity**

#### **1.1. Report on the regulation of physical infrastructure access**

We note that physical infrastructure access (PIA) has become a greater focus of regulatory intervention in a number of different markets and we welcome BEREC's intention to carry out an in-depth review of regulatory intervention in this area. We would encourage BEREC to engage with industry stakeholders at an early stage of this review to understand the market view of PIA and regulatory intervention in this area.

Regulation is only one element which influences the value of PIA in encouraging VHCN rollout – the quality of the PIA on offer is also critical. There are variations in the nature and quality of PIA product on offer across different Member States. In certain markets, the PIA offering available from the SMP operator is poor. Physical infrastructure access is of little value where the product is sub-standard, which can impede future rollout. We urge BEREC to also examine these factors.

#### **1.2. Workshops on ex ante regulatory experience concerning commitments, wholesale-only undertakings and commercial agreements review**

Liberty Global welcomes the external stakeholder workshop with operators and national regulators to discuss the importance of Article 76 Code on the Regulatory treatment of new VHCN elements, Article 79 Code on the Commitments procedure and Article 80 Code on Wholesale-only undertakings and their application. Such provisions are helpful tools for NRAs to take into consideration the specific characteristics of SMP operators and adopt a more tailored approach when addressing prospective competition concerns under market analysis. We believe it's also important to discuss the relevance of commercial agreements and commercial offers in the context of market analysis.



We have noticed that NRAs are more open to a conversation on these topics – we welcome this and urge to do this in an early state so the outcomes can be fully taken into account. The workshop will be a valuable moment of information sharing and discussion with national regulators on the applications of these provisions.

#### **1.4. Workshop on economic replicability test practices in the context of Article 61(3) of the Code**

Liberty Global welcomes the external stakeholder workshop with operators and national regulators to discuss current practice – we urge BEREC to invite stakeholders to respond as well to the prior survey BEREC said to initiate. We would welcome the broadening of the discussion to include whether the approaches and interpretations by BEREC in the Guidelines on the Criteria for Consistent Application of Article 61(3) of the Code are in line with the text and spirit of the symmetric access provisions. In response to the consultation on these guidelines we urged BEREC to ensure that these measures would be designed and adopted in line with the text and spirit of the symmetric access provisions, in a way which ensures they truly support and foster sustainable competition, and investments in new and improved networks. We also provided BEREC with a report by e-Economics on the Symmetric access obligations under Article 61(3) Code.<sup>1</sup>

#### **1.8. Report on Connectivity Indicators for the Digital Decade Policy Programme**

Liberty Global agrees with BEREC's assessment that the Key Performance Indicators ("KPIs"), intended to measure progress towards the achievement of the Digital Decade targets, are not consistent with the Code and the principle of technology neutrality.

In the KPI for fixed networks, we see an unjustified focus on FTTP only<sup>2</sup>. The Commission intends to monitor the evolution of the FTTP coverage separately when interpreting VHCN coverage data, leaving behind other technologies such as DOCSIS, which is also considered a VHCN and relevant, widely used technology.

Regulatory initiatives should not favour any specific technology, but should abide by the principles of appropriateness, proportionality, and technology neutrality. Liberty Global supports BEREC's monitoring activities in this regard and urges BEREC to involve stakeholders.

#### **1.10. Safety and security opportunities and challenges for networks resilience**

Liberty Global supports BEREC ongoing work in the context of coordinating and facilitating a common European approach towards tackling the challenges and opportunities as regards the security and resilience of Europe's communications networks and services. BEREC and national regulators are well-positioned to ensure that the NIS Cooperation Group and other policymakers take informed decisions on matters affecting our sector. At the same time, however, Liberty Global notes that the level of engagement sought by national regulators, to further BEREC's work in this regard, can differ from country to country. The centralisation of consultations and stakeholders at the European level, i.e.

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<sup>1</sup> e-Economics (in collaboration with Incyte Consulting and Radicand Economics), *Symmetric access obligations under Article 61(3) EECC – A report for Liberty Global, May 2019 (e-Economics Report)*.

<sup>2</sup> We see a similar focus on FTTP in the WIK report commissioned by the Commission "Investment and funding needs for the Digital Decade connectivity targets" (WIK, 2023), which focuses on the need for ca. €114bln for Fibre-to-the-Premise technology to achieve the Gigabit coverage goal.



through BEREC instead of indirectly via national regulators, can ensure a more consistent level of stakeholder engagement. We urge BEREC to hold a public consultation of the workshop summary report, to ensure full transparency and to enable those stakeholders unable to attend or to participate in the workshop to contribute as well.

### **1.11. BEREC Report on the evolution of private and public 5G networks in the Europe**

The rise of private mobile networks and the continued evolution of public mobile networks raises many interesting questions – and poses challenges from a regulatory perspective. Liberty Global commends BEREC for investigating this and associated trends, such as satellite communication, small cells, infrastructure, and spectrum sharing and neutral hosting. Liberty Global is of the opinion that BEREC's report has the potential to contribute to a principled and technology neutral application of current and nascent regulatory frameworks.

Finally, Liberty Global emphasizes that the providers of both public and private networks can provide the same set of services to e.g., verticals. This concerns *inter alia* bespoke connectivity services, commonly known as Networks-as-a-Service (NaaS). Spectrum license conditions – but also regulatory requirements – should not favour one form of delivery of such services over another, in order to avoid distortions of competition. Therefore, careful analysis is required in the setting of such conditions and requirements, to ensure spectrum – an inherently scarce resource – is allocated in accordance with maximum efficient use and broad coverage, and to ensure that regulatory frameworks are applied in accordance with the principle of technology and service neutrality.

### **1.13. Update of criterion 3 of the BEREC Guidelines on very high capacity networks**

Liberty Global welcomes the revision of criterion 3 of the BEREC Guidelines on VHCN. We expressed significant concerns in the past regarding BEREC's approach to setting the performance thresholds 1 in criterion 3. In the Guidelines BEREC defined the performance of a "gold standard" FTTB network as the VHCN benchmark network based on a "best technology" approach. By doing so, BEREC discriminated against non-FTTB operators, which would need to invest in their networks further to be able to meet this gold standard. The performance thresholds are not appropriate nor proportionate, go beyond the wording and spirit of the Code and are inconsistent with Code's key principle of technological neutrality.

BEREC should not set a gold standard VHCN with future network performance in mind, but rather define a VHCN that reflects the current market realities (including the current network technologies and performance). In its workstream, we urge BEREC to consult fixed network operators and involve them in every step of the data gathering process.

## **Strategic priority 2: thriving sustainable and open digital markets**

### **2.1. Implementation of the Open Internet Regulation and the BEREC Open Internet Guidelines**

Liberty Global broadly supports BEREC's continued efforts to monitor the implementation and application of the Open Internet Regulation and the associated Guidelines. We note that the national reports upon which BEREC's report is based are frequently also adopted and published without prior



public consultation. Given the importance of these national reports, as well as BEREC's pan-European report, in the furthering of a harmonized application of the Regulation, Liberty Global, at a minimum, urges BEREC to hold a public consultation prior to the adoption of the pan-European report.

## **2.6. BEREC Report on Infrastructure sharing as a lever for ECN/ECS environmental sustainability**

Environmental sustainability is a pressing policy objective and Liberty Global supports the increased emphasis on sustainability in the ECN/ECS sector. Infrastructure sharing could be a key tool to increase the sustainability of the sector under the right circumstances. Greater clarity on how the potential environmental benefits should be weighed against other regulatory considerations would be useful for operators. It is important that discussions surrounding this issue remain transparent and open for discussion, and we urge BEREC to ensure that dialogues with stakeholders continue.

## **2.9. Digital Radar**

Liberty Global supports BEREC's work examining how wider technological advancements are affecting the development of the ECN market. Understanding the wider movements in the market are essential for effective regulation. We would recommend also including Network-as-a-Service as a critical technological development which should be included in this Digital Radar. Given the pace of change of these developments, we would caution against the Digital Radar becoming the single "source of truth" as to how these developments influence the ECN market – there should be flexibility in how this document is used in application of regulation. We would once again like to reiterate that we encourage BEREC to consult and engage with stakeholders at every relevant opportunity.

## **Strategic priority 3: empowering end-users**

### **3.4. BEREC Opinion on Article 123 Code**

One of the key goals of the Code is to create more consistency in the application of consumer protection legislation across the EU, through modified full harmonisation of the end-user rights provisions. End-user rights are an area where there is significant fragmentation across the EU and BEREC will have an instrumental role in promoting regulatory best practice (incl. evidence-based consumer policy) and consistent application of these Code provisions. BEREC is also required to provide the European Commission with an Opinion on market and technological developments, and their impact on the application of the end-user rights provisions of the Code. This Opinion will serve as input for the European Commission's review of the end-user provisions under Article 123 of the Code.

In this regard, Liberty Global supports BEREC's initiative to host a workshop with BEUC and other stakeholders, and organisations of persons with disabilities. We consider it is important to involve consumers and consumer organisations when assessing the effectiveness of the Code provisions on end-user rights. Liberty Global also urges BEREC to ensure that service providers and all industry associations are given the possibility to participate as the discussion can benefit from their first-hand experience, and to inform them about the outcomes, as well as its intended follow-up on this subject.



## II. Communication and engagement

BEREC's stakeholder engagement intends to promote transparent and effective regulation, based on high-quality professional standards and regulatory best practice. Consultation and information-sharing by BEREC with a broad range of stakeholders on its initiatives is instrumental for stakeholder engagement. Liberty Global welcomes BEREC's commitment to 'continuously improving its interaction with all stakeholders to ensure that its output stays relevant', through ensuring transparent work processes, targeting relevant audiences as well as via the involvement of stakeholders at both early and advanced stages of BEREC's work. To further improve the relevance of stakeholders' contributions to BEREC's work, Liberty Global would particularly like to emphasize the need for (and merits of) involving stakeholders in e.g., defining the contents of questionnaires and of data requests. For example, in the context of a BEREC questionnaire on IP Interconnection, Liberty Global and other market participants recently were requested to provide data using a methodology which deviated significantly from industry standard practice. Liberty Global fears that, particularly when data is requested, the lack of adherence to industry standard practice or to a common methodology will have significant negative repercussions for the quality of the resulting (and aggregated) data. Involving stakeholders in the determination of the appropriate methodology can mitigate that risk and therefore contribute significantly to the quality and relevance of BEREC's data-driven work.

Therefore, when developing its WP2024, we urge BEREC to incorporate regular points of contact for stakeholder engagement, including workshops and one-on-one meetings, keeping in mind that the need for these opportunities must be truly bi-directional (e.g., through information sharing and open discussion of issues) to facilitate full transparency and effective communication.

### About Liberty Global

Liberty Global (NASDAQ: LBTYA, LBTYB and LBTYK) is a world leader in converged broadband, video and mobile communications services. We deliver next-generation products through advanced fiber and 5G networks, and currently provide over 86 million connections<sup>3</sup> across Europe and the United Kingdom. Our businesses operate under some of the best-known consumer brands, including Virgin Media-O2 in the U.K., VodafoneZiggo in The Netherlands, Telenet in Belgium, Sunrise 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 the VMO2 JV and VodafoneZiggo JV generate combined annual revenue of more than \$17 billion.<sup>4</sup>

Liberty Global Ventures, our global investment arm, has a portfolio of more than 75 companies across content, technology and infrastructure, including strategic stakes in companies like ITV, Televisa Univision, Plume, AtlasEdge and the Formula E racing series.

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<sup>3</sup> Represents aggregate consolidated and 50% owned non-consolidated fixed and mobile subscribers. Includes wholesale mobile subscribers of the VMO2 JV and B2B fixed subscribers of the VodafoneZiggo JV.

<sup>4</sup> Revenue figures above are provided based on full year 2022 Liberty Global consolidated results (excluding revenue from Poland) and the combined as reported full year 2022 results for the VodafoneZiggo JV and full year 2022 U.S. GAAP results for the VMO2 JV. For more information, please visit [www.libertyglobal.com](http://www.libertyglobal.com)