



ecta RESPONSE

**TO THE PUBLIC CONSULTATION BY BEREC
ON THE
DRAFT BEREC WORK PROGRAMME 2024**

BOR (23) 176

6 NOVEMBER 2023

1. Introduction

1. **ecta**, the **European Competitive Telecommunications Association**,¹ welcomes the opportunity to comment on the draft BEREC Work Programme, BoR (23) 176, which covers workstreams to be delivered by BEREC in 2024 (hereafter ‘draft WP2024’) and potential work for 2025 and beyond.
2. **ecta** appreciates that BEREC is offering stakeholders the possibility to contribute to refining the draft WP2024 prior to its final adoption.

2. Request for addition to the draft WP2024

3. In light of political pressure to “*review and update the regulatory and competition paradigm in the electronic communications sector*”, expressed notably by the Spanish presidency of the Council, and the White Paper announced by EC Commissioner Breton for Q1 2024, **ecta urges BEREC to create a concrete additional workstream. This workstream could demonstrate, based strictly on facts, the essentiality and success of Europe having a sector-specific regulatory framework for electronic communications based on competition law, providing for ex-ante regulatory intervention powers, enabling NRAs to prevent abuse of Significant Market Power, promoting competition and ultimately safeguarding end-user interests. Specifically, BEREC could usefully issue a report (and a short briefing note) making clear to policy makers why it would be counterproductive to dismantle or alter the existing regulatory paradigm in the electronic communications sector or to artificially disrupt it.** In this context, it would be helpful if BEREC could point out to policy makers that:
 - i. The currently applicable Significant Market Power framework contained in the European Electronic Communications Code (EECC) naturally self-extinguishes as competition develops. In cases where a relevant market is not deemed susceptible to ex-ante regulation or when no Significant Market Power is identified on a defined market, the EECC explicitly prohibits the imposition of regulatory measures. There is therefore no need to remove or alter the Significant Market Power regime to achieve deregulation where deregulation is justified.
 - ii. Whilst there is a large consensus on the introduction ex-ante measures to address market power and related behaviour of gatekeepers on digital markets, with an approach and specific measures (e.g. interoperability and switching) inspired directly by the framework applied successfully in the electronic communications sector, it is paradoxical that there is at the same time political pressure to remove safeguards which are known to be functioning. Given that electronic communications markets are diverse, placing National Regulatory Authorities in charge of defining markets, assessing Significant Market Power, and imposing regulatory obligations which are appropriate, remains of utmost relevance. The role of BEREC in promoting best practices, issuing guidance, monitoring, etc. is one that should certainly not be discontinued.

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

3. Key comments on the draft WP2024 and specific remarks on BEREC's introduction and background sections

4. **ecta** expresses its **explicit support for the contents of most of BEREC's draft WP2024**. In this response, **ecta** provides constructive suggestions for improvement of the WP2024.
5. **ecta urges BEREC, when considering** *"to what extent the new electronic communications framework is enabling the achievement of the EECC's objectives and whether the framework's provisions are effective to that end"* (page 4, para 4) and in application of Section 5.4.2, a forthcoming *"BEREC report on national experiences of the implementation of the EECC"*, to **conduct this exercise on a strictly factual basis, but with the knowledge that there are political pressures to dismantle or alter the existing regulatory paradigm in the electronic communications sector or to artificially disrupt it**. **ecta** advocates that this work should include an **assessment as to whether specific EECC provisions 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 (making abstraction of the recent high inflation), what the impact has been on take-up (incl. affordability) of VHCN connectivity, 5G, etc.
6. As BEREC *"will continue to analyse technological developments and their impact on sustainable competition on telecoms markets"* (page 5, para 1), and *"BEREC will reinforce its coordination on innovative networks and emerging technologies [...] to better understand them and identify their potential impact on regulation."* (page 5, para 6), **ecta explicitly asks BEREC to place the promotion of competition at the centre of its considerations. The role of BEREC should not be limited to monitoring and reporting. BEREC can and should actively encourage NRAs to take decisive action where competition is placed in peril.**
7. Where BEREC states that *"Closing the digital divide entails more than just the roll-out of very high capacity networks. It also requires end-users to have access that fits their needs"* (page 5, para 2), **ecta wholeheartedly agrees, and asks BEREC to add, in the final text of the WP2024, that this includes affordability of services**. **ecta** 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 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, upward adjustments to the WACC calculations, increases in wholesale charges for access to civil engineering infrastructure and copper unbundling, etc.) should be carefully assessed.
8. As regards the determination of **BEREC's objectives for 2026-2030** and related documents (page 5, last para, and page 6, para 3) **ecta expects BEREC to continue to focus, first and foremost, on its remit**, which is set out in Regulation No 1211/2009 (in

particular in Article 3 (Objectives of BEREC), points (1) and (2) and in Article 4 (Regulatory Tasks of BEREC), points (1) (e) and (k) thereof). BEREC's new duties in application of the Digital Markets Act, whilst relevant, are an additional responsibility, which is narrowly specified. NRAs' expected new responsibilities in the context of the Data Act are relevant as well, but do not justify BEREC shifting its focus away from electronic communications.

9. **ecta's** experience with many recent BEREC Reports is that these do not necessarily result in tangible guidance or agreed common approaches shared by NRAs, and in several cases consist of 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.** **ecta** considers that a '**Progress Report**' to be adopted at Plenary 4, 2024 (*Section 1.5: Managing copper switch-off*), without prior public consultation, **is not sufficient**. Regulatory Best Practices can and should be presented by BEREC.
- ii. **Regulatory treatment of business services** (follow-up to BoR (23) 89). The 2023 Report was essentially descriptive. **Follow-up work** (as indicated in Section 13 of the 2023 Report) **appears to be missing from the draft WP2024**. **ecta** considers that Regulatory Best Practices on the regulatory treatment of business services can and should be presented by BEREC, and that **a work item on business services should be reinstated in the final WP2024**.
- iii. **Implementation of Equivalence of Inputs.**

BEREC's 2013 Work Programme included a work item on Equivalence of Inputs (*point 7.5*), in the following terms:

"7.5. Implementation of Equivalence of Inputs (EoI) by NRAs

Following suggestions from stakeholders received during the call for input regarding the Work Programme 2023, BEREC plans to look closer at the issue of EoI implementation in the relevant markets in 2024. This task is closely connected to the final shape and scope of the new Access Recommendation review, which is still ongoing."

ecta cannot seem to find planned work on Equivalence of Inputs in the draft BEREC WP2024, which is deeply regrettable. **ecta** asks BEREC to reinstate this item. For reference, in its response to the Call for Input, dated 14 April 2023, **ecta** made an explicit request for BEREC to work on Equivalence of Inputs, in the following terms (Point 15, sub-point (v)):

(v) conduct a deep-dive examination on NRA decisions to select Equivalence of Input (EoI) or Equivalence of Output (EoO) for wholesale access to civil engineering infrastructure and for wholesale access to fibre-to-the-premises networks (FttHome and FttOffice). This could include examination of the degree of involvement and action needed by the NRA once EoI or EoO is in place, the number of cases of discrimination

raised (formally and informally) by alternative operators under EoI and EoO configurations, and the effort needed by the NRA to require corrective measures from the SMP operators, the type and intensity of monitoring required by the NRA under EoI and EoO, etc.

More generally, ecta is compelled to express its disappointment to find that the explicit request ecta made in its response to the Call for Input (BoR (23) 02) on BEREC to adopt updated Common Positions and issue Best Practices documents has not resulted in tangible BEREC Work Programme points for 2024 and beyond.

Please allow ecta to highlight that BEREC's mandate, as contained in Regulation (EU)2018/1971, concerns actions to be pursued towards the achievement of Article 3 EEC. 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;”

10. 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 2024. However, ecta considers that:

- i. Workshops where participants are allocated a few minutes of speaking time in the form of 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 reiterates a request made previously to BEREC, 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 with regard to BEREC's work, as well as in the context of the approach to Intra-EU communications, the announced European Commission White Paper, and in the run-up to the review of the European Electronic Communications Code and the Roaming Regulation, on which **ecta** expects BEREC to be active, in providing factual and reasoned inputs to policy-makers. In this context, **ecta considers it very important for BEREC Opinions to be subject to substantive (pre)consultations with stakeholders.**

11. 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).

4. Comments on the chapter entitled “BEREC Work in 2024”

12. **ecta** welcomes especially the second part of the statement that “*BEREC will continue monitoring developments in digital markets and emerging electronic communications services (ECS) in order to anticipate any potential regulatory needs in a fast-changing environment*” (page 7, para 1). Anticipation and working on an ex-ante basis constitute the right approach, rather than monitoring and reporting, potentially resulting in belated action, after damage to competition and end-user interests has occurred and may be irreversible.

4.1. Strategic Priority: Promoting full connectivity

13. **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.**

14. Section 1.1: Report on the regulation of physical infrastructure access. **ecta** welcomes this proposed workstream with caution, given that the European Commission’s Recommendation on the regulatory promotion of Gigabit connectivity has not yet been released and its contents remain unknown, but that a push toward wholesale access to PIA as the *primus inter pares* SMP obligation is expected. It should be noted that, so far, the definition of a stand-alone PIA market remains very much exceptional in NRAs’ practice. The Report should therefore definitely also address PIA as a remedy for SMP on Markets 1 and 2/2020 (and Market 3b/2014 where applicable), as is indeed proposed by BEREC. **ecta** notes that it is stated that “*BEREC may conclude with some recommendations*”. **ecta asks BEREC to be more affirmative, and to actively pursue the explicit identification of best practices**, both for the scenario in which PIA is defined as a stand-alone market, and for the scenario in which wholesale access to PIA is an SMP remedy. In addition, the consequences of a scenario in which a stand-alone PIA market is defined, and conceivably no other/downstream market is defined, is likely to become worthy of in-depth consideration, notably in terms of its likely impact on competition and end-user interests. In this context, the consequences on both B2C and B2B markets deserve attention. **ecta wishes to make clear up-front its concerns about potential severe exclusionary effects resulting from a scenario in which a stand-alone PIA market is defined, and no other/downstream market is defined.**

15. Section 1.2: Workshops on ex ante regulatory experience concerning commitments, wholesale-only undertakings and commercial agreements review. **ecta** welcomes this proposed workstream with caution. It is particularly important for BEREC to be mindful that the threshold for fulfilling the conditions of Art 76(1) EECC is specific. The absence of cases in which this threshold is fulfilled does not constitute a justification for BEREC to consider softening its Co-Investment Guidelines, or for NRAs to deviate from the legally established standard or pursue procedurally ‘easier routes’ to granting regulatory relief to SMP operators. A substantive review on the manner in which commitments by SMP

operators commercial agreements are reflected in subsequent market analyses is justified, notably because some challenger operators consider that, given inadequacies and delays in imposing and enforcing SMP regulation, they had no choice but to enter into commercial agreements with the SMP operator, as not doing so would have resulted in their rapid exclusion from markets. Where SMP operator commitments and commercial agreements are subsequently invoked by the NRA to justify further deregulation of SMP operators in an interim review of remedies or in the next full round of market analysis, this is seen by some challenger operators as a negative spiral in which regulatory failure feeds further deterioration of competitive conditions. **ecta welcomes that an external workshop is to be held before an internal workshop. This is the right sequence. ecta insists that: (i) the workshop summaries distinguish clearly between each instrument (co-investment, SMP operator commitment, commercial agreement, wholesale-only), and (ii) that any review of the BEREC Co-Investment Guidelines is preceded by a full public consultation.**

16. Section 1.3: Report on the design, enforcement and monitoring of remedies in subnational markets with multiple SMP operators. Insofar as this report focuses on remedies, as is proposed by BEREC, **ecta** welcomes this proposed workstream. **ecta** wishes to caution against unduly amalgamating scenarios which have fundamentally different characteristics, e.g. (i) geographically distinct incumbency (multiple incumbents in Finland, Hungary, UK which have held SMP since the introduction of SMP regulation), (ii) SMP for different technologies and in different cable footprints (Belgium), and (iii) and markets where new entrant (fibre) network operators are found to hold SMP in particular geographic areas (Denmark – and being contemplated elsewhere). The focus should probably be placed on the last of the four. That being stated, SMP regulation is aimed at preventing specific behaviour, irrespective of the entity that engages in it. NRAs should be cautious in accepting voluntary commitments that result in structurally low competitive intensity or limit opportunities for the development of sustainable competition, limited service differentiation opportunities, etc.
17. Section 1.4: Workshop on economic replicability test practices in the context of Article 61(3) of the EECC. **ecta** is not convinced that there is much value in pursuing this workstream, given that Article 61(3) has not been applied by NRAs (the case in The Netherlands resulted in the NRA not pursuing a symmetric access obligation).
18. Section 1.5: Managing copper network switch-off. **ecta strongly welcomes further BEREC work on network copper switch-off**, and indeed requested it in its response to the Call for Input. However, as stated in paragraph 9 above, **ecta** considers that a **'Progress Report' to be adopted at Plenary 4, 2024, without prior public consultation, is not sufficient. BEREC should instead issue a best practices document on the modalities associated with the shut-down of copper networks and the related transition to VHCN.** For detailed suggestions, please refer to **ecta's** January 2022 contribution to the public consultation on the draft BEREC Report on a consistent approach to migration and copper switch-off, BoR (21) 171. Since then, the issue of wholesale pricing for copper-based access during the transition to fibre has become a matter of serious concern in some

Member States. It is currently a critical issue in France, with the SMP operator set to receive excessive windfall financial transfers from alternative operators for a period of over 5 years, which encourage it to slow down rather than accelerate the transition. Those concerns are shared by the French Competition Authority in its opinion 23-A-14 dated 5 October 2023² to the French NRA on its draft Analysis of Market 1/2020. In addition, **ecta** considers it absolutely essential that all types of users, including business users' interests are assessed, and that the role of alternative operators providing B2C and B2B services is fully considered.

19. Section 1.6: Report on cloud services and edge computing (carry-over). **ecta** has actively contributed to BEREC's work in this area, including a meeting with the BEREC working group. **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. BEREC should firmly focus on B2B services closely related to electronic communications.
20. Section 1.7: BEREC Report on the authorisation and related framework for international connectivity infrastructure (carry over). **ecta** has followed the BEREC workshop on international submarine connectivity in the EU and is aware that the European Commission intends to issue a Recommendation to EU Member States on secure submarine infrastructures for Europe, and instruments to facilitate financing. A question remains 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.
21. Section 1.8: Report on Connectivity Indicators for the Digital Decade Policy Programme. **ecta** has, in recent weeks, been surprised to see several European Commission officials challenging the connectivity KPIs the Commission itself adopted as recently as 30 June 2023. Some operators are concerned that the Commission seems to be intent on developing KPIs that enable it to justify dismantling or altering the existing regulatory paradigm in the electronic communications sector or to artificially disrupt it. Therefore, **ecta** urges BEREC to focus on monitoring KPIs (as is understood to be the proposal) and not to accidentally feed a narrative of failure of EU policy in electronic communications, including as it concerns data on investments in networks, which BEREC mentions in the draft WP2024 (*page 15, paragraph 2*). To such purpose, **ecta** respectfully asks that in case BEREC prepares and issues a report on the investment figures of the sector, the

² <https://www.autoritedelaconcurrence.fr/fr/avis/relatif-une-demande-davis-de-lautorite-de-regulation-des-communications-electroniques-des-1>

investments between 2000 and 2023 are provided separately for: (i) fixed network deployment and upgrade, (ii) mobile network deployment and upgrade, with investment for spectrum identified separately. Customer Premises Equipment CAPEX should be accounted for separately. Moreover, **ecta** respectfully requests that if BEREC works on investment figures, it prepares and issues a report on the sector's returns on equity, the share price evolution and the evidence on the dividends paid by the stock market quoted companies. Those two reports would be crucial in order to shed light on the current discussions regarding the changes advocated for the current regulatory framework.

22. Section 1.9: 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.
23. Section 1.10: Safety and security opportunities and challenges for networks resilience. **ecta** agrees that it is relevant for BEREC to organise external workshop in Q4 2024 to discuss security challenges related to technological developments (cloudification/softwareisation, 6G, quantum computing, OpenRAN and use of AI-based tools) and changing climate conditions.
24. Section 1.11: BEREC Report on the evolution of private and public 5G networks in Europe. **ecta** agrees that private 5G networks, and the question of their different or overlapping use cases with public 5G networks, is a relevant topic for discussion. In its response to a RSPG consultation on Draft Opinion RSPG23-026 FINAL, filed on 1 August 2023, **ecta** has challenged the notion, prevalent throughout the RSPG's Draft Opinion, that additional EU harmonized and locally licenced spectrum for local/vertical use cases would be needed, for 6G, or even before 6G is deployed. It is preferable to take stock of the situation, given that many Member States have reserved spectrum for local/vertical use, and that usage is modest at best, and certainly is limited to specific small geographic areas. A case-by-case assessment is needed of the objective needs of industry, including the geographic locations at which local/vertical spectrum usage is happening and the extent to which industry needs are served by mobile network operators or using spectrum assigned to mobile network operators but made available for specific industrial use. Certainly, reserving >100 MHz for local/vertical use cases across the EU is unnecessary and is unduly wasteful of mid-band spectrum. Similarly, the argument for reserving large quantities of 26 GHz or higher spectrum for local/vertical use cases needs to be tested against objective reality.
25. Section 1.12: BEREC external workshop about the usage of satellite technologies in mobile communications. **ecta** agrees with BEREC that, following the workshop on 13 April 2023, it is relevant for stakeholder engagement to continue, not only as regards broadband connectivity, but also in the light of increasing development of direct satellite to handset communications, satellite-based Internet of Things developments, etc.

26. Section 1.13: Update of criterion 3 of the BEREC Guidelines on very high capacity networks. [ecta](#) recalls that, in the 2020 Guidelines, criterion 3 was defined for copper networks (G.fast 212 MHz) on the basis of information provided by equipment vendors, which was deemed by some operators as not reflecting real-world conditions, and that there were high variations in the data collected for other fixed network types. [ecta](#) invites BEREC to initiate not only data collection through a questionnaire NRAs send to selected operators, but to ensure that all interested operators are given an opportunity to contribute, in terms of discussing the methodology to be applied, and in terms of providing data.

4.2. Strategic Priority: Thriving sustainable and open digital markets

27. [ecta](#) welcomes BEREC's initiative to produce a "Digital Radar", in a similar manner to the "5G Radar" and related "Guide to the BEREC 5G Radar" presented in 2020. As is stated in this and in previous [ecta](#) responses to BEREC Calls for Input and Work Programme consultations, [ecta](#) expects BEREC to produce Common Positions and Best Practices and not limit itself to monitoring and reporting.

28. Sections 2.1 and 2.2: Implementation of the Open Internet Regulation and the BEREC Open Internet Guidelines and Collaboration on net neutrality measurement tools. [ecta](#) has no particular comments to make on these workstreams but follows their outputs with interest.

29. Section 2.3: BEREC workshop on the perspectives and regulatory/competition challenges of Internet of Things (carry over). This workshop occurred on 26 October 2023. [ecta](#) thanks BEREC for inviting our member Transatel's CEO as a panellist. The discussions were dynamic and relevant, with direct debate allowing for contradictory positions to be expressed and for rebuttals where panellists disagreed, which is most welcome. Also, the discussion's focus was on B2B IoT (in its response to the 2023 BEREC WP consultation, [ecta](#) explicitly requested for this workshop to not only address B2C issues but also to have a B2B focus, which is indeed what occurred). [ecta](#) looks forward to the workshop summary report as well as to the forthcoming BEREC call for input on M2M/IoT in the context of the Review of the Roaming Regulation.

30. Section 2.4: BEREC Report on the IP interconnection ecosystem (carry over). This Report is eagerly anticipated. A set of BEREC workshops has been held, including one in which [ecta](#)'s chairman and members participated, on 23 October 2023. [ecta](#) thanks BEREC for the invitation and its good offices, but regrets that the workshop was limited to a limited set of stakeholders, not permitting debate with the entire set of stakeholders interested in the topic. Opportunities for substantive stakeholder debate need to be actively created by BEREC, however complicated and controversial the subject matter is.

31. Section 2.5: BEREC Report on the entry of large content and application providers into the markets for electronic communications networks and services (carry-over). [ecta](#) wholeheartedly welcomed the addition of this workstream to the draft WP2023, and asked for its acceleration. [ecta](#) eagerly anticipates the public consultation on the draft Report. Plenary 2, 2024 for consultation and Plenary 4, 2024 for adoption is very late. Given ongoing

policy discussions, it still appears imperative for BEREC to accelerate this work and to deliver at least a draft Report within Q1 2024.

32. Section 2.6: BEREC Report on Infrastructure sharing as a lever for ECN/ECS environmental sustainability. **ecta**, whilst confirming many of its members' industry leading environmental performance, detailed in responses to previous BEREC consultations, expresses that extreme caution is needed with regard to the policies and regulatory decisions governing network sharing, including on environmental grounds. We refer to *page 24, para 3*, where BEREC refers to *"the possibilities how of how to weigh up identified benefits to the environmental impact from network sharing and/or take decisions motivated by the promotion of the protection of the environment"* and *page 24, last para, and page 25, first para*, where BEREC refers to *"Finally, elements of strategic reflections could be raised concerning potential trade-offs that will arise in terms of regulatory objectives and competition, as well as regarding the future of the pooling of networks with regard to environmental targets and markets developments"*. **ecta** submits that network sharing, for instance between the two leading MNOs, to the exclusion (rather than inclusion) of third, fourth or subsequent MNOs and/or fixed-wireless access operators in the same (environmentally motivated) sharing/pooling agreement, could have a destructive effect on competition, and concomitantly on end-user interests. Any proposed agreements (relating to mobile networks, fixed-wireless access networks, and for fixed networks) which are based on, or which include, environmental motivations, need to be assessed with utmost care. The solution is the inclusion of all operators interested in being included in agreements that are aimed at being a lever for environmental sustainability, not the exclusion of any operators from any relevant agreements.
33. Section 2.7: BEREC Workshop on telecom regulators role in the development and implementation of sustainability indicators in the ICT sector. **ecta** is on record with BEREC in advocating that BEREC is best placed to ensure that there is a single coordinated set of indicators for the environmental sustainability in the electronic communications sector, aligned with the Science Based Targets initiative (SBTi). **ecta** has observed that whilst BEREC has been a leader on this topic for the past several years, BEREC now appears rather to be deferring to the European Commission on this topic. The draft BEREC WP2024 remains focused on ECN/ECS (and more broadly the ICT sector's) own problems and areas for improvement. Whilst this is definitely an area for action, **ecta** reiterates its repeated request that BEREC and NRAs should also conduct work on identifying the positive impact that ECN/ECS operators have on the overall greening of the economy and society, notably through digitalisation of processes in public administrations and businesses, including their interaction with citizens.
34. Section 2.8: BEREC internal workshop on the implementation of the Digital Services Act. This is not an area of focus for **ecta**. Where NRAs are designated as the national Digital Services Coordinators (DSCs), human resources and budgets for this should be assigned separately, not in any way to the detriment of NRAs' and BEREC's continuing mandates relating to electronic communications networks and services.

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35. Section 2.8: Digital Radar. As stated in paragraph 27 above, **ecta** welcomes BEREC's initiative to produce a "Digital Radar", in a similar manner to the "5G Radar" and related "Guide to the BEREC 5G Radar" presented in 2020. As is stated in this and in previous **ecta** responses to BEREC Calls for Input and Work Programme consultations, **ecta** expects BEREC to produce Common Positions and Best Practices and not limit itself to monitoring and reporting.
36. Section 2.9: BEREC contribution to the implementation of the Data Act. As stated in paragraph 8 above, **ecta** notes NRAs' expected new responsibilities in the context of the Data Act, being designated as the national competent authority responsible for the application and enforcement of (some chapters of) the Data Act. **ecta** has a firm position on switching between data processing services and has communicated this position to BEREC. A BEREC contribution to the implementation of the Data Act (covering the monitoring of switching charges, interoperability, complaints handling, IoT, etc.) is clearly relevant. Where NRAs are designated as national competent authorities, human resources and budgets for this should be assigned separately, not in any way to the detriment of NRAs' and BEREC's continuing mandates relating to electronic communications networks and services. As far as IoT is concerned, **ecta** wishes to emphasise that IoT should not only be considered as an area for the imposition of new regulatory obligations (e.g. resulting from the Data Act) but that there are also evident needs to carefully examine, sensibly harmonise and simplify the set of regulatory obligations (authorisation, reporting requirements, Know Your Customer Requirements, data retention and lawful interception, contractual requirements, etc.), in a manner to enable a genuine EU Single Market for IoT-based services.

4.3. Strategic Priority: Empowering end-users

37. **ecta** asks BEREC to be systematically mindful, when referring to end-users and their empowerment, to the differences between consumers (B2C markets) and business users (B2B markets – including services provided to public administrations), in particular to avoid that NRAs impose undue and impracticable obligations on providers that are only serving B2B customers.
38. Section 3.1: BEREC Report on Member States' best practices to support the defining of adequate broadband Internet access service (carry-over). **ecta** considers that caution is needed. In particular, there is a need to avoid that Member State governments invoke a future BEREC Report in order to define broadband internet access service requirements at national level that go well beyond what is in reality needed to support the minimum set of (internet-based) services contained in Annex V of the EECC. A concern is that national governments will be motivated up the ante on each other, by specifying (with reference to the BEREC Report) ever greater downstream/upstream broadband internet access speeds, because some other EU Member States have decided to set particular parameters, without real reference to the list of (internet-based) services contained Annex V EECC or without real reference to actual bandwidth consumption of users of internet-based services. The reality is that, in practice, all the internet-based services contained in Annex V EECC, and

essentially all other widely used ones, work readily over all fixed networks, be they copper-based, HFC or fibre-to-the-premises, and indeed they are also used on wireless networks as well. Internet companies design their services to work well on the overwhelming majority of networks, in their own commercial interest. Member States governments upping the ante on each-other on the minimum levels for what is considered adequate broadband internet access service at national level could result in complicated obligations on all industry participants, and in some cases lead to universal service funding obligations for industry, resulting in a system in which funding by all electronic communications market participants would likely flow (mainly) to the SMP operator, because it is best placed for historical reasons to be the provider, on account of its legacy network, which is in fact able to support all the internet-based services listed in Annex V EECC. Such a system, resulting in financial cross-subsidy to the SMP/incumbent operator, not likely resulting in any actual improvements for end-users, would be most undesirable, and could cause severe damage to competition. In addition, BEREC's report could result in pressure to push for a review of Annex V EECC in 2025 to extend the list of (internet-based) services. BEREC itself has indirectly suggested a potential extension of the Annex V EECC list in its ongoing public consultation on the draft BEREC Report on Member States' best practices to support the defining of adequate broadband internet access service (BoR (23) 178). [ecta](#) considers this mistaken. There is no evidence of a need to extend the list contained in Annex V EECC. Network operators and service providers readily support the most used internet-based services, including their simultaneous use by several members of the same household, as well as various non-essential but widely used services going well beyond the list.

39. Section 3.2: BEREC Guidelines detailing Quality of Service (QoS) parameters (carry-over). [ecta](#) will provide a brief response to BoR (23) 179.
40. Section 3.3: BEREC contribution to empowering end-users through environmental transparency on digital products and services (carry-over). [ecta](#) 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. Participation in a BEREC workshop on end-users' empowerment, if it has not yet occurred (the draft WP2024 states that it was scheduled for Q3 2023), should not be limited to BEUC and the European Environmental Bureau, but 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. Overall, [ecta](#) keenly looks forward to the BEREC draft Report at Plenary 4, 2023 for public consultation.
41. Section 3.4: BEREC Opinion on Article 123 EECC. [ecta](#) is mentioned as a participant to a planned BEREC workshop (*page 32, para 3*) scheduled for Q2 2024, and awaits the invitation. [ecta](#) cautions against BEREC suggesting changes to the EECC, given that transposition remains recent in many Member States, and effects have yet to be assessed.

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

42. [ecta](#) simply wishes to comment that it can be observed 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.

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

43. [ecta](#) provides selective but important substantial comments and suggestions below.
44. [BEREC Strategies beyond 2025](#). [ecta](#) considers that BEREC's strategies to set its objectives for the period 2026-2030, to be merged in a single document (*page 34, para 3*), are **of crucial importance, and should be subject to a Call for Input and to a full public consultation on the drafts document(s)**. [ecta](#) expects BEREC to continue to focus, first and foremost, on its legally established remit, which is set out in Regulation No 1211/2009 (in particular in Article 3 (Objectives of BEREC), points (1) and (2) and in Article 4 (Regulatory Tasks of BEREC), points (1) (e) and (k) thereof). BEREC's new duties in application of the Digital Markets Act, whilst relevant, are an additional responsibility, which is narrowly specified. NRAs' expected new responsibilities in the context of the Data Act are relevant as well, but do not justify BEREC shifting its focus away from electronic communications. [ecta](#) expects BEREC to maintain the steady course it has followed since its first Medium-Term Strategy in 2012, updated in 2014, 2017 and 2020. [ecta](#) wishes to be very clear on the fact that the contents of BEREC's Action Plan for 2030 was not, as far as [ecta](#) is aware, put to any form of consultation with stakeholders, and that its five strategic orientations contain no reference to access to, and take up of very high capacity networks, to competition, to the internal market, and to citizens' interests, which each are crucial elements of Article 3(2) of the EECC. Whilst the BEREC Action Plan for 2030 does not contain problematic items in their own right, [ecta](#) urges BEREC to refocus, and to ensure that BEREC maintains the steady course, sticking literally to the objectives of the legislation in force, i.e., the EECC and the BEREC Regulation, and avoids summarising, paraphrasing or cutting corners, which may lead to diverging (intentionally or not) from the legally established mandate of BEREC and its constituent NRAs. The timing for BEREC adopting its 2026-2030 Mid-Term strategy should not be subject to the EU's political calendar. BEREC should clearly set out its Mid-Term Strategy based on existing legislation, and not await the outcome of a potential and inevitably lengthy co-legislative process, which may be expected to run from late 2025 until late 2026 and more likely into 2027.
45. [Section 5.2.1: Ad hoc input to the EU institutions/NRAs](#). [ecta](#) agrees that BEREC is likely to be called upon to support the EU institutions with regard to important (legislative) proposals. [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).

46. Section 5.2.2: Potential ad hoc work on ICTs sustainability in the frame of the European Green Deal implementation. **ecta** agrees that BEREC is likely to be called upon to support the EU institutions in this regard, and calls on BEREC to exercise leadership, notably on emphasising the positive contributions that electronic communications networks and services will definitely bring to greening other industries, to public administrations, and to society at large.
47. Section 5.2.3: Ad hoc work on cybersecurity related matters. **ecta** agrees that BEREC is likely to be called upon to support the EU institutions in this regard and welcomes its role.
48. Section 5.2.4: Peer review process and engaging with RSPG. 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 through discussions with the RSPG about 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 37, para 4).* The fact that BEREC does not mention the competitive dimension, or that it also should be pursuing 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 5.2.4, to underscore its commitment not only to promoting full connectivity, but also to competition and to end-user interests.**
49. Section 5.3.1: BEREC contribution to the implementation of the Digital Markets Act. **ecta** welcomes that BEREC is carrying out its new duty in the context of the Digital Markets Act. As indicated throughout this response, this additional function should not go to the detriment of BEREC exercising its core mandate set out in the BEREC Regulation and in the EECC.
50. Section 5.3.2: BEREC Opinion on the national implementation and functioning of the general authorisation regime. **ecta** is not convinced that BEREC’s actions on this topic have significantly moved the needle so far, and the database seems of limited use. BEREC should not be surprised if the European Commission proposes a restructuring of the authorisation regime in its White Paper scheduled for Q1 2024.
51. Section 5.3.3: BEREC Report on M2M and permanent roaming (carry-over). **ecta** awaits the BEREC call for input on this topic. It is unclear why this has been delayed, even beyond the workshop in IoT held on 26 October 2023. **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.

52. Section 5.3.4: Update of BEREC retail Guidelines on the Roaming Regulation. [ecta](#) awaits the European Commission review of the Implementing Regulation on the Roaming fair use policy and the sustainability mechanism. This is a highly sensitive topic for operators, and [ecta](#) therefore asks BEREC to be cautious and considerate with any proposals.
53. Section 5.3.5: International roaming benchmark data and monitoring report. [ecta](#) considers that this is now a standard deliverable, on which it has no comments to make at this time. That being stated, the data contained in this report is highly relevant, and operators continue to benefit from its publication.
54. Section 5.3.6: Roaming Regulation Report. [ecta](#) considers it essential that BEREC produces its input to the review of the Roaming Regulation during 2024, not just start preparing its analysis in 2024. This is necessary for BEREC to provide the factual basis to the EU institutions, notably the European Commission in time for their substantive considerations prior to political deliberations.
55. Section 5.3.7: 4th Ukraine Monitoring Report. [ecta](#) has no comments on this factual exercise.
56. Section 5.3.8. Update of BEREC Intra-EU communications Guidelines. [ecta](#) agrees in principle that BEREC guidelines will be of immediate relevance, in case the regime is subject to material changes. For reference, [ecta](#) considers it justified for the existing regime to be discontinued and disagrees with the European Parliament's ITRE Committee Report on the legislative proposal for the Gigabit Infrastructure Act being used as a vehicle for legislative change (both as a matter of principle and as regards the substance of the proposed text).
57. Section 5.3.9. Intra-EU communications Benchmark Report. [ecta](#) considers that this is now a standard deliverable, on which it has no comments to make at this time. That being stated, the data contained in this report is highly relevant, and operators continue to benefit from its publication. Evidently, in case the regime is subject to material changes, the report will have to be adjusted accordingly.
58. Section 5.4.1. Inventory of the evolution of NRAs' competencies. [ecta](#) sees no reason why the planned inventory would not be published.
59. Section 5.4.2. BEREC Report on national experiences of the implementation of the EECC (carry-over). As stated in paragraph 5 above, [ecta](#) urges BEREC to **conduct this exercise on a strictly factual basis, but with the knowledge that there are political pressures to dismantle or alter the existing regulatory paradigm in the electronic communications sector or to artificially disrupt it.** [ecta](#) advocates that this work should include an **assessment as to whether specific EECC provisions 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 (making abstraction of the recent high inflation), what the impact has been on take-up (incl. affordability) of VHCN connectivity, 5G, etc. **ecta** welcomes that BEREC plans to organise an external workshop in Q2 2024, but worries that the timeframe would make it prone to political rather than factual considerations (the White Paper announced by EC Commissioner Breton is scheduled for Q1 2024).

60. Section 5.4.3: 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. **An internal BEREC workshop may be relevant for self-reflection, but it would be preferable for such a workshop to be preceded by a workshop with industry stakeholders, for stocktaking purposes, and examining potential improvements to how BEREC carries out this duty.**
61. Section 5.4.4: Report on Regulatory Accounting in Practice. **ecta** continues to highly appreciate the value of this recurring report. It should definitely continue to be published annually and continue to be improved, whilst maintaining strictly factual content. **ecta** also wishes to express that there should be **no reduction of its contents**. A particular concern is that BEREC suggests that the 2024 RA report will be based on the EECC list of remedies (but will aim for consistency over time). **ecta** finds its **deeply concerning** that the report may be limited to covering Market 1/2020, Market 2/2020 and Market 3b/2014, and 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 so far. As regards the WACC calculation practices among NRAs, ecta urges BEREC to keep the report factual. It should not encourage NRAs to deviate from the EC WACC notice, as some have done in the past several months, leading to artificial and unjustified increases in wholesale prices which, in turn, continue to artificially fuel the inflation that is so damaging to the European economy.**
62. Section 5.4.5: Calculation of Weighted Average Cost of Capital (WACC) parameters 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.

7. Comments on Chapter 6: Stakeholder engagement

63. **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 2024. 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 2024, 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 with regard to BEREC's work, as well as in the context of the approach to Intra-EU communications, the announced European Commission White Paper, and in the run-up to the review of the European Electronic Communications Code and the Roaming Regulation, on which **ecta** expects BEREC to be active, in providing factual and reasoned inputs to policy-makers. In this context, **ecta** considers it very important for BEREC Opinions to be subject to substantive (pre)consultations with stakeholders.

8. Comments on Chapter 7: Potential BEREC work for 2025 and beyond

64. Section 7.1: Further work on 5G cybersecurity. **ecta** welcomes BEREC work in this area, providing support rather than substituting itself for EU institutions (EC, ENISA, NIS Cooperation Group). BEREC can usefully bring the work together into a cogent deliverable that is readily understandable for stakeholders.
65. Section 7.2: BEREC review of the Guidelines on Symmetric Access Obligations. **ecta** is not convinced that there is much value in pursuing this workstream, given that Article 61(3) has not been applied by NRAs (the case in The Netherlands resulted in the NRA not pursuing a symmetric access obligation). A review of the Guidelines should not aim at enabling NRAs to deviate from the legally established standard or pursue procedurally 'easier routes' to imposing symmetric regulation.
66. Section 7.3: BEREC review of the Guidelines on Co-Investment Criteria. **ecta** is not convinced that there is much value in pursuing this workstream. The absence of cases in which the Article 76(1) threshold is fulfilled does not constitute a justification for BEREC to consider softening its Co-Investment Guidelines, or for NRAs to deviate from the legally established standard or pursue procedurally 'easier routes' to granting regulatory relief to SMP operators.

67. Section 7.4: Universal services review. **ecta** is not convinced that the universal service regime, which was substantially modified by the EECC, which has only recently been transposed in several Member States, is in need of review. **ecta** encourages BEREC and NRAs to refrain from pushing for the extension of the regime, unless unequivocally justified. In its response to the EC Exploratory Consultation on the future of the electronic communications sector and its infrastructure, **ecta** did not support extension of the regime, on account of its limited success in achieving its objectives, and it causing market distortions (i.e. financial transfers to incumbent operators).
68. Section 7.5: Report on IoT/6G. **ecta** participated in the BEREC Workshop on IoT regulatory/competition challenges on 26 October 2026, and the CEO of **ecta** member Transatel was a speaker. There is definitely a need for a more harmonized set of operating conditions for B2B IoT in the EU Member States, and there are definitely further challenges to be addressed. As such, **ecta** would welcome work on this topic, sooner rather than later.
69. Section 7.: BEREC work on the review of the Delegated act relating to Article 75 of the EECC on the termination rates for mobile and fixed voice calls. **ecta** would support BEREC being involved in any envisaged review of the Delegated act. There remain serious issues and divergences between NRA practices and operator practices, notably resulting from the interpretation of Recital 15 and specifically where the CLI is deemed 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 NRA decisions and operator decisions resulting in the blocking certain calls and call types, based on the type of CLI, the interpretation of the CLI (as mentioned above). Again, this area is worthy of investigation, taking a harmonisation perspective.

9. Closing observations

70. In closing, **ecta** emphasises that adequate time – at least 6 weeks – is the minimum needed for associations representing multiple stakeholders to respond to BEREC public consultations with solid content. Due account needs to be taken, in addition, of the periods leading up to and including holidays.
71. **ecta** wishes all the best to the incoming BEREC chair for 2024, Mr. Tonko Objulen and his team, to the BEREC troika, to all NRA representatives involved in BEREC's work, and to the BEREC Office.

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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 Serdengecti, **ecta** Regulation and Competition Affairs Director.