



GSMA response to Call for input on the BEREC Work Programme 2024

6 November 2023

About the GSMA

The GSMA is a global organisation unifying the mobile ecosystem to discover, develop and deliver innovation foundational to positive business environments and societal change. Our vision is to unlock the full power of connectivity so that people, industry, and society thrive. Representing mobile operators and organisations across the mobile ecosystem and adjacent industries, the GSMA delivers for its members across three broad pillars: Connectivity for Good, Industry Services and Solutions, and Outreach. This activity includes advancing policy, tackling today's biggest societal challenges, underpinning the technology and interoperability that make mobile work, and providing the world's largest platform to convene the mobile ecosystem at the MWC and M360 series of events.

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Introduction

The GSMA welcomes the opportunity to comment on BEREC's work programme for 2024. We hope that the following comments can serve as a constructive contribution to the final work programme.

The GSMA generally welcomes and supports the work items planned by BEREC, in particular those with enabling potential for the delivery of the 2030 Digital Decade targets. However, in order to ensure the most efficient use of BEREC's resources in meeting its strategic objectives, we consider that some refinements are required in the context of the anticipated tasks and in the context of the processes related to collaboration between BEREC and its stakeholders.

Stakeholder engagement

The GSMA welcomes BEREC's continued focus on communication and stakeholder engagement via plenary debriefings, stakeholder forums and numerous workshops to allow for continued and effective engagement with industry and other stakeholders.

We appreciate that BEREC intends to enhance collaboration with stakeholders e.g., with focus on civil society. For BEREC to reach the best outcome of its activities, and deliverables, collaboration and close engagement with the industry is needed both in terms of providing sufficient time for the industry to analyse and develop responses but also that contributions are properly reflected upon by BEREC. In this regard, we wish to stress that less than a calendar month worth of consultation on next year's Work Programme is not sufficient to allow for efficient coordination to provide thoughtful feedback on the many items presented in the draft.

BEREC's communication efforts and stakeholder engagement could benefit from establishing a best practise approach to systematically involving industry stakeholders in BEREC's deliverables (opinions, common positions, guidelines etc.). The GSMA considers it especially important that the industry is involved in complex issues like the ongoing work in the IP-Interconnection workstream that require deep technical expertise and involvement of the different players in the value chain. We encourage BEREC to continue the cooperation on this topic. The GSMA also encourages BEREC to continue to ensure that when working on this and similar topics, different parts of the value chain are given the opportunity to take part in discussions with each other, for example through workshops. Further, we also consider it important that where BEREC plans to tender and publish external studies, contributions from the industry are included by means of interviews carried out with individual operators or at least with their respective associations. More generally, the GSMA believes that the industry's insights and views should always be sought by BEREC by default (BEREC decides on appropriate format, i.e., public consultation, workshops, etc.) and eventual deviation should be well justified.

Below we have highlighted areas where the GSMA would welcome more interaction with BEREC, generally and in respect to the 2024 work programme:

- Regarding *section 1.4* on the economic replicability test in the context of Article 61 (3), we welcome the inclusion in the work programme of a topic that is already very relevant in large EU markets and could become more widespread once the upcoming Recommendation on the Promotion of GB connectivity is published. We note, however, that only an internal workshop is foreseen in Q4 2024. We think there would be large value in prioritising the item and moving it to Q1 or Q2, and establishing appropriate procedures for stakeholder engagement. The same is relevant for the *section 1.2* on the ex-ante regulatory experience concerning commitments, wholesale-only undertakings, and commercial agreements review. We suggest that BEREC's work on such innovative and complex topic should provide for a possibility to submit opinions within a fully-fledged public consultation, as a stakeholder workshop alone in our view does not provide for enough transparency.
- BEREC intends (*cf. section 1.8*) to issue a report on the Digital Decade KPIs to monitor progress towards the Digital Decade targets. We understand that BEREC will also discuss data related to investments in networks and to get the full picture we deem it essential that data is also collected from the wider ecosystem and not only telecommunications providers thus a wider approach to involving stakeholders is necessary. Under article. 20, p. 1 sub-para. 2 of the EECC, NRAs are entitled to ask for data from undertakings active in closely related sectors. We suggest NRAs and BEREC start using this new regulatory tool under the EECC to ensure that the investments by different operations in the value chain is properly captured.
- As per *section 2.1* BEREC plan to further analyse DNS blocking in the context of the Open Internet Regulation. DNS blocking has been identified by the industry as one of the areas where there is lack of a consistent approach to OIR implementation. The GSMA would therefore encourage BEREC to involve stakeholders in this work stream in addition to the yearly OIR report to ensure that all nuances are captured in the report.
- BEREC's initiative (*cf. section 2.9*) to develop a digital radar to take stock of the different developments in the digital ecosystem (intersection between digital and telecom) and to support the analysis required in the coming review of the EECC, is a welcome activity. To the extent that BEREC envisages the radar to support the analysis required in the coming review of the EECC, it should be made clear along which lines such support is envisaged and the proposed lines themselves be made subject to consultation. The GSMA stands ready to contribute with views and insights and we encourage BEREC to continuously engage with stakeholders to maintain a strong holistic view of the developments, especially when assessing whether to advance in a deregulatory path that eliminates sector specific regulations and acknowledges the changing landscape 30 years after the liberalisation process began.
- We also suggest running a fully-fledged public consultation on a draft outcome under the *section 5.3.6*. (Roaming Regulation Report), given the complexity of the topic and especially given that BEREC's input is expected to be among the key drivers for the 2025 evaluation of EU roaming rules.

- Regarding (*section 5.4.5*) – Report on WACC parameters 2024, we note that no engagement with industry stakeholders is foreseen. We believe this would be relevant and request BEREC to reconsider its approach.
- Finally, we take note that BEREC besides publishing its action plan for 2030 also plan to revise its strategic objectives for the period 2026 – 2030 in view of the latest and expected market, technological and regulatory developments. We encourage BEREC to seek contributions from a wider group of stakeholders and urge BEREC to also consider those elements that will go into the White Paper¹, that the European Commission with support of the Council, plans to develop towards the beginning of 2024 as a basis for the upcoming Digital Network Act likely to land with the new Commission in 2025.

BEREC work in 2024

Promoting full connectivity

The Policy Programme “Path to the Digital Decade” represents a significant milestone in the development of EU’s policy on electronic communications and the digital topics in general. It sets new ambitious targets for digital connectivity and take up of services in Europe. We continue to believe that BEREC should separately assess how its planned key activities contributes to achieving the targets of the “Digital Decade” and whether any changes may be necessitated, given BEREC’s central role and experiences.

Workshop on ex ante regulatory experience concerning commitments, wholesale-only undertakings, and commercial agreement review.

GSMA deems very useful an exchange of views on this very important topic. Therefore, we would appreciate that also stakeholders are involved from the outset in the forum and not only afterwards in the workshop.

BEREC report on the evolution of private and public networks in Europe

A factual overview on the extent of the use of private and public 5G networks in Europe to serve business users, as foreseen in the draft programme, is in GSMA’s view a valuable exercise that we support. Those factual data should be the basis for a broader welfare analysis on the benefits and costs of reserving large amount of valuable spectrum frequencies for local networks. In preparing such a report, BEREC should ensure that operators of public networks are appropriately involved, including the possibility to participate in discussions with claimants from the private network community.

¹ Informal ministerial meeting on telecommunications, Leon, 23-24 October 2023

Thriving sustainable and open digital markets

Implementation of the Open Internet Regulation

BEREC and NRAs should continue to ensure that the Open Internet Guidelines are applied in a harmonised way, provide clarity, legal certainty, predictability and facilitate the differentiated experiences end-users on both the content and end-user sides want and need. Given the general nature of the Open Internet rules, we find it particularly relevant that the forum BEREC intends to hold to exchange national experiences seek input from the industry to seize new emerging trends. This is the more important as new products and new business cases enabled by 5G networks emerge.

BEREC report on the IP Interconnection ecosystem

Having taken good note of BEREC's announcement on this Work Programme item, the GSMA considers it essential that BEREC broadens the scope of enquiry and develops a forward-looking assessment of the present IP Interconnection ecosystem, instead of focusing exclusively on IP interconnection, which manifestly does not capture all the complexities of the internet ecosystem. Also, BEREC needs to address the significantly unbalanced bargaining power between providers of Internet Access Services and large content providers, clearly and urgently. These analytical amendments are imperative in view of BEREC's prior premature assessment rendered in the context of EU policy debates about a fair contribution to network deployment, as embedded in the European Declaration on Digital Rights and Principles.

Additionally, we point out that the term "sending party pays principle", as used in previous editions, is not appropriate as this principle has traditionally been associated with the voice market and the existence of individual monopolies in terminating networks. Digital connectivity networks are not monopolies. It would therefore be appropriate not to prejudge the outcome of the report and apply a more neutral approach to the analysis of the Internet ecosystem.

We welcome BEREC's early involvement of the industry prior to the public consultation of the IP-IC report and encourage BEREC to continuously interact with stakeholder throughout the process.

We note that (cf. section 2.4) the timing of the consultation and final publication of the updated IP-IC report has been pushed back compared to work programme 2023. We consider this revised timeline positive as no legislative initiatives in this area are expected in 2023/2024. It will also allow BEREC to align work in the IP-IC stream with the outcome of the work stream dealing with entry of large CAPs into the electronic communication sector in order to fully capture all the relevant evidence coming from the two reports. Unfortunately, despite the revised timeline, BEREC remained very strict with the timelines for data collection by network operators. BEREC should take into account that data gathering exercises are very cumbersome and that an adjusted timeline for the entire process could have accommodated the

operators' request for a prolonged submission date. BEREC's work would have benefited from the provision of more comprehensive data by the operators involved.

BEREC workshop on telecom regulators' role in the development and implementation of sustainability indicators in the ICT sector.

The GSMA welcomes BEREC's work on sustainability. The consistent use of the latest mobile technologies and the decisions of mobile operators to transition to green energy have been a testament to the importance of the industry to reduce its carbon footprint and eliminate it by 2050.

GSMA highlights that the mobile industry is tackling climate change, voluntarily developed a decarbonisation pathway aligned with the science-based target initiative (SBTi) and in line with the Paris Agreement target of achieving net-zero emissions by 2050. The mobile sector is taking collaborative action to be fully transparent about the industry's own climate emissions and have developed an industry-wide climate action roadmap, to achieve net-zero greenhouse gas (GHG) emissions by 2050, in line with the Paris Agreement. The mobile industry is making continued progress on disclosing climate data (rather than performance) and setting targets for emissions reductions.

GSMA members are working to improve energy efficiency across their operations, transition to renewable energy and make supply chains more sustainable. To date, 62 operators representing 61% of the industry by revenue and 46% by connections have committed to a science-based target of rapidly decreasing their direct and indirect emissions by 2030. A considerable portion of operators have also committed to net zero targets by 2050 or earlier, accounting for 39% of mobile connections and 43% of global revenue. Therefore, GSMA calls on BEREC to take into due account the work done to date at global level by the mobile industry.

GSMA would also welcome BEREC's acknowledgement of the key role connectivity plays enabling the 'green transition'. The mobile industry is committed to reducing its own emissions however, its greatest contribution to combating climate change is reducing the emissions of wider industries through smart connected technologies and promoting consumer behavior change.

BEREC's other tasks

Intra-EU communications Benchmark Report

The GSMA welcomes BEREC's commitment to develop the 5th Intra-EU communications Benchmark (section 5.3.9). We continue to believe that BEREC should strive for more accurate data in terms of the actual use and quantitative market share of Number-Independent Interpersonal Communications Services (NI-ICS) in intra EU-Communications to adequately reflect the level of substitution existing in the provision of these services.

Peer Review process

The GSMA welcomes increased cooperation and sharing of experiences to facilitate peer learning and ultimately aid in ensuring that the conditions for spectrum assignment support network deployment. This is especially important in the context of the Digital Decade, as spectrum policy is one of the key levers in the hands of policy makers to help deliver the EU's ambitious digital vision for 2030.

We therefore urge BEREC experts participating in peer review forums to encourage a long-term view regarding spectrum prices that is decoupled from the objective of maximising state revenues, thereby prioritising investments in 5G capacity and coverage. In addition, license durations, access conditions and coverage obligations should not inhibit the speed and scale of investment in network rollout. License obligations and conditions should be designed to minimise the cost of covering non-profitable areas.

BEREC report on M2M and permanent roaming (carry over)

Roaming is a very important factor for the deployment and cross-border roll-out of M2M/IoT services. The existing regulation allows operators to put in place commercial roaming agreements instead of using regulated wholesale tariffs.

Mobile providers increasingly enter into alternative M2M/IoT roaming agreements with innovative pricing models, reflecting the differences between these services and interpersonal services. Experience shows that most of these agreements are working well, and suppliers of IoT/M2M can negotiate commercial wholesale agreements with several different providers in each Member State. However, absent commercial agreements, the provisions in the wholesale roaming regulation still apply to M2M/IoT. These provisions, in particular the volume-based charging, are typically not optimal for these applications.

Partnerships established between European operators for development of M2M/IoT permanent roaming business have been built around the common understanding that service sustainability and customer experience improvement is only possible with commercial flexibility. Freedom for commercial negotiations should be maintained, enabling operators to continue the application of different pricing models for such cases. We therefore stress the wholesale roaming regulation should explicitly exclude M2M and IoT services in permanent roaming.

BEREC report on national experiences of the implementation of the EECC

The GSMA welcomes BEREC's open approach to assessing the functioning of the EECC. Given the pace of the technological developments that have taken place, which is likely continue in the coming period, we deem it important that BEREC maintains a holistic view when analysing whether the EECC is fit for purpose by closely aligning its assessment with the intentions that will be reflected in the Commission's White Paper cf. above.

Potential work for 2025 and beyond

Cyber security

The GSMA supports BEREC in this work. The GSMA is looking forward to future cooperation with BEREC on this important topic and stands ready to continue sharing industry's knowledge and expertise.

Overall, foreseeable, and stable cybersecurity regulation is vital to encourage significant cybersecurity investments in resilient networks. Short-term, or late in the day policy or regulation change can drive significant costs.

Review of the BEREC Guidelines on Co-Investment criteria

As an outcome of the workstream 1.2., GSMA suggests that BEREC prepares a report on the current market practices of co-investments and makes an assessment on whether EECC new rules have been applied and if they have pursued art. 3 EECC objectives. This report would support the Commission's review of the EECC planned for the year 2025. Possible new BEREC guidelines could be issued, if needed, after the conclusion of the EECC review, but not before.