

BEREC report on the consultation of the BEREC draft Work Programme 2012

9 December 2011

1. Introduction

The draft BEREC Work Programme 2012 was discussed and agreed at the BEREC Board of Regulators meeting in Barcelona on 29th September 2011. In accordance with the practice of previous years and in accordance with Article 5 of the BEREC Regulation, the BEREC Work Programme is subject to consultation. The public consultation ran from 6th October to 4th November 2011 with an oral hearing held on 21st October. The role of public consultation is to increase transparency and to provide us with valuable feedback from stakeholders.

15 contributions from the following stakeholders have been received in response to the consultation:

- ✓ EIDQ Association – the Association for the Directory Information and Related Search Industry
- ✓ FTTH Council of Europe
- ✓ The Number – Directory provider
- ✓ The Voice on the Net (VON) Coalition Europe
- ✓ Virgin Media
- ✓ Telekom Austria
- ✓ Telecom Italia
- ✓ Belgacom
- ✓ INTUG – International Telecommunications Users Group
- ✓ ECTA
- ✓ Cable Europe
- ✓ Bundesverband Breitbandkommunikation
- ✓ ETNO
- ✓ Phone Ability
- ✓ SFR

Submissions received are available on the BEREC website. Specific contributions from stakeholders are summarized per paragraph of the Work Programme [*draft as submitted to the public consultations*] to which they refer. New items proposed by stakeholders to be included in the WP 2012 are set out at the end of this report.

2. Specific contributions per paragraph of the draft Work Programme 2012 as it was published for consultation

The core topics of the work programme 2012 (3)

Art 7 FD-Procedures (3.1)

Telekom Austria believes that BEREC should focus its harmonisation efforts under Art 7FD only on the group of markets/services where effective harmonisation is needed due to potential distortions of the Common Market (for example mobile termination services where huge differences persist between member states which has impact on the roaming prices).

BEREC takes note of this opinion brought forward during the consultation and will look into that issue without seeing a need to adapt the Work Programme.

International Roaming (3.2)

VON encourages BEREC to reflect in its future benchmarking report also tasks assigned to BEREC under the roaming Regulation, namely: - to “consider the availability and quality of services which are an alternative to roaming (such as VoIP)”; and monitor “obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming services, such as WiFi, Voice over Internet Protocol (VoIP) and Instant Messaging services”.

Moreover, VON urges BEREC to emphasize the need to take appropriate measures to guarantee the development and growth of competitive alternatives to mobile international roaming in order to ensure consumer choice and end-to-end connectivity. BEREC should hence stress the need to address urgently the obstacles faced by alternatives to mobile international roaming such as for example blocking, degradation and/or discrimination by network operators against a number of Internet applications, services, and protocols – for example VoIP or even more broadly peer-to-peer.

INTUG welcomes BEREC commitment to continue monitoring of roaming in the EU and its involvement in the discussion with the European Commission on the third phase of regulation. In the long term, INTUG believes that the whole concept of a “roaming charge” should be removed from the international mobile market and that the 4G/LTE spectrum auction provides an ideal opportunity to achieve this by outlawing roaming charges as a condition of spectrum licenses.

Telekom Austria urges BEREC to improve its approach to data retrieval for prices at wholesale level as currently operators are asked for average prices on wholesale services. Therefore BEREC continuously misses the point, as contractual structures for wholesale services are much more complex. Therefore, Telekom Austria asks BEREC to (re-)start a profound activity to analyze wholesale roaming markets across Europe, hopefully with the result to reduce the political pressure to continue to regulate wholesale price caps.

BEREC thanks VON, INTUG and Telekom Austria for the contributions. Alternatives to roaming will be assessed within the given topic in the Work Programme.

Universal Service Provisions (3.3)

PhoneAbility notes that BEREC is waiting for European Commission's Communication on possible review of the scope of universal service. PhoneAbility encourages BEREC to be more pro-active in this matter as in PhoneAbility opinion there is scope for developing the concept of universal service within the existing legal framework. PhoneAbility suggests that BEREC collect evidence from NRAs on their appreciation of the current boundaries of universal service to complement any Commission examination of the need to broaden the scope of the Universal Service. In PhoneAbility's view the same applies to designation of Universal Service provider(s), costing and finance mechanisms which are all crucial elements which need to be examined in view of further harmonization under the currently applicable legal framework. Any work done proactively by BEREC in this direction would helpfully complement longer term suggestions that might be put forward by the Commission.

Telecom Italia welcomes the announced BEREC opinion on the expected Commission proposal on universal service. This opinion should clarify the separation between the Universal Service notion and the broadband promotion targets set by the Digital Agenda for Europe. In fact, according to Telecom Italia, the goal of a harmonised promotion of broadband access services, included in the Digital Agenda, should be carefully separated from the goal of Universal Service obligations.

SFR stresses that implementation of provisions related to the Universal Service financing by Member States resulted in different situations among EU member states. That is why BEREC should look especially into the matter of the calculation of net cost as well as of the proof of excessive character of the burden of Universal Service imposed on an operator.

The remarks made by PhoneAbility, Telecom Italia and SFR where taken into account and the theme of calculation of net costs has been added to the Work Programme.

Consumer empowerment (3.4)

INTUG fully agrees with the wish of BEREC to bring greater transparency in data tariffs. According to INTUG much greater transparency is needed in the provision of pricing information to customers, and it needs to be conveyed in a way which enables consumers to compare rates/plans of providers. If pricing information is bundled, it is much harder to make comparisons. OECD has insisted that pricing information is simplified by regulators to enable customers to make informed decisions. The same principle should also apply to comparable quality of service measures and reporting.

BEREC welcomes the remarks the INTUG's. The topic is already included in the Work Programme and no further adoption is needed.

Network Neutrality (3.5)

The Number stresses that BEREC should further examine the NRAs regulatory remedies available to address potential discrimination issues, with a link to the quality of service issue. It should be a priority for BEREC in the field of NN.

VON considers that BEREC's Public Consultation on draft guidelines on net neutrality and transparency misses an essential component, namely the identification of traffic management practices which are acceptable and which ones are not (see Article 20 of USD).

VON is also concerned at the fact that BEREC may be seen to imply that Article 8 (4) of the Framework Directive's objective for NRAs to "promote the ability of end-users to access and distribute information or run applications and services of their choice" is to be assessed at a market level (i.e. can end-users switch operators if they do not get choice with their current

one) rather than at a network level (*i.e.* does each access operator allow the end-user her/his freedom of choice?). VON considers the latter interpretation to be the only correct one in terms of the spirit of the Directive.

Commenting further *Draft BEREC Guidelines on Net Neutrality and Transparency* VON points out that application-blocking practices are not just 'problematic' for "*customers using this application*", they are a threat to the continued survival of the companies that created and offered these applications (in many cases for free and to the benefit of customers). VON therefore considers these practices not merely as 'problematic' but as a direct breach of net neutrality and Article 8 (4) of the Framework Directive. VON also emphasized that it sees traffic management for the purpose of combating spam, network security or punctual exceptional measures to alleviate congestion as useful as long as they remain proportional and not harmful. BEREC should state this same understanding clearly, through guidelines that would set out the boundaries of what is acceptable (and hence requires transparency) and what is unacceptable (and hence should be prohibited).

INTUG encourages BEREC to produce clear network neutrality guidelines to ensure consistent treatment of applications, content and service providers, including requirements for information provision, transparency reporting and network quality of service management. This is essential to avoid Member States implementing divergent national measures. For businesses it is important to be able to agree on SLAs for mobile electronic communications, separate from discussions on network neutrality. INTUG asks BEREC to take into account the differing service levels which will be achievable with 4G/LTE mobile communications.

Telecom Italia finds that the transparency of retail broadband access offers will be sufficiently dealt with in the BEREC Guidelines on Net Neutrality and Transparency, with regard to providing guidance for NRA to sustain self-regulation initiatives and promote the implementation of the new transparency requirements of the Universal Service Directive.

Cable Europe underlines that transparency and consumer understanding is a critical component in ensuring that end users are sufficiently informed in order to be able to make their own choices about the service they require. At the same time Cable Europe does not support co-regulation in a market where self-regulation and self-sanctioning act as much swifter corrective tools for increasingly demanding consumers who have many public avenues to address grievances.

Telekom Austria asks for further clarification of the scope of "network management" and on "relevant information on network management". Telekom Austria also believes that the five key criteria for an effective transparency policy put forward by BEREC should be further developed and an additional criterion should be included in the direct information approach; service providers shall be obliged to not less (but also not more) than "reasonable efforts" in order to make/keep their customers informed about network management measures relevant to them. Finally, Telekom Austria is in favour of further discussions on an indirect approach to producing understandable information to end-users.

ETNO encourages BEREC to not base its considerations on an own 'definition' of the concept of net neutrality, whether this were derived from academia or other jurisdictions. BEREC's work in this field should be firmly targeted at contributing to the aim of the EU regulatory framework to promote access of end-users to all content, services and applications of their choice (Art. 8 (4) g) EU Framework Directive) and the implementation of the relevant provisions of the framework that contribute to this objective.

BEREC is glad to see the high support for this important issue which was shown during consultation.

Next Generation Networks – Access (3.6)

The *FTTH Council* stresses that of particular importance will be the guidance BEREC can give regarding different models of investment, particularly around co-investment where a

high degree of co-ordination will be required, especially from NRAs themselves. *FTTH Council* believes moreover that BEREC should benchmark NGA investments (and State Financing) and the form of access deployed and progress being made in different Member States. This could be done in a similar manner to that proposed for roaming. The FTTH Council would like that NRAs play the role of co-ordinator-in-chief at a national level of network investment as currently the competencies in this field are often spread across different Ministries and Agencies, which results often in inefficiencies. A benchmarking report on activities on FTTH across Member States which would include co-ordination activities, levels of investment broken down into private and public expenditures as well as measures taken to reduce cost and/or promote service take-up would be important data for future interventions and would signal NRA's willingness to take a leading role in promoting NGA. The Council believes that accelerating NGA deployments by ensuring an appropriate investment model and also by ensuring competitive outcomes is a top priority for NRAs.

VON Europe suggests that BEREC should provide an opinion to the Commission's draft guidelines on State Aid, in which BEREC should encourage the Commission to continue to rely primarily on market forces to achieve universal service and broadband deployment goals. Targeted public funding should hence only be used to promote broadband deployment and availability in areas where otherwise a competitive roll-out of NGA would not be possible.

Belgacom draws the attention of BEREC to asymmetric broadband regulation with which it is confronted despite the substantial market position of the CATV network for retail broadband services. Belgacom underlines in this context the need for BEREC to take properly into account the various types of NGA networks based on an increasingly diverse set of architectures and technologies when updating its approach towards next generation access networks. Belgacom encourages BEREC to accurately address the unique position of CATV networks in the context of the forthcoming revision of the EC Recommendation on relevant markets susceptible to ex ante regulation as well as the update on the Common Position on Bitstream and LLU and to reflect it in the BEREC 2012 Work Programme.

In INTUG's view non-discriminatory access to all wholesale broadband services is of the highest importance to business users. It must be guaranteed to enable them to build effective international networks using a single supplier, or as few suppliers as possible, to support cross-border trade within a digital economy in the Single Market. According to INTUG there is not enough competition in the business market. It is still the case that competitors cannot always offer a complete service because of their dependence on incumbent networks and services. For INTUG transparent contractual commitment and reporting of critical clearly defined KPIs between the incumbent and the competitors is vital.

Telecom Italia indicates four main issues of interest: a) Geographical approach to NGAN market analysis; Telecom Italia deems that BEREC ought to provide further guidance to regulators in form of harmonized set of tools as far as geographical modulation of remedies is concerned b) NGAN symmetric access obligations; here TI finds that BEREC Work Programme for 2012 should include activities aimed at providing guidance to NRAs on how best to implement the provisions of "Framework" (Art. 12) and "Access" (Art. 5) Directives for addressing bottlenecks in the access network in a proportionate and effective manner, irrespective of an SMP position of the facility owner. c) prize squeeze test for NGAN products; here TI thinks that price tests for fiber services should be further addressed and calls for a clear definition of such a methodology. d) (announced) BEREC analytic report on NGAN models; Telecom Italia broadly shares BEREC proposed selection of issues that should be dealt with in more detail in the forthcoming report with two exceptions: - large business communication services should not be subject of the report as fiber access for large business users is already a highly competitive market and - thorough investigation of the access regulation scenario suitable to allow the implementation of the new "Vectoring" technology that is able to provide end users with a much higher bandwidth than VDSL2+ on FTTC architecture should be included in the report.

Cable Europe welcomes proposal to examine in more detail the relevance of cable competition as well as BEREC's intention to publish a report on the different mechanisms to promote broadband adoption. With respect to the revision of the state aid guidelines, it encourages BEREC to take a more active role in the mapping of broadband coverage across the Union and within Member States so as to reduce the risk of inappropriate publicly funded broadband infrastructure projects.

ETNO encourages BEREC to take full account of the different types of next generation access networks based on different architectures and technologies when proceeding with the announced update of its Common Position on Wholesale Broadband Access and the unbundled local loop. Therefore, at the least all NGA networks falling under the definition of the Commission Recommendation on regulated access to Next Generation Access Networks should be in the scope of this update. ETNO also invites BEREC when proceeding with an update of its Common Position on Wholesale Broadband Access and Unbundled local loop, to update the 2005 Chapter on bitstream access on cable networks⁵, as the situation has evolved significantly with the introduction of DOCSIS 3.0 technologies.

ETNO encourages moreover BEREC to consider developing best practice guidance for symmetric regulation to contribute to a consistent regulatory environment throughout the EU and include this item in the final 2012 WP. Another, related challenge for NRAs and relevant aspect for BEREC's work on NGA is to apply an appropriate geographic segmentation of broadband markets, at the level of market definition and remedies. On NGA-investment in general, ETNO welcomes BEREC's decision to make the strengthening of the demand side one of the over-arching horizontal principles of the BEREC work programme relevant for many of the proposed 2012 activities. ETNO finds moreover that separate BEREC work stream on ex-ante intervention on business communications services at this stage of NGA deployment is not necessary in the light of regulatory practice and the current Recommendation on relevant markets and would risk leading to a disproportionate implementation of the EU framework. Moreover, ETNO invites BEREC to actively reflect upon a genuinely technology neutral and a forward-looking definition of broadband wholesale markets in the revised Recommendation.

BEREC will assess the different models of investments. This is already reflected accordingly in the Work Programme.

Further topics (4)

Consistency of remedies and further developments (4.1)

Review and update of BEREC Common Positions (4.1.1)

ECTA strongly supports the best practice documents issued by BEREC and the continuation, strengthening and, where necessary, updating of this guidance, preferably with a focus on the following:

- ✓ Wholesale local access: adjustment to reflect next generation access remedies (ie duct access and fibre unbundling), and availability of business-grade SLAs.
- ✓ Wholesale broadband access: adjustment to reflect next generation developments (ie that remedies should cover all applicable speeds within the relevant market where SMP has been found), and to reflect the need for differentiated consumer and business-focused remedies. In particular creation or replication of triple-play offers is necessary in the residential segment, whilst high grade low contention services are more relevant in the business segment. Aggregation points also differ for consumer and business due to the differing economies of scale.
- ✓ Leased lines: Current guidance is still relevant. However, it could be clarified that remedies should include all applicable speeds in the market where SMP has been found, and more detail could be given on the specifications of the Ethernet interface to facilitate a common approach across Europe.

BEREC takes note of ECTA's remarks, but sees no need to adapt the Work Programme as the evaluation of the three mentioned topics is already covered by the Work Programme.

Implementation of key-remedies (4.2)

Non-discrimination (4.2.1)

In view of the European Commission's questionnaire on nondiscrimination obligation and functional separation Telecom Italia welcomes the initiatives taken by BEREC on the separations models adopted this year and supports the announced follow up to address the different models of vertical separation. In this regard, a BEREC common position/best practices assessment on the access network separation models and the related equivalence models would undoubtedly promote a harmonized interpretation and implementation of new Articles 13a and 13b of the Access Directive.

SFR suggests that the work of BEREC on the benchmarking of principal KPIs is necessary, however not sufficient to address the question of discrimination resulting from among others inefficiency of the processes of the incumbent. Besides the KPIs, this benchmark should include major production processes of services provided by the incumbent. The goal would be to reach the level of the «best in class» process.

ECTA finds that BEREC should work with the Commission on guidance on non-discrimination including functional separation which clearly identifies best practice on service provision and non-price terms. ECTA moreover encourages BEREC to collect and publish core KPIs for service quality on a regular and EU-wide basis.

Also these themes are already covered by the Work Programme.

Regulatory Accounting (4.2.2)

In view of the European Commission's planned Recommendation on cost methodology in 2012 which will guide the NRAs in setting the prices for the fibre and copper wholesale access products, Telecom Italia welcomes the continuation of the BEREC yearly report on regulatory accounting. The aim of such an expected revision should be to foster the application of consistent accounting principles and methodologies at EU level, taking into account the experience gained at national level in the domain of cost accounting and accounting separation.

ECTA finds that there is an urgent need for guidance on cost methodologies to address excessive charges which are impeding competitive development in some markets, and to ensure appropriate treatment of copper and fibre before, during and after the migration process so as to ensure competition and incentivise efficient investment in fully open fibre networks.

The consultation results showed support for that topic, especially for the mentioned yearly report, included in BEREC Work Programme.

Implementation of Recommendations (4.3)

Recommendation on termination rates (4.3.1.)

INTUG finds that mobile termination rates (MTRs) still remain far too high, and the benefits of lower MTRs are not as effective as they should be, since they are not always passed on to end customers. Fixed operators frequently hide the impact by obscuring the balance between the price per minute and call set up charges.

SFR draws the attention to the recovery of full costs which would not be covered by the rate of call termination. This question was raised in France on the occasion of application of LRIC model for the purpose of calculation of fixed termination rates. European Commission issued a comment letter in this respect within the Article 7 FD procedure. This issue would be worth analyzing by NRAs as one of the consequences of implementation of the Recommendation on Termination Rates which has not been assessed by the Commission when publishing the Recommendation. Moreover, SFR turns to BEREC when it comes to development of a harmonized implementation of the TR Recommendation in order to limit the risks of distortion of competition among operators in Europe. On the same occasion SFR suggests BEREC to include in its Work Programme a question of regulation or lack of regulation of SMS TR in some of member states.

In addition to the reference made in the draft Work Program on fixed termination rates, ETNO invites BEREC to also assess the effect of the 'pure BULRIC' methodology on MTR. As pure BULRIC covers only a fraction of network and common costs it can be expected that network and common costs will have to be recovered by other services. However, cost recovery by other services may not be possible due to strong competition (including by new players such as OTTs). Where cost recovery is not possible, the price setting for MTR would conflict with the underlying EU framework provisions which foresee cost recovery. In such a case, operators would moreover be seriously restricted in the ability to further invest into the network and sustainable infrastructure competition in the mobile sector could be put at risk in the long term.

As a result BEREC added the evaluation of SMS termination to the Work Programme.

Benchmarks (4.4)

ECTA suggests two further benchmark exercises, in addition to the existing ones, in order to monitor harmonization in the fields of non-discrimination and standard NGA wholesale access products: 1) Core Key Performance Indicators (KPIs) to measure the implementation of

non-discrimination to be collected and published on a 6 monthly basis by BEREC; 2) Availability of key NGA wholesale access products to be measured from the outset and after the adoption of harmonized standards by BEREC, to measure the availability of those standardized products. ECTA also suggests that BEREC start to examine the anticompetitive threats raised in the Internet/OTT environment, caused also by the lack of interoperability of IP-based services. This exercise may help the emergence of truly pan-European cross-border services.

BEREC added the evaluation to include further benchmark exercises in the future to the Work Programme.

Promotion of Broadband (4.5)

While BEREC emphasizes “*the important role of broadband networks in the further development of the economies of Europe and the benefits that they can bring to its citizens*”, VON would recommend BEREC to take a more balanced approach towards promoting investments in its planned report on different mechanisms towards the promotion of broadband. In VON’s opinion the communications ecosystem, and the way users experience it, is such that services, content and applications running over the networks – over the Internet in particular – are at least as important as the pipes they go through, if not more because they stimulate demand (hence, return on investment) for the networks in the first place, and are a key contributor to the wider socio-economic benefits derived from broadband rollout. Focusing exclusively or predominantly on one component of that ecosystem risks jeopardizing the development of other critical components.

VON believes moreover that focusing on maintaining an open Internet is the best means of promoting investments across the entire Internet ecosystem and paramount to the EU’s future economic and social welfare.

VON believes that BEREC should recommend to national regulators to guarantee that end-users have access to and can use the Internet services, content, and applications, as well as the devices of their choice. Therefore all attempts, whether regulatory, technical or commercial (be it by prohibiting it or unduly asking for additional subscription fees), to block or hinder unfettered access to and use of VoIP (or similar technologies), and in general all legal Internet content, applications, and services, including their underlying technologies, should be prevented.

As the mentioned points are already covered by the Work Programme there was no need in adopting the Work Programme furthermore.

Access to special rate services (4.6)

The EIDQ Association finds that directory services are an important element of this market sector and in some member states suffer significant harm as a result of the high origination fees (particularly on mobile networks). The resulting high retail charges are having a seriously detrimental impact, not only on consumers who pay them, but also on the longer term viability of the directories market which is already facing huge challenges. According to *EIDQ Association*, if action is not taken to control these origination fees, the future of the directories market in some member states is at real risk, which will create serious difficulties for consumers (particularly those without internet access) who rely on it. *The Number* suggests that in the field of access to special services BEREC should give as detailed as possible guidance and set common objectives in terms of outcome, should a common approach be too difficult to identify in light of the diverging legal frameworks in the different member states. Such common objectives could relate, in the case of directory services, to the ability for service providers to set their price, to the objective of ensuring that mobile origination charges to non-geographic numbers become aligned with mobile origination charges to geographic numbers, etc. The way in which these objectives would then be reached in each

member state could differ depending on the tools available to NRAs and on the legal framework, but the outcome for service providers and consumers would be coherent.

According to INTUG while International 00800 freephone services were intended to provide a single company number most companies wishing to use these numbers have encountered barriers too great for viable implementation and are forced to use national 0800 numbers instead. There are different regimes in each country, and in some countries 00800 numbers are not reachable from mobile phones, or are charged for, thus destroying the whole aim of the number.

BEREC takes note of the comments. The concrete suggestions such as DQ services have been added to the Work Programme.

Cross-border and demand side related issues (4.7)

In the context of the planned BEREC report on the cross border accessibility of numbers *The Number* finds that in light of the questionnaire circulated by BEREC in August 2011 on this topic and the likelihood of identifying issues in this respect, this work stream should remain in the WP 2012, and possibly go further than a mere Report.

The Number considers that BEREC's work stream on art. 28 USD should encompass requirement of Art 25 (4) of USD in a proactive manner. *The Number* stresses that measures are necessary to permit existing national Directory Enquiry [DQ] services to be accessed across internal EU borders (whether in interconnection or in roaming) and for DQ providers to be able to control and set their own transparent prices.

The Number encourages BEREC and its members to ensure that the transposition of Article 28 combined with Article 25 of the USD clearly sets out that NRAs have the power to mandate the 'blocking and un-blocking' of numbers. Un-blocking should be especially considered when it is motivated by commercial discrimination, as is often the case with directory numbers on mobile networks, where the short code of the mobile operator remains accessible cross-border whilst those of its competitors are blocked. BEREC should specifically ensure that all NRAs enable DQ providers (whether themselves directly as public communications network operators or indirectly via transit operators who manage interconnection for them) to have their numbers "opened up" (or that NRAs have the powers to mandate operators to open these numbers) in cross-border interconnection and in roaming agreements in order to permit end users from any Member State, or traveling to any Member State, to access their services.

Regarding the "accessibility to ECS for disabled citizens", VON agrees that Member States should take measures to ensure that PATS services are accessible to disabled end-users. However, such measures should be technology-neutral and the non-voluntary measures should only be applicable to PATS services. VON adds that in particular, obligations regarding access to emergency services for disabled end-users should remain technology-neutral. Moreover, such obligations should be harmonized in cooperation with international standards organisations focussing on this issue in Europe and elsewhere and should support the industry's current developed process for self-declaration of accessibility features included in existing products and services. Service providers should have the flexibility to offer innovative solutions, even if those do not have the 'look and feel' of conventional access tools.

As far as caller location information is concerned, in light of BEREC's work regarding the "reliability and accuracy of caller location information in particular for emergency calls", VON stresses that the 'technical feasibility' should remain a criteria in terms of the provision of location information, in light of Recital 40 of the Citizens' Rights Directive 2009/136/EC. VON also encourages BEREC and its members to take into account (and not pre-empt) the on-going development of standards that would enable the feasibility, more reliability and ac-

curacy for emergency calling using IP technologies, notably within ETSI following a recommendation by the European Commission.

Furthermore, VON strongly encourages BEREC to focus regulators' attention on ensuring the fullest possible retail price transparency and to remove the link between location information and geographic numbers.

According to INTUG, business users report difficulties because the warning of emergency numbers, especially for VoIP, differs in different countries.

PhoneAbility suggests that BEREC undertake some preparatory work on accessibility of Electronic Communication Services for disabled citizens. In this field BEREC's input is likely to be requested by the Commission, based upon the report of EC Expert Working Group. PhoneAbility believes that given the demand for initiatives on accessibility for disabled persons in Member States (example of services for hearing-impaired people) BEREC should take some action in parallel to the work of the European Commission. PhoneAbility observes that for these accessibility initiatives, patterns of service and funding mechanisms vary widely. Therefore an informative review of what is being done in different Member States would be helpful to many organisations within Member States, including their NRAs. PhoneAbility sees much scope for technical harmonisation, even if the approaches to funding have to be driven through national subsidiarity. PhoneAbility would like to see BEREC pursuing the two goals of (a) facilitating new access services at national level by developing awareness through 'good practice' models, and (b) exploring ways of improving cross-border linkages between those current services, with due attention given to termination rates when calls are passed to and from a nationally subsidised service.

BEREC is glad to see so much support for this issue. The harmonisation question as well as further detailed evaluation in the field of cross-border issues and business services will be covered in the Work Programme with regard to the outcome of two reports on this issue by the end of 2011.

Cooperation with RSPG and ENISA (4.8)

VON comments on the BEREC's intentions to continue delivering insights on the impact of fixed-mobile convergence for spectrum management policies that full – and preferably harmonised – utilisation in the Member States and across Europe of radio spectrum will be critical to deliver on Europe's growth and policy objectives in the Digital Agenda. However, it is also essential to be clear about the fact that, while VON welcomes harmonisation, it also stresses the importance of the principles of technological, network and service neutrality within a common regulatory framework, and the importance to permit new spectrum uses wherever there is no objective interference-related impediment (to be assessed on a scale which is less than nation-wide).

VON deems that the analogue switch-off and the subsequent use and management of the digital dividend (not only 790-862 MHz, but also 470-790 MHz) is an important momentum to adopt policies promoting the most efficient and effective utilisation of unused spectrum.

VON Europe considers that BEREC should examine the increasing opportunities for unlicensed devices and innovative spectrum access models, making a maximum of spectrum available for broadband Internet access and improving the transparency of spectrum allocation and utilisation. According to VON, Besides the often stated Digital Dividend, there are huge parts of the spectrum that remain rarely used (defence for example does only need certain bands at specific times in specific locations). Governments have significant tools at their disposal in order to increase the effective and efficient use of spectrum, and BEREC could help by identifying these tools.

Telekom Austria requests BEREC to support the implementation of the Radio Spectrum Policy Programme at national level within the period prescribed as delays in different Member

States would increase the digital divide in Europe. Moreover Telekom Austria suggests BEREC to undertake a best-practice exercise dedicated to national spectrum allocation procedures as BEREC should play a more active role in this field. In fact current practice in Europe proves that NRAs/Ministries take different approaches to these procedures. Consequently, Telekom Austria sees a necessity to stronger harmonize the approaches taken by national authorities when allocating spectrum to the telecommunications industry.

INTUG finds also that BEREC WP 2012 should pay some attention to network security, especially for business users as there will be increased m-banking, m-commerce and other sensitive data-based transactions from handheld with 4G and responsiveness to them will be critical. INTUG sees here the possibility to cooperate with ENISA.

BEREC will evaluate questions of further harmonisation in the Work Program Programme.

International cooperation (4.9)

INTUG proposes that BEREC make (bilateral) agreements on roaming charges to ensure the complete elimination of this tax on trade. BEREC should publish the international roaming rates negotiated by Member States with countries outside the EU, exposing the highest rates, so as to put pressure on other national regulators to lower roaming rates with the EU.

BEREC sees no need to adopt the Work Program as the mentioned topic is beyond the legal powers of BEREC.

Additional items and horizontal issues to be taken into account by BEREC as proposed by the stakeholders:

[INTUG] Migration from Legacy Services In all Member States, existing technology is being replaced by all IP-networks and this creates a major challenge of migration for business users in terms of the timing of the phase-out of different services (e.g. ISDN) with the impact of the investments required, and the identification of viable alternatives, e.g. faxes, communications in elevators, alarm systems, fail-safe and circuit breaker and process control devices dependent on very low latency services such as ISDN. INTUG requests BEREC to provide substantive assistance to NRAs on user migration advice.

BEREC welcomes the comment made on this issue and will look into it within the existing EWGs.

[INTUG] Common SIP Standards. Businesses need good standards for migration to IP services. BEREC must promote the use of a common SIP standard, e.g. SIP connect v1.1. This will reduce cost and delay for service providers, PBX-vendors and the business market. Businesses must be able to guarantee that their own equipment and software, and that of their supply chain partners, will work together, e.g. for unified communications, and they need to be able to “federate” between different systems so that they can use best of breed solutions without interoperability difficulties, for example when they acquire new subsidiary companies or merge operations between parts of their business.

It might be beyond the legal powers of BEREC to promote the use of certain SIP-Standards.

ECTA and INTUG support the creation of a single market for business communications which should be BEREC first genuine cross-border harmonization objective. In order to ensure the competitive provision of seamless cross-border communications services to pan-European businesses, BEREC should issue guidance on the uniform treatment of the national regulated wholesale inputs required to serve business users EU-wide [ECTA]. INTUG stress that that harmonization and consistency are key to electronic communications business users as companies active in more than one Member State still face different regulations

BEREC is bound to the market recommendation of the European Commission.

ETNO finds that the BEREC WP for 2012 should explicitly recognize the creation of a regulatory framework that gives incentives for private investment in high-speed wireline and wireless networks in line with Art. 8 (5) of the Framework Directive as a central objective of BEREC’s work in 2012 and beyond. Any new regulatory initiative should be subject to a rigorous assessment of its impact on the investment conditions and financial health of Europe’s leading investing companies in the sector.

Since it is not in BEREC’s remit to do so BEREC cannot act proactively regarding these remarks.

ETNO suggests that BEREC keep regulatory predictability and legal certainty at the centre of its work programme.

This is also in the main interest of BEREC and the member NRA’s and BEREC already acts to those standards.

In ETNO’s view the in-depth know-how of the local circumstances regarding NGA and NGN of BEREC’s twenty-seven NRA’s should be reflected in one of the topics of the BEREC work programme.

This topic is already reflected in the NGA Country Report and BEREC sees no need in further adopting of the Work Programme.

PhoneAbility especially believes that BEREC can do much to improve the accessibility for disabled end-users in the short to medium term, without interfering with the Commission in its longer term strategy in this field. PhoneAbility therefore wishes to see some measures included in the Work Programme that would enhance this process.

BEREC is already taking care of the issue in the best possible manner.
