



# Policy Paper

## Cable Europe comments on the BEREC Work Programme 2016

**30 October 2015**

Cable Europe appreciates the initiative of BEREC to invite the industry to comment on its Work Programme 2016.

Generally speaking, Cable Europe supports BEREC's proposed work programme and would like to make the following comments.

### **PROMOTING COMPETITION AND INVESTMENT**

Cable Europe supports BEREC's work on promoting competition and creating a favourable climate for investment and innovation. We do share BEREC's objective to encourage investment in high speed broadband infrastructure while ensuring at the same time a competitive environment and level playing field.

Sectors such as cable, which operate in a highly competitive environment and are fully captured by the relevant regulatory frameworks, must not be stifled by prescriptive market regulation if they are to continue to invest and innovate.

#### **Work item 1.5 Current developments in IP interconnection markets and related issues**

Cable Europe supports BEREC's initiative to launch an expert workshop with the OECD on IP-interconnection.

For the time being, Cable Europe considers that IP interconnection issues like peering agreements are well handled by the market. No situation has demonstrated the need for ex ante regulation. It is important to leave to the market the possibility to develop new business models without regulatory sword that would block investment. Any competition failure can be remedied by competition law.

#### **Work item 2: Challenges and drivers of NGA rollout and infrastructure competition**

Cable Europe welcomes the overall initiative to incentivise NGA investment. However, we are very cautious towards measures that could promote the development of a unique technology, create a disincentive to invest in infrastructure or could result in a distraction to the upgrade plans of existing



communications networks. This thematic will be indeed debated at length in the Review and Cable Europe will follow with interest BEREC report on the matter.

### **Work item 3: Oligopolies**

Cable Europe acknowledges BEREC's work on oligopolies and its future work in the context of the review as well.

Cable Europe replied to BEREC's consultation on its draft report.

Cable Europe would strongly advise against adopting an alternative standard for joint dominance/tacit collusion outside of competition law. Indeed, the standard developed in the context of competition law is not only the relevant legal standard, but it is also sound from an economics point of view.

We would also be very cautious in revising the regulatory framework to include findings of joint dominance but also to regulate potential competitive ineffectiveness not covered by SMP. We believe that this would send the wrong message to investors: no legal certainty and locking in regulation permanently contrary to the initial goal of the framework.

Imposing ex ante remedies, such as access regulation on an operator will likely reduce the attractiveness for this operator of investing in new infrastructure. While such regulation may be perfectly justified on static efficiency grounds when there is a single dominant operator, it is harder to justify when there is effective competition among infrastructures. The static efficiency gains will indeed be smaller than with a single operator and it will risk sacrificing dynamic efficiencies for the benefit of short term static efficiencies.

We do encourage regulators not to punish success stories. Investment is needed. We therefore believe that efforts and expertise should be focused on rural areas where the market has not delivered. Areas where competition has proved to work should rather be further encouraged.

### **Work item 4: input to the Review with regard to spectrum**

The European cable industry provides high speed broadband Internet, digital TV services, and telephony to more than 76 million European citizens, uses spectrum (non-radio) for the delivery of its services through cable's Hybrid-Fiber-Cable (HFC) infrastructure.

Any change that is introduced into the EU electromagnetic environment has to ensure that existing and widely used radio and non-radio services are not negatively impacted. There is much reason to suspect that the introduction of wireless broadband in the 700 MHz band may cause severe interference to broadband services delivered via HFC networks (co-channel and adjacent channel interference).

Recent studies have shown that HFC is a future proof technology, well capable of Gigabit broadband speeds. Innovative and converging advanced TV services may



also be affected by interference. Therefore Cable Europe strongly believes that co-existence between existing and new radio spectrum (RF) users of licensed and license-exempt frequency bands should be a key policy target. This issue is ultimately a consumer problem and needs to be considered carefully from this angle.

BEREC has a key role in the cooperation with RSPG and the European Commission in contributing with positive and holistic solutions. A coordinated approach in Europe is needed to help tackling this issue and to introduce the necessary safeguards to ensure co-existence before this becomes a real problem for European companies and European citizens alike.

EU coordination should cover several aspects, namely:

- a) End-to-end programmed roll out plans shared with stakeholders;
- b) Aim for a realistic transmit power, not only maximum transmit power;
- c) Reasonable "link budget" in mobile networks;
- d) Collect and implement end-to-end best practices of countries where interference was experienced;
- e) Educational campaigns to explain transition and possible impacts.

All these measures need to be technologically neutral. BEREC should also consider the preparation of a Best Practice Guide that each Member State could take into account in their roll out plans.

## **PROMOTING THE INTERNAL MARKET**

### **Work item 6. Preparation of the Review**

Cable Europe welcomes BEREC's work on the preparation for the review of the regulatory Framework. We will be more than happy to collaborate and enter into a dialogue with BEREC on this issue, as well as providing input as necessary.

Cable Europe considers there is a bright future in Europe where less regulation and more pricing flexibility allows for space to grow, compete with one another to the letter of the law, consolidate and push for a more international, bundled and service-oriented market. But in order to invest you need a good investment environment where risk levels are not aggravated by significant variations in the market that Europe is still trying to turn into a single one.

Two independent NGA infrastructures can clearly drive network upgrades and evolve towards the provision of ultra-fast services. Cable Europe encourages BEREC to further promote sustainable and efficient investment in high speed broadband infrastructure and services.



Cable Europe shares BEREC's views to avoid too intrusive regulation that would hinder innovation and to focus on more proportionate means to achieve the proposed harmonisation objectives.

#### **Work Item 7. Economic impact of OTTs/CAPs on market definition and competition**

Cable Europe shares BEREC's view that the situation of OTT providers might trigger a debate as to what extent their activities should be covered by the regulatory framework. They might indeed have an impact on market definition and competition. We therefore support BEREC's priority approach given to this question as well as any report or input paper BEREC is preparing on OTT services.

### **EMPOWERING AND PROTECTING END-USERS**

Cable Europe has followed closely BEREC's work on the consumers' issues especially all the work done on Net Neutrality and is committed to continue to do so.

#### **Work item 11.1. Guidelines for the implementation of Net Neutrality provisions of the TSM regulation**

Cable Europe welcomes BEREC's Guidelines for the implementation of the obligations of NRAs related to the supervision, enforcement and transparency measures for ensuring open Internet access. We will be happy to contribute to this work.

Cable Europe considers that Internet access service and specialised services can work well with each other. Cable operators have been able to increase both the network resources dedicated to Internet access service and the network resources dedicated to digital TV. And cable operators, given their strong HFC network with high capacity, certainly can meet this requirement of not degrading the Internet access service even if developing specialised services.

There is nowadays no objective justification for NRAs having to impose any QoS requirement on cable operators as there has been a continuous improvement of the networks and its capacity, which prevents degradation as a consequence. In any case, we believe that transparency and competition tools would suffice to remedy the situation. Communicating transparently on the impact of specialised services on the open Internet would also be welcomed by consumers.

#### **Work item 11.2. Regulatory assessment of QoS in the context of Net Neutrality**

The Internet is complex and evolving very fast. Cable Europe welcomes a regulatory approach on Net Neutrality that gives the possibility of development of future business models. This should help innovation and provide legal certainty.



As regards monitoring of QoS in the context of Net Neutrality, Cable Europe supports BEREC's initiative in fostering dissemination of knowledge among NRAs and identifying monitoring systems. Monitoring QoS in the context of Net Neutrality is important to improve NRAs capacity to perform regulatory assessments of potential degradation of service and provide sufficient information to end-users about the performance of their services.

As it is widely recognised, European electronic communications markets are highly competitive and one of the most transparent in what regards to broadband services. This competition has been a cornerstone that prevents market failures on what concerns Net Neutrality.

BEREC's role in promoting a coherent and uniform model of measuring Internet services performance is key but should be limited to what is strictly necessary. These measurements should be based on sound and robust technical justification. BEREC's involvement will benefit from all stakeholders' input and Cable Europe is willing to contribute actively to this task that will improve all European broadband consumers' experience.

ISPs already have significant transparency requirements on their electronic communications' contracts that are in place with consumers, which already provides guarantees of their rights, but are also framed by a fierce competitive environment that creates the onus on ISPs to provide the best possible service to retain their customers.

When developing a toolkit on Net Neutrality, we therefore advise BEREC that any rules on measurements and Quality of Service should be flexible and micro-regulation avoided. We see a risk for over prescriptive intervention that would have tremendous effect on competition. It is BEREC's role in our view to prevent such a worse effect to take place.

BEREC should reflect on a solution for co-regulation.

Transparency should be a key enabler but every measurement should be fair and comparable. Any measurement requirements on cable ISPs should be limited to the HFC network which we control end-to-end. We cannot be responsible for reporting on how the quality of the end user's hardware, the upstream the IP transit path, or the location of the server, affects the broadband speeds consumers experience, and this should be made explicit in any policy guidance BEREC develops. Such an approach would also improve consumers' choice as it would allow for a clear comparison between competing ISP networks on a like-for-like basis.

BEREC should use the work and knowledge that already exists among various stakeholders. And we are committed to help BEREC in its task.



### **Work item 12. Input to the Review with regard to the revision of the Universal Service Directive**

Cable Europe welcomes efforts to facilitate broadband connectivity in Europe. These efforts should be made to support any technology capable of delivering high speed broadband, be it wireline or wireless.

Cable Europe is convinced that broadband targets set by 2020 are ambitious, though proportionate and achievable. While demand and actual speeds offered will exceed those targets in many areas due to market driven developments anyway, no further binding targets are needed beyond 2020. The real challenge will be to develop broadband demand from both the public and private sectors. It is the attractiveness and availability of the services using a broadband connection that will be key for future broadband connectivity in Europe. Networks development will follow, with cable at the forefront.

Cable Europe therefore calls for focusing public money strictly to underserved areas only and for removing barriers to private investment and its rewards.

One should wonder whether there is a real need for Universal Service when the objective can be met otherwise. Cable Europe will be happy to provide BEREC with further input in its reflection on the Universal Service.

### **Work item 14.3 Analysis of the emergence of new markets due to bundling trends**

Cable Europe will be following very closely BEREC's work on the emergence of new markets due to bundling trends.

Bundling offers are widespread in any economy and in most cases are beneficial as they respond to consumers' needs, improve quality, bring about cost efficiencies and allow, in general terms, for a better performance of the market mechanism.

Cable Europe believes that the new business dynamics, innovative technologies and the benefits for the consumers will have to be carefully addressed by regulators. Ample room should be left to competition law to examine bundling practices in the telecoms sector.



European Cable Communications Association  
Avenue des Arts 41, 1040 Brussels, Belgium  
[info@cable-europe.eu](mailto:info@cable-europe.eu)