

The Consumer Voice in Europe

BEREC DRAFT WORK PROGRAMME 2016 BoR (15) 140

BEUC response to public consultation



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The European Consumer Organisation (BEUC) welcomes the opportunity to comment on BEREC's draft Work Programme for 2016, a year of key importance for digital consumers as many legislative and policy initiatives are rolled out, and on which BEREC plays a very important role.

As the European Union rolls out multiple overlapping initiatives in an effort to build a Digital Single Market to the benefit of all European consumers, it is ever more crucial that NRAs, with BEREC's coordinating and leading role, step up their efforts to strengthen consumers' role in the market, and strongly protect their rights and freedoms.

Multi-stakeholder approach and public consultations

BEREC's approach to working in consultation with stakeholders is necessary and thus welcome, and we encourage BEREC to continue organizing stakeholder consultations and public debates. We have appreciated being called in to participate in multiple consultation processes, particularly in the area of net neutrality.

We are nonetheless dissatisfied with the short deadlines that have been assigned to the latest written consultations, for example on the draft Report on OTT Services – BoR (15) 142. It is important to understand that four weeks is not sufficient time for BEUC to analyse a technical report, prepare a draft response, consult with its members (which requires at least 2-3 weeks), and submit a final answer. Allowing for sufficient time for stakeholders to respond to public consultations is crucial, in order to ensure a wide array of responses particularly from civil society, and especially to allow the more resource-constrained organisations to be able to input in detail.

BEREC should always allow consultation periods of at least 8 – 12 weeks in order to ensure a truly participatory process, allowing stakeholders to provide for solid and detailed input.

Strengthening cooperation with consumer organisations

As we have already highlighted in the past, it is important that BEREC's members work closely with national consumer associations in their respective markets, as these associations are the ones that hold an informed overview of where the challenges, complaints and issues are on everyday consumer issues.

We suggest drawing from the experience of the Council of European Energy Regulators (CEER), with which we have collaborated on a number of work-streams, both on EU affairs as well as coordinating input from BEUC members at a national level. First, we jointly developed a vision¹ for Europe's energy customers that was then subsequently endorsed by 17 umbrella associations representing different actors present in energy markets. CEER then ran a benchmarking exercise to understand the level of regulatory cooperation between energy NRAs and national consumer organisations in each Member State. This exercise then led to the publication of CEER recommendations on how to better involve and engage with consumer organisations in the regulatory process.² Another positive initiative by CEER is the section of their website dedicated to energy consumers, where

¹ http://www.beuc.eu/publications/beuc-x-2013-100_mst_ceer-beuc_2020_vision-joint_statement_long_updated_june_2014.pdf

² http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab5/C14-CEM-74-07_ConsOrg%20Involvement_Advice_March%202015_0.pdf

CEER helps consumers understand how energy markets work, what their rights are and how they can exercise them.³

Furthermore, the Agency for the Cooperation of Energy Regulators (ACER) has recently started explaining their policy work to energy consumers via 'Citizens' summaries', a welcome idea to help consumers understand the policies that affect them as energy customers.⁴

We would be very happy to help BEREC and its members develop closer relationships with BEUC's members and ensure easier access for national consumer organisations into telecom regulatory processes. We also encourage BEREC to draw from the ideas highlighted above to help telecom consumers better understand their rights and identify and eliminate switching barriers so they can vote with their feet when they are dissatisfied.

The telecoms framework review: no race to the bottom on consumer protection

Competition is an essential ingredient for telecommunications markets to deliver consumer welfare, but competition alone is not enough. A strong framework of consumer rights is necessary for consumers to reap the benefits of competition in the market. The review of the framework is a unique opportunity to update the sector's consumer protection framework, in particular the Universal Service Directive and ensure that barriers to switching are tackled, unfair conditions eliminated, and consumers get access to accurate information and effective redress in case the performance of the service does not meet the consumer's expectations or deviates from the initial offer. Last but not least, securing a sustainable Universal Service Obligation that includes access to a basic quality Internet connection is important in order to ensure consumers' can exercise their rights and freedoms adequately.

Moreover, it is important to review the framework in a way in which it is consistent with present and future trends in the market. In this sense, we welcome the recognition that the bundling of multiple contracts (e.g.: internet access, IPTV, telephony, mobile) is a commonplace practice nowadays, and should be dealt with accordingly in the framework. We encourage BEREC to look into competition and consumer protection issues such as lack of transparency, and the creation of switching barriers that arise from these practices. In this area, CEER is currently coordinating a benchmarking exercise that will collect different switching barriers that energy consumers experience across Europe. We encourage BEREC to kick-start and coordinate a similar exercise in telecoms markets in order to identify and tackle the different switching barriers that telecom consumers face.

Furthermore, analysing the role of so-called "over the top" (OTT) Internet applications in communications markets is a reasonable task in order to understand the realities behind the services that European consumers use every day. BEUC will develop more detailed insight into how these applications should be addressed to maximise consumer protection, and what – if any – changes should be done to the framework to ensure consumers are equally protected when using any type of communication service. In the meantime, we strongly highlight the importance of impeding that the inclusion of OTTs as part of the policy work on the framework results in a lower level of consumer protection standards in the telecoms and online communications arena.

³ http://www.ceer.eu/portal/page/portal/EER_HOME/ENERGY_CUSTOMERS

⁴ <http://www.acer.europa.eu/Media/Pages/Citizens-summaries.aspx>

The telecom framework review: competition must continue as guiding principle

The pro-competition principles such as infrastructure-based competition and technology neutrality that underpin the current regulatory framework have allowed a satisfactory degree of competition to develop in Europe, in many fix and mobile markets. Competitive markets have, in turn, delivered some consumer benefits such as downward price pressure and a choice between operators so that consumers can switch when they are dissatisfied. Yet, too many switching barriers and uncompetitive practices still exist and must be tackled efficiently.

As BEREC prepares its detailed input into the review of the regulatory framework, it is of utmost importance that it strongly protects and strengthens these pro-competitive principles with a view to ensure that the reviewed framework continues to foster competition to the benefit of consumers. Without this key pillar, any reform of the framework will fail to protect its most essential element in the value chain.

Constructing the conditions for a competitive market to thrive means ensuring competition at all levels of the value chain, from the decision to undertake an investment, to unbundling infrastructure so that multiple competitors can deploy innovative services on top and compete on prices, quality and choice. In this sense, BEREC must ensure that there is no trade-off between the need for investments and the level of competition in fix and mobile markets, nor between the need for investments and consumer protection rules. A virtuous circle of competition, investments and strong consumer protection is possible if policies are conceived adequately.

The post-TSM era: ensure net neutrality is protected

The Telecoms Single Market Regulation lays down the general rules that should, in theory, protect the openness and neutrality of the Internet in Europe. Yet many of these rules are broad in their scope and insufficiently clear. The Guidelines that BEREC is mandated to develop are therefore of crucial importance. BEUC will provide more detailed feedback to BEREC once it opens the public consultation on the draft Guidelines, but in the meantime these are important shortcomings of the TSM Regulation that should be strengthened or resolved via the Guidelines:⁵

- 1) Zero-rating of content should be outlawed across Europe. The TSM Regulation states that traffic management cannot be based on “commercial considerations”. Zero-rating of content is a practice purely based on commercial strategies and should thus be declared an illegal practice in the context of the TSM Regulation.
- 2) The rules governing ‘specialised services’ should be strengthened to close loopholes that allow operators to treat their own services preferentially.
- 3) Net neutrality issues beyond the ‘last mile’ need to be addressed. We encourage BEREC to look into these issues as part of the planned work on measuring quality of service, also beyond the access market.

⁵ For more information on our views on TSM, please refer to our position papers here: <http://www.beuc.eu/digital-rights/telecoms-single-market>

The post-TSM era: abolish roaming fees once and for all

The Roaming IV Regulation (as amended by TSM) lays out a roadmap for the abolition of roaming fees for European consumers, and a key step in the roadmap is the reform of the wholesale market. It is crucial that this reform takes place as soon as possible for two main reasons. First, because as of May 2016 wholesale and retail caps will be set at the same level, a measure which can have worrying effects on competition levels across Europe. Second, because the wholesale reform is set as a pre-condition for the abolition of retail roaming fees in mid-2017, and it is high time that European consumers can enjoy a roaming-free Europe. We therefore urge BEREC to work closely with the European Commission and then with the co-legislators to reform the wholesale market in the fastest timeframe possible.

The Roaming IV Regulation also provides exemptions to the general obligation to provide 'Roam Like at Home' services in the form of 'fair use policies' and 'cost recovery' (called 'sustainability of the abolition of retail roaming surcharges' in the Regulation). If these exemptions to the general rule are not strictly limited to cases where they are objectively justified on the basis of demonstrable economic considerations, the end of roaming for all consumers will not be a reality. We therefore call on BEREC to aid the European Commission to issue implementing acts that properly regulate these exemptions in a way in which all European consumers can benefit from the end of roaming.

Eliminating other barriers to the Single Market

In addition to roaming, we believe that BEREC should step up its work in helping eliminate other barriers to the Single Market, in particular the excessive prices that exist for cross-border telecom services such as calls and messaging. As Mobile Termination Rates and Fixed Termination Rates continue to decrease, it only makes sense that surcharges for a service that crosses an otherwise artificial border, such as voice calls and SMS, are eliminated in Europe. This way consumers will benefit from a truly integrated Single Market, getting closer to being able to use telecom services without worrying where they or their counterparty are in the Union. In this sense, we encourage BEREC to provide input into the Commission's planned review of the Termination Rates Recommendation with a view to ensure that a Single Market for telecommunications can become a reality.

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