



**GSMA comments on the
Draft BEREC Work Programme 2016 (BoR (15) 140)**

About the GSMA

The GSMA represents the interests of mobile operators worldwide, uniting nearly 800 operators with more than 250 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces industry-leading events such as Mobile World Congress, Mobile World Congress Shanghai and the Mobile 360 Series conferences.

For more information, please visit the GSMA corporate website at www.gsma.com. Follow the GSMA on Twitter: [@GSMA](https://twitter.com/GSMA).

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The GSMA welcomes the opportunity to submit its views on the BEREC draft Work Programme for 2016. BEREC plays an increasingly important role in ensuring a consistent and proportionate regulatory approach in the European Union and the GSMA looks forward to continued and enhanced cooperation with BEREC in 2016.

The GSMA considers that the BEREC 2016 Work programme is rightly focused on providing input to the forthcoming reform of the EU regulatory framework and activities related to the implementation of the new roaming and net neutrality provisions.

BEREC input to the EU Telecoms Regulatory reform

Telecommunications markets have changed dramatically since the current set of rules came into force. Today's markets are characterised by a rapidly-increasing scope and convergence of technologies and services. Consumers are faced with a wide array of technologies and providers, many from adjacent industries, offering similar solutions to satisfy their communications needs.

The region needs a forward-looking policy and a regulatory framework that further strengthens Europe as a preferred location for investment and innovation, with European citizens receiving the same level of protection when using the same or similar services. This includes a thorough assessment of communication service markets and a profound analysis of an effective set of rules consistently applied to all communication services. Besides effectiveness, rules need to come at proportionate costs for all providers – for OTTs as well as for telecom operators. The assessment of communication services' substitution effects needs to be consumer centric and, thus, technology-agnostic. This is certainly a big task, to be undertaken through dialogue between policy makers, industry and stakeholders over a period of policy development. We very much agree that BEREC needs to play an active role in the regulatory reform.

The legal framework has struggled to keep pace with economic and technological developments, and its reform should therefore deliver a future-proof framework. That's why we believe that an "incremental step" is not sufficient for Europe to meet the connectivity challenge, and to regain its digital leadership. So much has changed and yet so much is expected of the Digital Single Market. In order to deliver it, we need a complete 'Re-think'. It is now or never, so we should take the opportunity to get it right.

A successful Re-think by the EU of its regulatory approach would follow three principles:

- A thorough assessment of the vision and the regulatory objectives being pursued, and examination as to how those objectives can best be achieved. Only then will it be possible to agree on measures.
- Second, as many of today's legacy regulatory structures are outdated, policymakers should take a "clean-slate" approach that assesses current, as well as potential new, regulations. They should identify the optimal means of achieving the regulatory objectives, without reference to legacy regulatory regimes and approaches. This approach recognises that changes in technologies and markets have likely altered both the need for regulation and its optimal form and focus. Thus, for example, it would seek to apply a consistent set of criteria to assessing market power throughout the Internet ecosystem and focus regulatory attention on areas where it currently exists or is likely to exist in the future (rather than where it may have existed in the past).
- Third, the new regulatory framework should prioritise flexible, performance-based approaches over command-and-control-style prescriptive standards. Regarding the mobile markets, a dynamic model that focuses on *ex post* enforcement over *ex ante*, prescriptive rules would

better account for the pace and inevitability of technological and market innovation. Such a model allows the means by which regulatory objectives are realised to evolve over time, even while the objectives remain largely stable.

The GSMA is concerned that some of the activities outlined in the Work Programme, in particular the workstream on “Oligopoly Analysis”, risk going in the opposite direction to the above principles. We believe that any proposals to adopt extra controls of oligopolies should be considered across all sectors of the economy, and that there should not be a presumption that oligopolistic market structures require *ex ante* regulatory remedies. The GSMA contends that there is little or no evidence of mobile-market failure and that the current framework provides all the tools necessary to address any concerns, should they arise. Broadening of the *ex ante* regulation in the mobile markets raises the prospect of successive layers of regulatory intervention. The GSMA believes that creating a novel “oligopoly regime” will lead to uncertainty for investors, national regulators and competition authorities.

The GSMA is also following with great interest BEREC’s intention to commission a fact finding study on market developments post-mergers. We would encourage BEREC to analyse the fullest possible dataset of relevant indicators of consumer outcomes over the longest time period possible, and we would like to recall here that similar studies by GSMA found that mergers can ultimately lead to consumer benefits such as lower unit prices, enhanced quality of service and greater coverage in remote communities.

The Telecoms Framework Review also provides a fresh opportunity to look at reforms to spectrum policy, supporting deployment of new and harmonised spectrum for mobile broadband across Europe. The GSMA welcomes the importance BEREC attaches to the spectrum area, as well as its close collaboration with the Radio Spectrum Policy Group (RSPG). The GSMA urges BEREC to continue to work closely with the RSPG on spectrum issues in Europe and coordinate their efforts. In particular, we commend the work on best practice for spectrum policy on the Telecoms Framework Review so as to foster agreement between all ministries and regulators in the EU ahead of the work in Council. The GSMA encourages BEREC to involve stakeholders throughout the process. In particular, we urge BEREC to include stakeholders in the joint workshops with the RSPG as well as hold timely but also adequate consultations where the industry can share its knowledge and views.

The GSMA welcomes the work BEREC has been doing on the Internet of Things and in particular on Machine to Machine communication. It is important that BEREC recognizes the truly global nature of these services, IoT and M2M users most often require global distribution coverage and managed platforms for economic viability and the provision of consistent global services. In light of its different nature, we urge BEREC to focus on encouraging the development, growth and investment in this sector all the while making sure all stakeholders and key players are involved in the process.

Despite an entire chapter dedicated to end-user empowerment, it appears that the BEREC Work Programme for 2016 lacks a holistic approach to consumers’ need for a modernised and simplified legal framework. In fact, the Work Programme does not make any reference to the new horizontal rules on online purchases that could potentially apply also to communications services, included in a broader new legislation for all services in the digital market.

Given the convergence of communications services and the increase in competition between telecom operators and other providers, sector-specific service regulation must be reviewed in parallel with general service regulation, in order to ensure consistent consumer-protection standards. This includes the need to carry out an overall assessment of the current definitions and requirements, encompassing all digital products and services regardless of the provider and of the way by which they are provided to the customer.

The GSMA recommends that BEREC look at consumer protection issues from a more horizontal perspective in order to advise the European Commission to use the current extensive overhaul of legislation as a chance to come up with modernised, simplified and effective rules that shall apply horizontally to all services serving communications needs, irrespective of the technology, the business model and the provider.

Moreover, better coordination with the proposal on New Rules for Online Purchases of Digital Content is needed, on which a legislative proposal is already foreseen by the end of the year.

Implementation of the new Roaming and Net Neutrality rules

We agree with BEREC that significant work needs to be done to ensure the final details of the Telecoms Single Market (TSM) Regulation are implementable. It is important that the implementing act on Roaming work effectively to prevent negative impacts on domestic markets, and guidelines for the Open Internet rules ensure consistent application of the Regulation across the EU.

We warmly welcomed BEREC's expert voice and constructive engagement during the legislative debate on the TSM. Such an approach will be key to addressing implementation challenges. We call on BEREC to continue to follow a pragmatic approach and to consult market players.

We thank BEREC for the opportunity to comment on its draft 2016 Work Programme and look forward to working with BEREC on these important topics over the year to come.