



Position Paper

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Cable Europe comments on the BEREC Work Programme 2017

Cable Europe appreciates the initiative of BEREC to invite stakeholders to comment on its Work Programme 2017.

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 of encouraging investment in high speed broadband infrastructure while ensuring at the same time a competitive environment and level playing field.

As recently demonstrated in BEREC's report "Challenges and drivers of NGA rollout and infrastructure competition", cable networks are one of the strongest drivers of infrastructure-based competition. Therefore, any recommendation should envisage that cable is not stifled by prescriptive market regulation, thus encouraging Cable to continue to invest and innovate.

Work item A.1.1 - The impact of content markets (incl. premium audiovisual) and devices on fixed and mobile Electronic Communication Services (ECS) markets

Cable Europe believes that content markets have worked efficiently under the present model which is based on commercial negotiations.

We also believe that the proposed fact-finding exercise will provide important inputs to analyse the evolution of the electronic communications' ecosystem. The initial assumptions of BEREC's WP2017 already acknowledge that the traditional market segmentation is blurring and operators are repositioning themselves on the value chain. As a consequence, Cable Europe believes that this fact finding exercise should be multidisciplinary, involving communications, audio-visual and privacy regulators.



Regarding the device industry, it will also be timely to understand if the relevant rules are fit for purpose and future proof.

Work item A.1.3 - Input on implementation of symmetric obligations: description of existing practices and consideration of future challenges

Cable Europe understands that symmetric access is an exception to the SMP mechanism and should as such only be used in a very limited number of well-described situations. Especially when symmetric access is imposed on other network elements than in-house wiring, the conditions foreseen need to be applied in a very strict manner. A broad and liberal application of the symmetric access tool further disincentives those investments that were already difficult because of the specific circumstances. The end result might be that no connectivity at all will be offered by any of the private players in those situations where symmetric access applies.

Cable Europe believes that the “SMP-mechanism” should remain the central axis of the Electronic Communications’ regulatory framework. Other concepts such as symmetric or non-SMP based access need more detailed analysis – they should only be applied in rare and clearly defined cases to deal with certain instances of local monopolies, used with the greatest caution and should not replace the role that SMP plays within the regulatory framework and create uncertainty amongst market players and investors.

Work item A.2.1 - Implementation of the Broadband Cost Reduction directive

At this point in time, the implementation of the Broadband Cost Reduction directive is still in early stages. It is therefore premature to try to understand how the directive has facilitated the evolution of investments on infrastructure and how market players have been using the directive to deploy new infrastructures. Cable Europe recommends that BEREC’s analysis should be carried out once the market has had enough time to reap the benefits from the implementation of the directive. This means that P4 2017 is too early for that exercise.

Work item A.2.2 - Analysis of individual NRAs’ current work around access conditions to State Aid funded infrastructure

Investment in Europe, particularly in the field of technology and the needed infrastructures, is a recurrent question. Where businesses see future value, they will invest as a means of competing with other providers. Where businesses do not see a commercial incentive for investment, state aid may, in the appropriate circumstances, be deployed as a remedy to ensure that crucial infrastructures are rolled out across Europe as uniformly as possible.



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Cable Europe has always expressed concern over the prospect of public money flowing into areas that are capable of attracting private investments such as densely populated areas – or indeed into areas in which private investors have already deployed networks that meet customer demand. That is why NRAs' involvement is crucial to secure a harmonized application of the notion of market failure. NRAs expertise has a decisive role in defining whether or not market-failure exists and whether there is a need for state aid or other public intervention.

Work item A.2.4 - IP interconnection practices in the context of net neutrality

Regulation 2015/2020 is very clear on leaving IP interconnection agreements outside the scope of the Net Neutrality provisions.

Cable Europe considers that IP interconnection issues like peering agreements have been well handled by the market. No situation has demonstrated the need for ex ante regulation. It is important to give the possibility to the market to develop new business models without a regulatory sword that would block investment. Any competition failure should be remedied by competition law.

Work item A.3.2 - Spectrum needs to foster innovation in Europe

The European cable industry provides high speed broadband Internet, digital TV services, and telephony to millions of European citizens using spectrum (non-radio) for the delivery of its services through cable's Hybrid-Fibre-Coaxial (HFC) infrastructure.

Recent studies and tests have shown that HFC is a promising technology, well capable of Gigabit broadband speeds. Therefore, spectrum will be a master pillar for Cable to deploy **massive connectivity across Europe**.

Fixed network capillarity is a **key enabler for 5G and IoT deployments** and this places cable industry at the forefront of spectrum stakeholders with a solid interest that spectrum is efficiently allocated.

Cable Europe is willing to collaborate and enter into dialogue with BEREC on this issue, as well as to provide input as necessary.



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PROMOTING THE INTERNAL MARKET

Work item B.1.2 – Collaboration with the Commission’s consultant on its study on the review of SMP guidelines (to be determined with the European Commission)

The SMP guidelines have provided stability to the market, allowing all players to take their investment decisions based on the predictability of the regulatory framework. That is one of the most important attributes of the SMP guidelines.

Cable Europe believes that the ongoing revision of the European electronic communications’ regulatory framework is a far-reaching process that should focus all stakeholders’ attention and efforts. Any revision of the SMP guidelines at this point in time will weaken the importance of the debate on the above mentioned regulatory framework.

EMPOWERING AND PROTECTION OF END-USERS

Work item C.1.1- Current definition and provision of universal service

The current universal service regime was designed to play a role in the transition phase from a monopoly to a liberalized competitive market. Its role in this respect has been outpaced by both technological and market developments. Thanks to investments made, competition among different technologies (fixed, mobile, internet) and innovation for high-quality services, EU citizens can nowadays have access to electronic communications services at affordable price (prices having dropped down over the years).

Cable Europe considers that the Commission’s intention as set out in the draft Electronic Communications Code, of getting rid of obsolete services under the universal service provision as well as the shift towards ‘affordability’ instead of ‘availability’, are positive developments.

We support BEREC’s intention to complement the 2014 internal report with a survey on recent experiences on the evolution of the universal service scope and content in the Member States.



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Work item C.2.1- Implementation of Regulation 2015/2120 and Guidelines on Net Neutrality

Cable Europe has provided input to BEREC in the context of its consultation on the draft guidelines on the implementation of the Net Neutrality provisions of Regulation 2015/2010. We are of the view that the potential for digital transformation must not be fettered by overly prescriptive rules that stifle innovation in digital technology.

We support BEREC's monitoring of the Net Neutrality provisions in the context of its guidelines as we consider that such assessment will be crucial in determining how NRAs will have exercised their role. It will also contribute to a consistent application of the regulation across the Member States.

Work item C.2.2 - Regulatory assessment of QoS in the context of net neutrality

Cable Europe reiterates its response to BEREC 2016 Work Programme consultation, in supporting BEREC's initiative to foster dissemination of knowledge among NRAs and to identify QoS 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 to provide sufficient information to end-users about the performance of their services.

However, BEREC's role in promoting a coherent model of measuring Internet services performance, although key, should be limited to what is strictly necessary. Measurement tools should be based on sound and robust technical justification. They should also be flexible (avoiding micro-regulation), fair and comparable. Ideally, they should be based on co-regulation.

Any specific QoS assessment on cable ISPs, should be limited to the HFC network which cable operators control end-to-end. Cable operators should not be responsible for reporting on the manner in which the quality of the end user's hardware, the upstream the IP transit path, or the location of the server, affects the broadband speeds of end-users, and this should be made explicit in any deliverable adopted by BEREC.

Within the described framework, Cable Europe welcomes BEREC involvement and is willing to contribute actively to its work.



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QUALITY AND EFFICIENCY

Work item D.2- Procedures for collection and standardization of statistical and market information on OTT services, in cooperation with Eurostat.

Cable Europe welcomes BEREC's initiative to address NRA's lack of legal competence to seek information from OTT providers, in particular in cases of short term need, through cooperation between the European Commission and Eurostat.

More generally, it is Cable Europe's view that given the current market changes it would be a positive development if the future Electronic Communications Code, foresaw the requirement for OTTs to notify their operations to NRAs as well as the power of NRAs, specifically in the context of market analysis, to request information to all services providers, including OTTs.

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About Cable Europe

Cable Europe is the trade association that connects leading broadband cable TV operators and their national trade associations throughout the European Union. The regulatory and public policy activities of Cable Europe aim to promote and defend the industry's policies and business interests at European and international level. The European cable industry provides high speed broadband internet, TV services, and telephony into the home of 64.5 million customers the European Union.

This paper represents the views of the full members of Cable Europe, and not necessarily those of our associate members, partners or affiliates.



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