

EBU RESPONSE TO THE PUBLIC CONSULTATION ON THE DRAFT BEREC STRATEGY 2018-2020 (BOR (17) 109)

05.07.2017

1. The European Broadcasting Union (EBU)¹ and its members, public service media organisations from 56 countries across Europe and beyond, welcome the publication of the draft BEREC Strategy 2018-2020 and appreciate the opportunity to provide views on the matter. More generally, we very much value the opportunities that BEREC continues to provide to engage in a constructive dialogue, whether it is through various public consultations or through stakeholder dialogues, debriefing sessions and public events.
2. The EBU welcomes the fact that BEREC proposes to continue organising its work for the coming three years around three overarching strategic pillars originally set out in 2014 – promoting competition and investment (I), promoting the internal market (II) and empowering and protecting end-users (III).
3. We would like to highlight the inherent links and interaction between the different strategic pillars. While we support BEREC's understanding under strategic pillar I that "*effective and sustainable* competition is what drives *efficient* investment and choice for end-users", (page 5) we also believe **that ensuring end-users continued ability to choose the services of their choice (under strategic pillar III) directly underpins competition in broadband access markets**. By establishing effective mechanisms empowering end users in broadband markets and by maintaining and effectively enforcing open Internet safeguards, the incentives to invest in networks and superfast broadband are also likely to be optimized.
4. **The notion of "end-user" under the third overarching strategic objective has to be interpreted in a broad way** (page 2). We very much welcome BEREC's wide interpretation of the notion of end-user as part of its 2016 guidelines on net neutrality.² It rightly encompasses different types of end-users, including content and applications producers (CAPs). This is not only consistent with the definition of Article 2(n) Framework Directive but also with Article 2 (14) of the European Commission proposal establishing the European Electronic Communications Code.
5. We agree that the continued transition to next generation broadband access and the trend towards internet-enabled services are underpinned by technical developments in networks and an increasing willingness by end-users to buy and use services (as stated in paragraph 2 on page 3). **However, offering high-quality content and applications on the open Internet is also a key driver for fast broadband usage and Internet access demand**. Public service media drive innovation and actively contribute to the open Internet's

¹ <http://www.ebu.ch>

² 2016 BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules, BoR (16) 127.

success (or the Internet take up) with the development of new services, new formats, new technologies and high quality content. Many public service media have also become trusted brands in the online environment. Over the past decade, they have become an indispensable and popular point of reference through a range of online services: from catch-up TV, radio podcasting, and live streaming of their programmes through their webportals, to making available services through smartphone and tablet applications. **We would very much welcome if BEREC would recognize the role of content and applications providers (CAPs) online in the Internet value chain in paragraph 2 on page 3.**

6. For the reasons mentioned above, **the ultimate paragraph of page 3 could be adapted to clearly outline that CAPs' continued investment in and the increasing making available of quality content online plays an equally important role** in accelerating the transition to digitization, be it for banking, social, entertainment or communication purposes **but also for information purposes.**
7. We **agree** with the statement on page 5 that **5G needs spectrum resources.** But we would like to point out that this often means more allocations to the mobile service. It should be noted that **different services** and applications require different spectrum features. While for more of these services 5G as a technology is considered they will need their own **access to dedicated spectrum resources** in the future.
8. We welcome the specific strategic priorities identified by BEREC in its proposed strategy. **We particularly value the monitoring of potential bottlenecks in the distribution of digital services as a strategic priority 2 for 2018-2020** (page 6). The audiovisual media landscape is very complex, much influenced by a growing range of mostly global and increasingly vertically integrated players that are strengthening their positions mostly on the broadband network/platform market. **The EBU supports further developing robust data in the public domain about the behaviour of intermediary actors, their role as gatekeepers and the repercussions they may have on the digital value chain.**
9. We would like to **highlight that this strategic priority should not only focus on looking at the existence of potential bottlenecks to competition (page 6) but more broadly to potential access or distribution bottlenecks.** Previous BEREC output³ has recognized that a network operator - whether or not vertically integrated - could indeed have an incentive to exclude a market rival and hamper end users' access to new services and content without necessarily infringing competition rules.
10. We also acknowledge that 5G and other network technologies are likely to foster innovation and growth in the European market. In addition, we would like to highlight that in the **media and entertainment sector** many technology assessments and developments are very advanced. More aspects are currently under study, for example in the European **5G-Xcast project** as part of the Horizon 2020 framework program. Therefore, we welcome BEREC's intentions

³ e.g. 2012 BEREC report on differentiation practices and related competition issues in the scope of net neutrality, BoR (12) 132.

to work on solutions for standards, interoperability, business models and other issues.

11. Regarding net neutrality, **we welcome BEREC's continued commitment to actively supporting national regulators as part of the 2018-2020 strategic priority 4 on fostering a consistent approach of the net neutrality** (page 7). The role of national regulatory authorities (NRAs) – under consistent guidance by BEREC – is equally critical to get the TSM Regulation to work in practice. **NRAs must be highly proactive in Article 5 of the TSM Regulation and other responsibilities, their monitoring and in maintaining dialogue with industry.** As highlighted in earlier contributions, we would also encourage national regulators to cooperate with all other competent NRAs and particularly monitor the effects of commercial practices (not only regarding IAS offers but also specialised services) on cultural diversity and media pluralism. In doing so, NRAs should take utmost account of relevant BEREC guidelines.
