



Response

Cable Europe response to BEREC's consultation on the review of the BEREC medium-term strategy for 2018-2020

Cable Europe welcomes BEREC's initiative to invite stakeholders to comment on the review of its Strategy 2018-2020.

Cable Europe's comments below relate to selected topics raised in the consultation document and naturally follow on the comments made to BEREC's medium-term strategy for 2018-2020.

BEREC Strategic Priorities 2018-2020

Promoting competition and investment

The present draft report states BEREC's "understanding that effective and sustainable competition is what drives efficient investment and choice for end-users". This understanding can be misleading if it is not well explained. BEREC report "Challenges and drivers of NGA rollout and infrastructure competition" looks at the different forms of access regulation adopted in different circumstances and different MS and the possible effects on competition and NGA investments. An important insight from the analysis was that the main factors identified and discussed were factors which were largely or completely exogenous to regulatory interventions by NRAs. Considering four different scenarios, the report shows that SMP regulation focuses on the promotion of competition to incentivise investment considering the given national (or subnational) conditions and NGA rollout strategies of operators. The same report identified that "competition from other fixed network infrastructures such as cable networks and alternative FTTP networks" influence the status of NGA rollout. That means that investment (in cable or FTTP networks) generates investment and consequently competition improves. Competition will not be directly created by regulation, regulation should be a catalyst.

Promoting the internal market

A consistent regulatory approach across all MS is crucial for the internal market. Regulation harmonisation is a key element for this objective. Cable Europe believes that fragmented



legislative initiatives create uncertainty and delay a consistent pan-European electronic communications market.

Empowering and protecting end users

To promote the interests of EU citizens and the protection of the interests of vulnerable end-user groups, BEREC and NRAs should have a holistic approach and include Electronic Communications operators in this process. The present draft report never looks at the Electronic Communications operators as enablers of the ecosystem. On the contrary, there is always an implicit understanding that operators will necessarily mislead end-users. This biased approach restricts ambitious and efficient solutions.

Strategic Priority 1: Responding to connectivity challenges and to new conditions for access to high-capacity networks

BEREC identifies that the “roll out of fibre networks and migration from legacy networks, as well as market consolidation, can lead to new forms of competition problems which need to be tackled by national regulators with the appropriate tools”.

Cable Europe would like to stress that the “SMP-mechanism” should remain the central axis of the Electronic Communications’ regulatory framework. Cable Europe believes that other concepts such as symmetric or non-SMP based access 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.

It’s widely acknowledged that infrastructure based competition – largely driven by cable - is the most sustainable type of competition. It is also at the heart of the recent incumbents’ decisions to invest in their own fixed networks, an effect of infrastructure competition that has been underpinned by many financial analysts and by regulators themselves. SMP based access regulation should continue to play a role, as a mean to complement the infrastructure competition dynamic. Nonetheless, with competition increasing and a new wave of infrastructure investment needed - if the Gigabit Society targets are to be reached and all member states need to benefit - we caution against any attempts to re-regulate the sector. The principle that telecoms-specific regulation should be reduced as and where competition increases, has proven to be a recipe for success and should not be undermined.

Linked to the SMP regime and the review of the Electronic Communications’ regulatory framework is the review of the SMP guidelines. The European Commission has recently



launched a call for tenders for a service contract aimed at evaluating to which extent the SMP guidelines need to be amended as well as a public stakeholder consultation. The focus of the study will be the SMP concept in ex ante regulation of the electronic communications networks, in particular, the concept of joint dominance. Although the Commission wants to complete the study in 2017, the review of the guidelines will spill over into 2018 (a Commission communication is due during 2Q 2018). Given BEREC's intention to participate in this review process (BEREC Work Programme 2017), Cable Europe would like to make the following remarks. We believe that any revision of the SMP guidelines in parallel to/following the review of the EU regulatory framework should not lead to the weakening of the SMP concept via the backdoor. Cable Europe shares the European Commission's view expressed in the proposed electronic communications code that SMP should remain the key principle of the revised rules. Any departure from the SMP concept would undermine investment incentives of cable operators which are the main challenger to the incumbents in most of the EU Member States.

Strategic Priority 2: Monitoring potential bottlenecks in the distribution of digital services

The market structure has evolved and the digital ecosystem has today various players which changes the dynamics of competition. NRAs will have to include those new players and their impact when performing new market analysis. These market revisions should reinforce consumer's awareness of new players' business models. The digital market is moving towards a dual model where obligations on ECS (Electronic Communication Services) players are much stricter than obligations imposed on ISS (Information Society Services) players. That occurs independently of the services being interchangeable.

Strategic Priority 3: Enabling 5G and promoting innovation in network technologies

Cable Europe understands that both 5G and the new networks technologies should have time to mature before being stifled with unwanted effects of regulation. These new network technologies are still under development and engineers need a white canvas to achieve their full ambition. Only this way, the full ecosystem will be able to develop new disruptive services. Cable Europe recommends that BEREC and the NRAs should keep an open dialogue with the industry rather than focusing on regulation that will impact technology developments at a very early stage.

As already stated in BEREC medium-term strategy for 2018-2020, Cable Europe believes BEREC and NRAs have a critical role of educating consumers and cooperating with electronic communication operators.



Strategic priority 4: Fostering a consistent approach of the net neutrality principles

The work on Net Neutrality needs to be focused on objective principles and avoid impacts that fragment a consistent approach across all Member States. Cable Europe has actively participated in all Net Neutrality discussions launched by BEREC and continues to believe that the existing regulation provides the right balance for the various stakeholders. Nevertheless, BEREC should keep a neutral approach and work with every stakeholders to avoid rules that stifle innovation and create additional barriers to the European digital economy.

Strategic priority 5: Exploring new ways to boost consumer empowerment

The Electronic Communication' sector is the most transparent in comparison to other sectors. Where Cable operators are present, consumers of ECS (Electronic Communication Services) enjoy three critical benefits:

- a) Markets in cable footprint show one of the **most competitive environments** with choice and affordable services;
- b) Also, these markets show **the highest level of innovation** that empower consumer and businesses to fully enjoy the benefits of the digital society;
- c) And finally, the European citizens on the cable operators footprint **have already achieved, today, the coverage targets** set by the European Commission for 2020.

Output and efficiency

Cable Europe notes and congratulates BEREC and its members for pursuing the most efficient and least intrusive regulatory approaches. We believe that working “*to reduce regulatory uncertainty*” and “*taking timely and proportionate decisions grounded in evidence on relevant regulatory matters*” is crucial to provide confidence to investors.

Stakeholder engagement

As always, Cable Europe is looking forward to working with BEREC and with the NRAs to achieve informed and balanced solutions that enhance the market outputs and promote the sector.



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.