



Response to

BoR (17) 109

BEREC Strategy 2018-2020

5 July 2017

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I. About MVNO Europe

1. MVNO Europe represents various types of Mobile Virtual Network Operators, with different business models, addressing retail consumers, business users, the public sector, machine-to-machine (M2M) and Internet of Things (IoT), etc. <http://www.mvnoeurope.eu/members>
2. Our members provide mobile-only offers, fixed-mobile convergent offers and offers incorporating audio-visual media content, financial services, machine-to-machine communications including connected cars, embedded data SIMs for tablets, laptops and other devices, etc. Our members are also active on wholesale markets as MVNE (Enabler) / MVNA (Aggregator). MVNO Europe does not represent branded resellers.
3. MVNOs currently represent +/- 10% of SIM cards in the European Union.
4. MVNOs contribute strongly to competition and provide clear B2C and B2B end-user benefits. MVNOs also contribute to financing mobile networks through payment of wholesale charges which assure revenues to mobile network operators, whilst avoiding costly duplication of network assets.

II. Introduction

5. MVNO Europe welcomes the opportunity to present its contribution on BEREC's Strategy 2018-2020.
6. This contribution should be read in conjunction with the input MVNO Europe filed with BEREC on 5 April 2017 in response to BoR (17) 38. That material is provided in annex to this response, and is not repeated in this contribution.

III. Market and Technological Developments

7. MVNO Europe broadly agrees with BEREC's description of market and technological developments, but would like to invite BEREC to go further. Please allow us to draw attention to BEREC's statement, on page 3, paragraph 4, as follows:

"While network sharing may be an efficient way to reduce cost, such arrangements might also limit the level of infrastructure competition unless competition law principles are respected. As spectrum becomes an even more important resource to manage due to several competing needs of wireless technologies, such as 5G or fixed wireless access, spectrum sharing is another area in which cooperation between ECS operators might increasingly be explored."

8. Whilst we support this BEREC statement, we think that active monitoring and further attention is needed to developments on mobile markets, in particular:

a) Impact of consolidation and related competition law commitments on mobile market structure and dynamics. The impact differs strongly between Member States. For instance, the Austrian multi-MVNO / MVNO reference offer commitment is now producing positive effects in terms of multiple market entry, innovative service packaging, reduced retail pricing, and strong growth of MVNOs. By contrast, in Ireland, one of the two beneficiaries of competition law remedies has put the business up for sale in a loss-making situation. The other beneficiary may struggle to maintain its aggressive quasi-unlimited offers, on account of the roaming regulation and its implementing regulation. The German market is basically closed to new entry by Full MVNOs (a fact that is also affecting pan-European and global IoT markets), and the company that was the sole material beneficiary of competition law commitments is subject to a takeover offer. In the Spanish case, an MVNO was empowered by competition law commitments, to the extent that it managed to acquire the struggling 4th MNO, and became a fixed-mobile integrated player enjoying strong growth. The impact of the Belgian and Italian cases has yet to fully materialise, although Italian MNOs have launched or are preparing to launch 'fighting brands' in anticipation of the launch of the new MNO. We also draw attention to a 3 to 2 mobile merger which was notified to the Malta Competition and Consumer Affairs Authority.

BEREC's work should include analysis of market structures and related competitive dynamics, and special attention is needed in case market structures are not producing competitive outcomes. One way to assess this is by examining explicitly whether and to which extent (Full)MVNO access is granted, and the terms thereof, and to verify whether MVNOs can act as across-the board competitors.

b) Impact of fixed-mobile integration. Fixed and mobile networks are not only converging, but they are increasingly integrating with one-another at the physical layer, to become a single network not only in the core, but also in backhaul and access segments. This is expected to further increase, especially if small cells are deployed on a far larger scale in a '5G' context than they are today.

BEREC's work should reflect this fixed-mobile integration trend, in order to empower NRAs to act on an ex-ante basis in case competition problems arise.

c) '5G' networks. One of our members recently aptly described '5G' networks as 'shared tenant networks', where operators (MNOs, MVNOs, IoT companies, vertical sector actors,

and anyone else) would participate, at their relevant scale, in funding and operating the network, for example by acquiring a relevant 'network slice' and managing that 'network slice' itself.

BEREC's work should include facilitation of competition and innovation in '5G' networks, especially to ensure that '5G' does not lead to reduction of competition. Non-extension of (Full)MVNO access to '5G' (as has been observed for '4G' for a period extending to several years) would have predictable negative effects on market structure and competition, and can therefore be assessed on an ex-ante basis (examining either individual or collective behaviour of MNOs).

9. On the basis of the above, we confirm our request to BEREC to explicitly put the promotion of competition (in every Member State, for every technology), the development of a true European internal market (removing regulatory obstacles and addressing network operators' restrictive practices where appropriate), and end-user interests (B2C as well as B2B) at the strategic core of its Strategy for 2018-2020. If BEREC includes investment as a strategic pillar of its 2018-2020 Strategy (as it did in its 2015-2017 Mid-Term Strategy), we ask BEREC to explicitly recognise that: (i) MVNOs contribute to financing mobile networks through payment of wholesale charges which assure revenues to mobile network operators, whilst avoiding costly duplication of network assets, and (ii) MVNOs make considerable investments themselves in their core network, OSS/BSS systems, billing systems, etc.

IV. BEREC Strategic Priorities 2018-2020

10. BEREC's consultation document BoR (17) 109 refers, at the bottom of page 5, to the three overarching strategic objectives of: (i) promoting competition and investment, (ii) promoting the internal market, and (iii) empowering and protecting end-users, in the following manner:

"BEREC will continue to plan its annual work around these three strategic objectives for the period 2018-2020 and in doing so, take special consideration to the 5 strategic priorities listed below."

11. It is not entirely clear to us that the three overarching objectives will actually be listed in the final BEREC Strategy 2018-2020. We hereby ask BEREC to list the three overarching objectives in the final document, in such a manner that it is explicitly clear that the three overarching objectives are the core of BEREC's work, and the five strategic priorities are a development of the three overarching objectives.

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

12. MVNO Europe welcomes the last sentence of the description of Strategic Priority 1, which reads as follows:

"There will also be an important role for BEREC to look at access to high-capacity networks in more general terms (both fixed and wireless), such as how access to fixed high-capacity networks influence wireless network coverage and how the relationship may impact on the ultimate goal of increased connectivity."

13. We regret that basically the entirety of the remainder of the (short) text seems to concern fixed high-capacity networks. We therefore ask BEREC to modify the text to make it clear that connectivity challenges and access to high-capacity networks concerns mobile/wireless networks in an equal manner as fixed networks. For the details of MVNO Europe's position in this regard (fixed-mobile integration and '5G'), please refer to the elements we provided in paragraph 8, points b) and c) above.

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

14. Whilst we find this area of enquiry understandable for BEREC, it should not be to the detriment of BEREC and its constituent NRAs robustly addressing competition issues in telecommunications markets on an ex-ante basis, which is and remains NRAs' core mandate.
15. Our considerations on the distribution of digital services, devices, and IoT markets are contained in our response to BoR (17) 38 which is included as an annex.

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

16. We ask BEREC to explicitly and systematically encompass the promotion of competition (and not only innovation) also in Strategic Priority 3. For the details of MVNO Europe's position in this regard (fixed-mobile integration and '5G'), please refer to the elements we provided in paragraph 8, points b) and c) above.

VIII. Strategic Priority 4: Fostering a consistent approach of the net neutrality principles

17. MVNO Europe understands that this is a BEREC mandate imposed by EU Regulation. We ask BEREC to ensure that, when issuing/updating Guidelines, and when making other elements

de-facto mandates that NRAs will impose on operators, care is taken to ensure that MVNOs (which often are smaller operators) are not faced with disproportionate implementation costs.

IX. Strategic Priority 5: Exploring new ways to boost consumer empowerment

18. MVNO Europe understands that this is an important area for BEREC and its constituent NRAs. We ask BEREC to ensure that, when making proposals in this area, especially if elements become de-facto mandates that NRAs will impose on operators, care is taken to ensure that MVNOs (which often are smaller operators) are not faced with disproportionate implementation costs.

X. BEREC Work

19. MVNO Europe has examined the section entitled 'BEREC Work', including the part on stakeholder engagement. We support the proposed approach.

XI. MVNO Europe Contact Details

Should you require any clarifications or further information on the elements and positions set out by MVNO Europe in this response, please contact:

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XII. Annex – MVNO Europe Response to BoR (17) 38



Response to

BoR (17) 38

Stakeholder Consultation on the Review of the
BEREC Medium-Term Strategy for 2018-2020

5 April 2017

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I. About MVNO Europe

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II. Introduction

24. MVNO Europe welcomes the opportunity to present its views and expectations relating to BEREC's Mid-Term Strategy for the period 2018-2020, and is pleased to provide this brief contribution.

1) Do you have any comments on the elements presented above? (BEREC's introduction)

25. The extent to which pro-competitive policies, legislation and regulation will continue to be pursued in the years to come is currently at stake, as is the shape of EU telecommunications and ICT/Digital markets going forward, notably in light of the EC legislative proposal for a European Electronic Communications Code and the related EC Communication entitled '5G for Europe: An Action Plan'.
26. MVNO Europe expects BEREC's 2018-2020 Mid-Term Strategy to maintain and enhance its pro-competitive stance, and to continue to pursue the formation of a true EU internal market on a basis which makes sense for Europe-based challenger operators, ultimately for the benefit of end-users. Indeed, MVNO Europe expects BEREC to be instrumental in enabling challenger operators such as MVNOs to continue to play their role in delivering innovative solutions for all

types of customers (on B2C as well as on B2B markets), building on MVNOs' lead in areas such as attractive data-led offers, fixed-mobile convergence, and embedded mobile data connectivity.

27. In our response to BoR (16) 169, we noted with satisfaction that BEREC will be devoting particular attention to specific issues relating to business customers in the relevant work streams (*Section II, paragraph 5*). We confirm our request to BEREC to explicitly take account of the B2B segment in mobile markets, converged markets involving mobile connectivity, and new markets involving mobile connectivity in new ways. We especially ask BEREC to ensure that its actions enable and foster a viable and diversified European-led ecosystem for M2M and IoT, without undue fragmentation along national lines.

28. On the basis of the above, we ask BEREC to explicitly put the promotion of competition (in every Member State, for every technology), the development of a true European internal market (removing regulatory obstacles and addressing network operators' restrictive practices where appropriate), and end-user interests (B2C as well as B2B) at the strategic core of its Mid-Term Strategy for 2018-2020. If BEREC includes **investment** as a strategic pillar of its 2018-2020 Mid-Term Strategy (as it did in its 2015-2017 Mid-Term Strategy), we ask BEREC to explicitly recognise that: (i) MVNOs contribute to financing mobile networks through payment of wholesale charges which assure revenues to mobile network operators, whilst avoiding costly duplication of network assets, and (ii) MVNOs make considerable investments themselves in their core network, OSS/BSS systems, billing systems, etc.

III. Section 1 – Market and Technological Developments

a) The End-User Experience

- 2) *Of the issues listed above, which do you consider to be the most important in shaping the end-user experience? Please explain your answer in detail.*
- 3) *How can the interests of digitally disengaged citizens be best protected?*
- 4) *What can be done by BEREC to improve the end-user experience by providing more and easier-to-use information?*
- 5) *Are there any other significant trends/developments that BEREC should consider in relation to the end-user experience?*

29. MVNO Europe expresses its concern with regard to BEREC's reference to 'shaping the end-user experience', which is immediately followed by areas of potentially reinforced attention or even regulatory intervention by BEREC/NRAs. Regulators should not unduly substitute themselves for market demand and for the market mechanism; they should instead adopt measures enabling markets to evolve towards sustainable effective competition.
30. We are convinced that competition (supported by regulation where appropriate), resulting in choice between diversified market offerings (at different quality and price levels, in different bundles, bundles led by different products/services), is the only guarantor of: (i) a good customer experience, and (ii) the development of services/packages that attract digitally disengaged citizens. This is applicable to traditional telecommunications services, ICT/Digital services, and new integrated products/services in which connectivity is an underlying component, which may in the future be invisible to the end-user (sometimes sold without a recurring (telecoms) subscription).
31. In addition, it is key in the context of M2M/IoT, and new integrated products/services in which connectivity is an underlying component, that the businesses whose products/services necessarily include connectivity have genuine choice among providers of the underlying telecommunications services. In light of the products/services concerned (e.g. connected computing devices, cars, e-health, financial services, etc.), that choice will in many cases be affected by pan-European or even global considerations, rather than concern a national market, because the devices and related products/services travel across borders. BEREC's Mid-Term Strategy for 2018-2020 needs to reflect this, by ensuring a 'home market' at European scale for European businesses, including European MVNOs.
32. MVNO Europe members interact with the device industry in different ways. Problems relating to achieving full functionality for some devices for end-users using MVNOs' services have arisen, harming the MVNO customer experience (lack of 4G connectivity even where the underlying network supports 4G, problematic activation processes, issues with messaging, roaming, etc.). MVNO Europe has made considerable progress on these issues by engaging directly with device manufacturers on behalf of its membership, but vigilance remains appropriate.
33. On the basis of the above, MVNO Europe considers that the following points are key, in this order: (i) ensuring competition (supported by regulation (including MVNO access) where appropriate), enabling end-users to select providers (including MVNOs) and effectively switch to them, (iii) enabling businesses that integrate communications in their products/services to have genuine choice between providers, and switch between them, on a pan-European scale.

b) Competitive Dynamics in the Digital Ecosystem

- 6) *What aspects of the issues listed above do you believe to be most important? Please explain your answer in detail.*
- 7) *Are there any other significant trends/developments that BEREC should consider in relation to the digital ecosystem?*

34. MVNO Europe agrees that the issues/trends/developments identified by BEREC are clearly visible on mobile markets.
35. The way in which radio spectrum has historically been assigned with reference to technology constraints leads to the current mobile market structure, which is characterised by the presence of typically 3 or 4 mobile network operators, widespread network sharing among pairs of them, and fringe MVNOs. BEREC would be well-advised to keep future technology evolution under objective review in this regard, in order to understand whether more pro-competitive approaches to radio spectrum licensing become available and viable. The granting of MVNO access, and the conditions thereof, remains very diverse between Member States. Effects of mobile market consolidation and cross-sector mergers, and where applicable merger remedies on the mobile segment, are varied as well. Active promotion of competition remains appropriate, to enable markets to evolve towards sustainable effective competition. Several of our members report problems in securing MVNO access on acceptable terms, with Germany often identified as the most problematic EU Member State, resulting in impediments to competition on the German domestic mobile/bundles market, and structural detrimental effects on pan-European competition and indeed global competition on M2M/IoT market segments.
36. At least one additional trend/development needs to be given serious consideration by BEREC, as explained in the two paragraphs hereafter.
37. A key development is that connectivity is being 'baked-into' products/services of non-telecoms companies, and sold by non-telecom companies, sometimes without a recurring (telecoms) subscription. eBooks and car maintenance, mapping and infotainment are real-life illustrations which have been in existence for several years. Much more is in the pipeline, and MVNO Europe members are in the lead on some segments, on account of their ability to deliver cross-border solutions. However, their leadership position is at risk from restrictive practices by European MNOs, and regulatory obstacles in some Member States.

38. Europe is the 'home market' for European MVNOs who are leading providers of the telecoms services underlying products/services of non-telecoms companies. The markets concerned are in many cases actually of global dimension. There should therefore not be obstacles to European MVNOs being present and viable in every EU Member State. This is a key area of attention for BEREC (and co-legislators).
39. MVNO Europe members (who are European companies) operating M2M and IoT services on a multi-country/global basis express the need for a single EU-wide authorisation regime, with complete harmonisation of the regulatory obligations associated with such a single EU-wide authorisation. As an alternative, a country-of-origin principle, where the MVNO would have to comply only with the regulatory obligations applicable in its home country, would also be a solution.
40. In many EU Member States, MVNOs were prevented by MNOs from launching 4G simultaneously with their host operator(s), with delays on network capability parity sometimes exceeding 18 months, and even remaining to this day in some cases. This should not happen again with '5G'. Fit-for-purpose wholesale access for MVNOs, incl. in terms of network technologies and in terms of wholesale charges, is necessary in order to ensure sustainable competition and innovation (in technical and in commercial terms), and pan-European/global reach and competitiveness. MVNOs need to: (i) benefit from the same RAN technologies and the same RAN coverage as the Host MNO(s) on a non-discriminatory basis, and (ii) not be subject to margin-squeeze.
41. MVNO Europe members have had serious concerns that e-SIM could negatively affect competition. Considerable progress has been made on this issue by engaging directly in the standardisation process, but vigilance remains appropriate.

c) Evolution of Networks

8) *What aspects of the issues listed above do you believe to be most important? Please explain your answer in detail.*

9) *Are there any other significant trends/developments that BEREC should consider in relation to evolution of networks?*

42. MVNO Europe agrees that the technology developments listed by BEREC are relevant for mobile markets.

43. However, we think that BEREC/NRAs should avoid focusing on the capabilities of specific technologies and developing regulatory reasoning from the existence or prospects for such specific technologies. Instead, BEREC should maintain a principled stance on the justification for regulatory intervention, which is based on market circumstances and focused on the promotion of competition, to enable markets to evolve towards sustainable effective competition.
44. Network convergence between fixed and mobile, along with NFV/SDN, and '5G' does deserve particular attention on BEREC's part, in order for it to continue to take a pro-competitive stance. This is necessary in order to ensure that competition does not regress as a result of incumbent telecoms operators' structural advantages (e.g. ownership of the ubiquitous fixed network, matched by no fixed network competitor, which can be leveraged to unparalleled mobile backhaul capability for small cells across the national territory, control over the densest mobile network, resulting from that same structural advantage, plus advantages relating to state ownership/participation making it a privileged contractual partner of public sector entities).
45. We reiterate that in many EU Member States, MVNOs were prevented by MNOs from launching 4G simultaneously with their host operator(s), and some are facing delays to this day. This should not happen again with '5G'.

d) Over-Arching Questions

10-13)

46. Please refer to MVNO Europe's introduction and answers to Questions 1-12. These cover the strategic issues we consider relevant to BEREC's Mid-Term Strategy for 2018-2020.

IV. Section 2 – How BEREC Works and Engages with Stakeholders

a) BEREC's Work with the Regulatory Objectives

14) Do you have a concrete example where better coordination/harmonisation between NRAs would be or has been particularly beneficial for your activity, either directly or indirectly?

15) How do you consider that BEREC could further contribute to the development of a Digital Single Market (e.g. best practice dissemination)?

47. The reduction of Mobile Termination Rates contributes to enabling competition on mobile markets, including by MVNOs (and on fixed/bundle markets as well). This was understood early on by a small number of NRAs, which promoted their approach with other NRAs, and with the European Commission. The ERG (now BEREC) remained in observer mode. European Commission action (2009 EC Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU) proved to be required to move NRA positions on the issue (including until late 2016 – Germany). Full harmonisation remains elusive to this date, but considerable progress has been achieved. BEREC/NRAs should learn from this example, and consider whether they could have 'done better' in terms of agreed harmonisation. In 2017, the same issue is on the co-legislators' agenda again.
48. Another example is the harmonisation of ECNS notification/authorisation requirements. Only after the European Commission included a single notification system in its 2013 legislative proposal, did BEREC consider and propose its own system. Pressure on this issue subsided in the 2013/2014 co-legislative process, and BEREC subsequently did not take its own proposal forward. In 2017, the same issue is on the co-legislators' agenda again.
49. BEREC has opportunities to be a leader on coordination/harmonisation in many areas. Going forward, BEREC leadership is particularly necessary on M2M/IoT-related issues, to ensure that a pan-EU 'home market' is enabled for European companies, including MVNOs, to enable them to be global players on products/services that embed communications capabilities on a cross-border, pan-EU and global basis.

b) Towards a BEREC Stakeholder Engagement Strategy

16) Which of the above described practices can be used in order to increase BEREC's transparency and accountability? Are there any additional proposals for BEREC to increase its transparency and accountability?

17) Do you consider that BEREC's current engagement with stakeholders provides the opportunity to engage in the work of BEREC at the right time and at the right level? Are there any particular areas where you believe BEREC could improve or do things differently?

18) How can BEREC improve its communication to stakeholders and to the public? More specifically, which instrument(s) (press releases, public debriefings, information on the website, etc.) do you consider to be particularly useful and why? Do you have any proposals for new channels of engagement or for the improvement of the existing ones?

50. Since its formation in 2012, MVNO Europe (previously EAFM) has responded to all BEREC public consultations that it has considered relevant, and MVNO Europe has often been a speaker/panellist representing the association at the annual BEREC Stakeholder Forum and at (a small number of) thematic workshops. We are grateful that our views are considered by BEREC, and we have seen them reflected in BEREC consultation reports.
51. We would like to be completely sure that we are directly informed, in good time, of ALL BEREC thematic workshops, to enable us to consider our potential participation and contribution.
52. We do not have the resources to systematically track materials disseminated on Twitter and YouTube by BEREC. We ask that BEREC makes links to these materials available to interested stakeholders on a maillist, e.g. in a daily or weekly digest sent via e-mail. We would also very much welcome an e-mail alert for every item and new document added to BEREC's website.

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