

Stakeholder consultation on the review of the BEREC Medium-Term Strategy (MTS) for 2018-2020

ETNO Response (in blue)

Introduction

In 2017 BEREC is set to review its current Medium-Term Strategy (MTS) to make sure that its work stays relevant in relation to major developments in the digital ecosystem. The BEREC MTS has the function of guiding BEREC's work in the medium term and it serves as the blueprint for BEREC's annual work programmes. The MTS was last updated in 2014, establishing three over-arching strategic objectives that follow from the policy objectives and regulatory principles that BEREC members apply in accordance with Article 8 in the Framework Directive; promoting competition and investment, promoting the internal market and empowering and protecting end-users.

In this year's update of the MTS, BEREC will seek to establish a strategy for the period 2018-2020 and invite stakeholders to take an active role in this process.

To this end, BEREC is seeking input from stakeholders at the earliest stage possible on how BEREC work is perceived and on which market developments will be important for BEREC to consider in its MTS for the period 2018-2020. In Section 1 of this consultation, BEREC seeks open input on what market and technological developments could influence the new strategy, while also seeking answers to questions on more specific areas, such as end-user quality, competitive dynamics in digital markets and evolution of networks. In Section 2 BEREC is seeking answers to questions relating to how BEREC works with its current objectives and how stakeholder engagements could be improved.

BEREC enters this process maintaining its commitment to the three over-arching strategic objectives of the current MTS, which still remain relevant.

BEREC recognizes that the MTS for 2018-2020 will be drafted in a period of regulatory evolution. The ongoing Framework Review is still at an early stage, which makes it difficult to relate to. As a consequence, BEREC will pursue its work with the MTS independently of the Review, looking first to major market developments and stakeholder input as a source for updating its strategy.

After collecting stakeholder input, the current strategy will be updated and submitted for public consultation in June; the final version is expected to be adopted in October 2017.

BEREC welcomes your views on what the next BEREC MTS 2018-2020 should look like.

Question: Do you have any comments on the elements presented above?

ETNO welcomes the opportunity to provide input as from the earliest stage to the formulation of the BEREC MTS for 2018-2020.

Regarding the elements outlined above, we would like to make the following comments:

- Even though, as BEREC rightly points out, the legislative process on the European Electronic Communications Code (EECC) is ongoing, BEREC should add among its strategic objectives the new objective of the draft EECC, that of promoting “access to, and take-up of, very high capacity data connectivity, both fixed and mobile, by all Union citizens and businesses”, as well as fostering the investments needed to achieve the objective.
- The overriding objective should be to provide society with best-in-class connectivity, to empower EU citizens and promote growth across the EU in a sustainable competitive environment. If BEREC does not take into account this new objective of the EECC, the MTS risks being outdated from the outset;
- As a preliminary comment, we underline the need for caution in foreseeing the competitive and technological developments which will affect the electronic communications sector. Technological and competitive evolution in a market economy is the result of the work of market forces and innovation which, especially in the fast-moving digital sector, cannot be predicted with certainty in advance.

Section 1 - Market and Technological Developments

In this section, BEREC is seeking input on which market and technological developments should be considered in the Medium Term Strategy. These developments are classified in four categories; the end-user experience, competitive dynamics in the digital ecosystem, evolution of networks and overarching questions.

A. The end-user experience

Society is increasingly reliant on communications networks for a growing range of services and activities. Access to high quality electronic communications services is a prerequisite for maximising the benefits of an inclusive digital society.

The end-user experience depends on a range of parameters, including, inter alia:

- **Performance of the networks.** Quality of service is, and has always been, of the utmost interest to BEREC and will be the subject of further work in 2017 which will contribute to a common understanding of connectivity in the Union.

- **Devices.** These can play a gate-keeper role regarding access to certain digital contents and services; they also have an impact on qualitative aspects of the end-user experience
- **Factors influencing the take-up of technologies and digital services.** BEREC and NRAs continue to study factors which may restrict or impact on the end-user digital experiences and to research activities which may help combat digital exclusion and help to ensure that all citizens are connected and experience the benefits of digital innovations and the digital market. In this vein, assessing the digital experience from a consumer perspective by ensuring better and more granular information for people and businesses on the availability, speed, quality and pricing of services will play a part in improving people's ability to engage with the market and switch providers.
- **Data protection, privacy and network security.** These are essential to a well-functioning digital society. While this set of issues is not necessarily within the scope of BEREC or most of its constituent NRAs, BEREC is aware that they are increasingly important aspects of the end-user experience.
- **Consumer protection.** The protection of consumers, for example around issues such as billing, affordability and switching, is essential to the effective functioning of a digital society

Questions:

- 1) **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.**
 - All of the above-listed elements play a key role in the user experience. The comprehensive and diverse list actually highlights the complexity of the digital ecosystem and the wide range of issues to be taken into account. ETNO has been consistently advocating that the best way to enhance end-user experience is to promote innovation and quality of services, focusing on sustainable benefits for EU citizens and businesses, by maximizing availability, quality and choice of communications networks and digital services. For that purpose, it is important to promote sustainable investment and innovation, ensuring the good functioning of competitive markets. Regulation should also address barriers to innovation and foster investment in network deployment, thereby enabling the provision of better services for citizens and businesses.
 - In particular, regarding the issue related to the performance of the networks, ETNO believes that the transparency framework established by Regulation (EU) 2015/2120 is quite balanced and no further work is required on it. In particular, disproportionate regulatory intervention on technical architectures in order to monitor compliance with the provisions of the Regulation should be avoided.
 - Finally, many of the listed topics are relevant beyond the telecoms sector and should not be considered in an isolated way, but in the broader context, as perceived by consumers.

2) How can the interests of digitally disengaged citizens be best protected?

- The interests of digitally disengaged citizens can be best protected by creating an environment of trust in the use and take up of digital networks and services. Creation of trust, from a regulatory perspective, is ensured by the reliance on simple, easily enforceable rules, which are equivalently applicable to all functionally similar services, regardless of the nature of the provider.
- In fact, the coherence of the rules and the consistency of consumer protection standards are increasingly important, as Internet-based services have become substitutes for more traditional communication or media services and various sectors in the digital value chain are increasingly integrated to facilitate the cross-border provision of services, creating a fair balance in the digital value chain and providing end-users with consistent protection standards. Wherever possible, reliance on horizontal consumer protection and privacy rules, rather than outdated sector-specific ones, should be sought.
- It is also fundamental to stimulate demand and take-up of digital networks and services to improve citizens' engagement in the digital society, e.g., through public policies aimed at stimulating digital skills and the take-up of digital services by public authorities.
- Regulation needs to strike the right balance between ensuring reasonable safeguards and granting consumers the right to make informed decisions. Where consumers have choice and proper information, overly protective regulation is not proportionate.

3) What can be done by BEREC to improve the end-user experience by providing more and easier-to-use information?

- By relying on best practices experienced in the different EU Member States, taking into account the input of all relevant stakeholders, including users and industry providers.
- Such best practices should ensure that information is useful to consumers and presented in the appropriate format, and that the information requirements are proportionate to the benefits for consumers, which will not necessarily mean that ever more granular data is always appropriate or the best approach. In fact, it is not necessarily true that the more information, the better. On the contrary, too much information can have the effect of overwhelming consumers, driving their attention away from the most relevant pieces of information. Regulation should therefore focus on the actual consumer needs, avoiding excessive information layers. This obviously applies beyond the telecoms sector and requires a horizontal approach¹. Moreover, in specific cases, BEREC could issue guidelines on terms and conditions for digital applications that should be applied by all the players operating in

¹ E.g. developing a summary contract template containing the most crucial information, presented in a clear and user-friendly way.

the digital market. In particular, with regard to data protection, BEREC should coordinate with the EDPS as personal data use by providers should be communicated in a transparent and harmonized way with the use of a consistent privacy-labelling easily understandable by the end-users.

4) Are there any other significant trends/developments that BEREC should consider in relation to the end-user experience?

- It is also important to address converging technologies and services, through a technology-neutral approach, maintaining fair competition between all digital market players. The regulatory approach should seek to enhance transparency and availability of choice, relying on non-discrimination principles and regulatory intervention limited to the situations where the market fails to deliver. Proportionality is also key in this context to avoid imposition of extremely costly obligations that deliver minor benefits, having a systemic impact on product development and innovation processes, ultimately resulting to the detriment of the user experience.
- BEREC should also consider the digital environment change deriving from IoT services, especially on data ownership and end-user experience, refraining from interfering with the development of innovative business models. Finally, it is essential to draw a clear distinction between the actual end-user experience and the issues of contractual compliance. This is particularly relevant in the context of the monitoring of Internet Access Services, (“IAS”). End-user experience is a broader concept, which should consider other factors beyond the operator’s control and responsibility as agreed in the contract (e.g. the provider of the IAS has no influence on the quality of devices or home infrastructure, which may negatively impact the experienced speed).

B. Competitive dynamics in the digital ecosystem

Digital transformation creates new challenges and opportunities for electronic communications providers. Changing technological solutions, investment requirements and end-user needs require both transformations in the business models and enhanced cooperation across the established electronic communication market boundaries.

BEREC has been studying the evolution of the digital ecosystem to gain a better understanding of the challenges and opportunities developing for competition and innovation, but also for the regulator’s capacity to tackle those situations.

Important issues in this field include, inter alia:

- Increasing **market consolidation** and **cross-sector mergers**
- Tendency towards **oligopolistic markets**
- Emergence of **less homogenous competitive conditions**

- Appearance of **new entrants**
- **Cooperation** between ECS operators (e.g. network and spectrum sharing)
- **Interaction between ECS operators and other sectors** (i.e. between ECS operators and device manufacturers, content providers, the automotive industry, etc.)
- **Coopetition** (competition and cooperation) between ECS and OTT providers
- Introduction of the **e-SIM** which might change the competitive landscape in the mobile industry
- Ongoing popularity of **bundled services** which might increasingly take the form of services which combine not only communication and audio-visual services but other types of services as well and which may lead to the emergence of new business models and value chains

Questions:

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

- When it comes to the first two issues (market consolidation, cross-sector mergers and oligopolies), we have the following considerations: 1) these are topics that should be assessed by ex-post competition authorities, rather than by BEREC; 2) the fact that the electronic communications markets is characterized by the presence of few players is an intrinsic characteristic of such a capital-intensive industry, and therefore this is not a issue that should be singled out as extraordinary².
- The emergence of less homogenous conditions in EU markets is a topic that requires attention, and more importantly the application of granular geographic segmentation of remedies (avoiding the practice according to which local bottlenecks may lead to the imposition of disproportionate remedies at a broader geographical level). Commercial agreements between operators are important and have to be taken into account by NRAs in their geographic market analysis, as proposed by the EC in the draft EECC.
- The appearance of new entrants in EU telecoms markets over the past years (e.g. cable operators; municipal networks; wholesale-only business models; utilities rolling out electronic communications networks) has been an important trend which has not always led to the most appropriate regulatory response. The rise of new drivers of infrastructure competition should be taken into account in market analysis proceedings.
- Cooperation between ECS operators (network and spectrum sharing) is a feature of many markets, and one which can increase efficiencies and synergies. It should remain a process led by voluntary agreements, without requiring any specific regulatory fixes.

² We refer to our longstanding position on BEREC's work on Oligopoly analysis and regulation for further reference: [https://etno.eu/datas/positions-papers/2015/Reflection-Documents/RD415%20-%20ETNO%20Comments%20BoR%20\(15\)%2074%20-%20Oligopoly%20Analysis%20and%20Regulation.pdf](https://etno.eu/datas/positions-papers/2015/Reflection-Documents/RD415%20-%20ETNO%20Comments%20BoR%20(15)%2074%20-%20Oligopoly%20Analysis%20and%20Regulation.pdf)

- Interaction between ECS operators and other sectors: digitization of industry processes and services and the emergence of the Internet of Things are developing a wide a variety of business models, both B2B and B2C, entailing the provision of different services in which connectivity is only an element of the service. E-SIM cards are also an important technology enabling the provision of machine-to-machine services, where the traditional relationship between the operator users and other services providers is transformed. This is why highly prescriptive regulatory approaches focusing on a specific kind of services or providers will soon become outdated and ineffective. Regulation should be future-proof and principle-based not to stifle or interfere with the emergence of new business models.
- Coopetition / Competition between Telecoms and OTTs: services markets are today driven by a fierce competition between a broad variety of players, i.e., not only among telecom operators (in markets such as interpersonal communication services, internet access services that solely provide connectivity -e.g. leased lines - and specialised services), but also with new players providing attractive and innovative communication services over the internet. Consumers benefit directly from this increased competition and can make a choice between a wide-range of services. Moreover, in few years, all communication network providers will have switched traffic on their networks to IP. Therefore, irrespectively of the type of provider or service, the kind of data submitted over the network will be the same: IP-based. From an end-user perspective, the various communication services offered are increasingly perceived as substitutes, requiring consistent approaches from regulators, reflecting the consumer perspective and the new market realities.

In addition to the concepts of substitution and closeness of competition, more practical relevance needs to be given to the downstream / retail level. In fact, the competitive situation at the retail level ultimately determines whether market power at the upstream or intermediate (i.e., wholesale) level can be transferred via, e.g., higher prices, to end users.

Regulation should build trust, considering new kinds of services remuneration based on the processing of personal data, lack of transparency, and broader responsibility of market players regarding particular vulnerable consumers, to be addressed in horizontal legislation.

- Bundled services: The offer of bundled services of a different nature is indeed becoming increasingly popular, due to its significant benefits to consumers. Bundled offers emerge in the digital ecosystem from a wide range of players, such as social media platforms which often combine communication services, media distribution channels, platforms for user-generated content and other functionalities, network operators providing communication services, TV streaming (IP-TV), platforms for 3rd party offerings (e.g. Video on Demand) and internet access services (IAS). Again, the variety of business models requires a consistent regulatory approach. Regulators must take into account the new market dynamics.

2) Are there any other significant trends/developments that BEREC should consider in relation to the digital ecosystem?

- The extent to which the EU digital economy is capable of being attractive, competitive and thriving at the global level (including its electronic communications sector);
- When looking at the digital ecosystem, NRAs should take into account that the rapidly changing digital markets require an even greater flexibility and a forward looking view with regard to the market definition in order to capture the dynamic ever-changing nature of these digital business models, constantly developing and changing.

Other elements to consider in this context are:

- Two-and Multisided Markets: the digital services will often constitute new markets, such as online platforms, which are based on two- or multisided business models. These markets have to be defined in a manner that takes both sides and the indirect network effects (reinforced via lock-in mechanisms, switching costs, economies of scale and scope) in relation to the respective other side of the market into consideration. The feedback effects between the two markets cannot be ignored. Digital markets have high risk of tipping to winner-takes-it-all markets, as companies rather compete for the markets than in the markets
- The competitive assessment needs to analyse the business models in a more holistic way and assess how a dominant position of a platform may be abused with regard to further services and products.
- Zero-priced Services: another specificity of the digital economy is that a lot of the services are zero priced, such as online search or social networks. Whereas most of the current tools for competitive market analysis are based on the effects on consumer pricing, such as the SSNIP test, which is commonly used for market definition. These tools fail to assess competitive constraints, which zero-priced services may have or exert and therefore need to be adapted for digital markets. This means that zero-priced services must be fully recognized in the competitive analysis just as any price-based services are. Beyond that any competitive constraints or harms to the market that are caused by zero-priced services must be analysed with the same scrutiny by the competition authorities.
- Broader Market Definitions: fully recognizing the zero-priced services or new digital business models will not only lead to new market definition, but also has an impact on the traditional markets. Here the definition often will need to be expanded to include new digital services, exercising competitive constraints on certain services or products.

- Role of Data: consumers often pay with their personal data for services. Data has a unique value, in certain business models, higher than monetary compensation from the consumer, since data can be used for multiple other products and services. For instance it can be monetized at the advertisement or data analytics side. At the same time it can be used for creating new or optimizing existing products and services. In the digital economy the personal data of consumers is one of the crucial factors that the online platforms compete for. On the other hand, as a valuable asset, data can provide for a competitive advantage under certain circumstances. There are no strong barriers for the access to data, but the market position of certain players (controlling several sources of data, the processing technology, etc.), together with specific features of these markets (such as network effects, customisation, bundling and convergence, etc.), can constitute a source of market power
- Usage: Another important factor that online platforms compete for is the attention of the end-user. In particular, with the option for consumers to multi-home on different online platform it is all the more important to maximize the use of the consumer of your services on your platform. More use will mean more data and more advertisement and lead to higher lock-in effects.
- Competitive effects both within and between platforms therefore need to be better understood and integrated into the competition assessment.
- Finally, the competitive constraints exerted by (traditional) mobile services on fixed access markets, due to the increasing fixed-mobile substitutability, should be considered in the market definition and in the SMP assessment.

C. Evolution of networks

Much of BEREC's work focuses on the rapid changes in networks, and the associated challenges to NRAs working to monitor and regulate the market. While the current ECS ecosystem focuses primarily on how people connect, the next wave of innovation is anticipated to be in relation to connected "things".

Important issues in terms of evolution of networks include, inter alia:

- **Network convergence** between fixed and mobile technologies
- The expansion of **IoT and M2M services** and the potential impact of this on numbering, spectrum use, roaming, licensing etc.
- **Investment in high speed networks** to ensure capacity for bandwidth-heavy services
- **Fixed wireless technologies** as a potential alternative to certain fixed NGA networks
- Importance of **access to civil infrastructure** in the context of network deployment
- **5G deployment** and the emergence of associated new business models and regulatory challenges

- **Technological changes** which have the potential to impact on regulation. These include new ways to handle network resources such as Software Designed Networking (SDN) and Network Function Virtualization (NFV), and the potential evolution of networks generated and operated by the end-users themselves (e.g. mesh networks, free licenses, spectrum sharing).

Questions:

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

- All mentioned issues are important at present. They may remain important over the next years. In particular, investment in high speed networks and 5G deployment are key factors to meet the EU connectivity goals and the end users' increasing bandwidth needs (for applications and video)³. In this context, we encourage BEREC to look at ways to promote, in a technology-neutral way, the deployment of high-speed fixed and mobile networks

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

- N/A

D. Overarching Questions

1) Are there any market or technological trends that have not been addressed above? Please explain your answer in detail.

- Artificial Intelligence technology and Machine Learning approaches, based on the analysis of large amounts of data, could create bottlenecks in services provision and should be evaluated to guarantee transparency, openness and competition.

2) Over the next three years, which market or technological trends do you anticipate having the most significant impact on the ECS markets? Please explain your answer in detail.

- Internet based communication services will increasingly substitute traditional communication services. It is therefore of the utmost importance to create an environment where all players can compete in an equal footing, taking all the market realities into account. Achieving a level playing field between functionally equivalent services is therefore paramount.

3) Do NRAs and BEREC have the appropriate tools to deal with anticipated market changes and associated regulatory challenges over the next three years? Please explain your answer in detail, and, if possible, outline potential solutions.

- On the infrastructure side, as far as BEREC and NRAs competencies are defined in the current EU framework for electronic communications, yes.

4) In which ways can technological and market developments impact upon promotion of the single market?

Section 2 - How BEREC works and engages with stakeholders

In this section of the consultation we are seeking input on the way BEREC works to support the implementation of the regulatory objectives in the framework and on how BEREC consults with stakeholders during this process.

A. BEREC's work with the regulatory objectives

The core function of BEREC according to Art. 1.3 of the BEREC Regulation is to contribute to the development and better functioning of the internal market by aiming to ensure a consistent application of the EU regulatory framework.

The article furthermore states that in all its activities, BEREC shall pursue the same objectives as those of the National Regulatory Authorities (NRAs), as set out in Article 8 of the Framework Directive.

In this context, BEREC supports the European institutions and works with the NRAs in a number of different ways (some examples listed below):

- Implementing the EU regulatory framework's mandates (e.g. Net neutrality and Roaming) and aiming to give early advice to all NRAs on how related issues should be treated.
- Working on defining common sets of data required throughout Europe in order to allow comparisons and common approaches – E.g. OTT indicators are a BERECEUROSTAT cooperation, common approaches to QoS measurement etc.
- Examining and studying at an early stage certain technological developments which may impact the markets or existing regulation and trying to find common perspectives of how this should be treated (eg. network function virtualisation, software defined networks etc.)
- Cooperating with other European institutions depending on the subject (RSPG, EDPS, etc) and adjusting its approach to reflect changes in business models, technology and the value chain.

Questions:

1) 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?

N/A

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

Promoting the adoption of best practices across the EU.

B. Towards a BEREC stakeholder engagement strategy

BEREC currently engages with stakeholders (including the EU institutions) in a wide variety of ways, such as thematic workshops, public consultations, public debriefings, the annual BEREC Stakeholder Forum and through press releases and information on its web page, twitter and YouTube channels.

Questions:

1) 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?

- All of them are important. For additional proposals, see the following question

2) 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?

- In some areas, in the past (for example for the process related to the definition of the BEREC Net Neutrality Guidelines in 2016), we have felt that consultation should have taken place in a more consistent way during the whole process in the relevant EWG and, not only at the end;
- In general, the views of stakeholders should be taken into account during the whole process, public consultations should always be promoted (sometimes they are overlooked for timing issues) and all BEREC reports should always be made public. BEREC should justify the reasons for not accepting stakeholders' suggestions.

3) 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?

All instruments can be useful. In particular:

- Establishing communication channels with the sector allowing to exchange views with BEREC expert working groups. Organizing public workshops.
- Envisaging public consultations for all the relevant items included in the working plan.