

8.11.2017

EBU STATEMENT REGARDING THE BEREC DRAFT REPORT ON THE IMPACT OF PREMIUM CONTENT ON ECS MARKETS AND THE EFFECT OF DEVICES ON THE OPEN USE OF THE INTERNET (BOR (17) 181)

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 report and the opportunity to comment. We appreciate BEREC's transparent working methods and value the opportunities to engage and interact with BEREC notably through public consultations and stakeholder fora.
2. **EBU Members - public service media (PSM) organisations from across Europe - are key actors in the EU content industry. They actively drive the success of Europe's electronic communications sector**, including the take-up of network connectivity, with the development of new services, formats and technologies. They invested over 17.5 billion euros on high quality programmes, news and documentaries in the EU in 2016, of which 85.4% was on original content production.
3. **Media service providers, in turn, critically depend on electronic communications networks and services to reach their audiences.** Therefore, developments in telecommunications markets are of utmost importance for the media; market concentration and, more particularly, vertical integration and control over gateways can severely affect citizens' access to media content.
4. The BEREC report provides a comprehensive description of the value chain in relation to premium content as well as emerging bundling practices offered by ECS providers. **In particular, we broadly welcome the Report's findings in relation to the potential negative implications of bundling for competition and consumers alike.**
5. The Report provides a brief overview of recent merger decisions: **effective merger control can significantly contribute to addressing concerns over vertical integration** and, in particular, concerns over access to premium content, a valuable input that drives competition in a number of markets. Mergers affecting telecommunications and media markets give rise to a number of complex issues. As a result, competition authorities must ensure that they exercise merger control with due diligence.

A concentration that is wrongfully approved may significantly harm competition in the affected markets. This is illustrated by the recent annulment of the Commission's decision to clear the Liberty Global/Ziggo merger. The decision was annulled on the grounds that the Commission did not engage in a thorough analysis of concerns over access to premium sports content.

6. The report, alongside work undertaken by the EU institutions (notably regarding the proposed EU Electronic Communications Code) and by other regulatory bodies, are valuable tools in the wider process of developing effective and comprehensive public policy responses to the long-term challenges. These

¹ <http://www.ebu.ch>

challenges are linked to an ever more complex landscape characterized by accelerated market concentration and, in particular, vertical integration.

7. We believe that the BEREC report could constitute a useful step towards creating more synergies between telecoms policies and content policies. In particular BEREC could promote the implementation of telecoms policies in ways that contribute to audiovisual policy objectives. While the EU regulatory framework governing ECS regulates the transmission of content and not the content itself, it recognizes that the separation between transmission regulation and content regulation **"does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection"**.² Market and technological developments can only be expected to reinforce the need to explore such synergies in the coming years.
8. We have noted with much interest the Report's conclusion that suggests that device markets and related software platforms (operating systems and app stores) should be monitored by regulatory authorities.

Indeed, we believe that such monitoring is vital in view of the increasing importance of such end-user devices, OS and app stores as key gateways for users to access information. There are potential threats to competition and to the openness of the internet, as highlighted in the Report, but also to the freedom and pluralism of the media. We also welcome the broad notion of devices targeted in the report, which includes *inter alia* IPTV boxes and smart TVs.³ We encourage BEREC to pay due attention in further work to connected TV boxes and smart TVs, as the availability and appropriate prominence of PSM services, often in the form of apps, is vital to delivering our public purposes.

9. From a public service media perspective, and bearing in mind their public service mission and role in society, it is **essential that PSM are able to make their programmes and services accessible and findable for everyone, via users' preferred networks, platforms and devices.** This must not only be ensured for television and radio services, but also for on-demand services and apps.
10. Accordingly, **we look forward to contributing to BEREC's overall monitoring exercise and are ready to share and discuss with you the experiences and problems that our Members have encountered in this field,** for example with regard to cable TV boxes, as well as emerging issues, including developments on the TV device OS market and control of the app environment by OS platforms.
11. We welcome **BEREC's continued commitment to follow developments regarding the issues covered by the Report and warmly commend any follow-up initiatives** in this area.

² See Recital 5 of Directive 2002/21/EC (Framework Directive).

³ See Footnote 50 of the Report.