

# **BEREC Report on the outcome of the public consultation on the draft Work Programme for 2020**

5 December 2019

## Contents

I.	Introduction .....	3
II.	Background and BEREC Work in 2020 and Beyond.....	4
1.	Strategic Priority 1: Responding to connectivity challenges and to new conditions for access to high capacity networks .....	5
1.1	Carry-over work on Guidelines on very high capacity networks .....	5
1.2.	Carry-over work on BEREC Study on the determinants of investment in very high capacity networks.....	6
1.3.	Carry-over work on Guidelines on the identification of the network termination point..	7
1.4.	Carry-over work on Guidelines on the criteria for a consistent application of Article 61(3).....	8
1.5.	Carry-over work on Guidelines on the consistent application of the co-investment criteria .....	8
1.6.	Opinion on the review of the EC Recommendation on Relevant Markets .....	8
1.7.	Carry-over work on Guidelines for geographical surveys of network deployments.....	9
1.8.	Expert workshop with OECD - QoS .....	10
1.9.	BEREC Report on Access Regulation (including prices) based on EU State Aid .....	10
2.	Strategic Priority 2: Monitoring potential bottlenecks in the distribution of digital services	11
2.1	Update to the Guidelines on intra-EU communications .....	11
2.2	Intra-EU communications Benchmark Report .....	11
2.3	Report on Market & Economic issues of Digital Platforms .....	12
2.4	Workshop on data collection from Authorised Undertakings and OTTs .....	13
3.	Strategic Priority 3: Enabling 5G and promoting innovation in network technologies .....	14
3.1	Carry-over work on the impact of 5G on regulation.....	14
3.2	Peer review process .....	15
3.3	Workshop on infrastructure sharing .....	16
3.4	Report on security issues related to 5G implementation .....	17
4.	Strategic Priority 4: Fostering a consistent approach of the open internet principles .....	18
4.1	Carry-over work on update to the Guidelines on the Implementation of the Open Internet Regulation .....	18
4.2	Report on the implementation of Regulation (EU) 2015/2120 and BEREC Guidelines on the Implementation of the Open Internet Regulation.....	18
4.3	NRA Deployment support and sharing of practical experiences of the Net Neutrality Measurement tool.....	19
5.	Strategic Priority 5: Exploring new ways to boost consumer empowerment .....	20

5.1 Carry-over work on Guidelines on common criteria for undertakings other than ECN/ECS to manage numbering resources .....	20
5.2 Carry-over work on Guidelines detailing quality of service parameters .....	20
5.3 Carry-over work on Report on Member States' best practices to support the defining of adequate broadband internet access service .....	21
5.4 Carry-over work on Guidelines on how to assess the effectiveness of public warning systems transmitted by alternative means to mobile NB-ICS.....	21
5.5 Report on how to handle third party payment charges on mobile phone bills.....	22
5.6 Report on Penalties .....	23
6. BEREC obligatory work and stakeholder engagement.....	24
6.1 Ad hoc input to the European Union institutions or NRAs .....	24
6.2 Carry-over work on Database of E.164 numbers of European emergency services... ..	25
6.3 Carry-over work on Database of numbering resources with a right of extraterritorial use within the European Union.....	25
6.4 BEREC input to the setting of single EU-wide maximum fixed/mobile voice termination rates .....	25
6.5 BEREC input on the weighted average of maximum mobile termination rates across the EU .....	26
6.6 International Roaming benchmark data report .....	26
6.7 Transparency and comparability of international roaming tariffs .....	26
6.8 Ad hoc works – Inputs to any potential legislative proposals of the EC on roaming ...	27
6.9 Termination rates at the European level .....	27
6.10 Article 7/7A Phase II process.....	27
6.11 Report on regulatory accounting in practice.....	27
6.12 WACC parameters calculation and Report and VHCN Notice Opinion .....	28
6.13 BEREC Annual reports .....	28
6.14 Stakeholder Forum .....	28
6.15 BEREC Communications Plan 2020-2021 .....	29
6.16 BEREC Work Programmes 2020-2022.....	29
6.17 Review of the BEREC Medium-Term Strategy.....	29
6.18 Programming.....	31
6.19 Cooperation with EU institutions and institutional groups.....	31
6.20 International cooperation .....	31
6.21 Possible work for 2021 and beyond.....	32

## I. Introduction

During its 40<sup>th</sup> Plenary Meeting (3-4 October 2019 in Crete, Greece) BEREC approved for public consultation the draft BEREC Work Programme 2020 (WP 2020) and asked for input to the upcoming review of the BEREC Medium Term Strategy (MTS). The role of the public consultation is to increase transparency and to provide BEREC with valuable feedback from all interested parties. Indeed, this public consultation on the draft document follows BEREC's initial public consultation for inputs to the WP 2020, which closed on 23 April 2019 and prompted a wide spectrum of stakeholder engagement.

In accordance with BEREC's policy on public consultations, the current report is a summary of how stakeholders' views have been taken into account. In addition, BEREC also publishes all individual contributions on its website, taking into account stakeholders' requests for confidentiality. The public consultation was open from 7 October to 6 November 2019. BEREC also held a public hearing on the WP 2020 on 16 October 2019, organised as part of the 7<sup>th</sup> BEREC Stakeholder Forum meeting, which was open to the participation of all interested parties.

This document, then, summarises the responses received to the public consultation and presents BEREC's position with regard to suggestions and proposals put forward in those responses, as relevant. In total 18 responses were received, 2 of which are considered as confidential, based on the request of the respective respondents.

The 16 non-confidential contributions were received from the following organisations: Zerofiber, Article19, European Consumer Organisation (BEUC), Vodafone, European Telecommunications Network Operators' Association (ETNO), Global System for Mobile Communications Association (GSMA), European Automotive and Telecoms Alliance (EATA), Open Fiber, FTTH Council Europe, DIGITALEUROPE, Liberty Global, Telefónica, Public Safety Communications Europe (PSC Europe), Europe European Competitive Telecommunications Association (ECTA), Eir and MVNO Europe.

BEREC welcomes all contributions and thanks all stakeholders for their submissions. The non-confidential contributions received from stakeholders will be published in their entirety on the BEREC website.

Generally, the responses are both supportive and positive towards the work BEREC will engage in through 2020, and further into the following year 2021. Some stakeholders are keen to engage further with BEREC requiring additional consultations beyond those already planned by BEREC, and will do so on an ongoing basis through BEREC's many public consultations on the work set out in the BEREC WP 2020. BEREC will continue in its efforts to ensure such ongoing engagement and in particular, with respect to the many guidelines BEREC has been tasked with (in light of the EECC). BEREC appreciates this willingness to engage on behalf of its stakeholders and is continually working to improve its transparency and engagement with all stakeholders.

## II. Background and BEREC Work in 2020 and Beyond

In its draft Work Programme 2020 (chapter 'II. Background' and chapter 'III. BEREC Work in 2020 and beyond'), BEREC elaborated on the focus of its work in 2020 and beyond into 2021, which will be primarily the mandatory projects tasked to BEREC in light of the EECC and BEREC Regulation. BEREC's Medium-Term Strategy 2018-2020, its objectives and strategic priorities remain fundamental to the work of BEREC. Given the timing for transposition deadlines set out in the EECC, particularly with respect to guidelines, BEREC has paid specific attention to when public consultations are due to take place, in order to allow stakeholders sufficient opportunity to respond to such consultations. Six stakeholders provided direct responses to this chapter and those responses are summarised below.

Zerofiber notes that the new telecom code defines the space and direction for BEREC work. Furthermore shared spectrum and easier access to spectrum at lower cost are key priorities to encourage higher ICT investments and enhanced market performance.

Vodafone supports BEREC's proposed work programme overall. Vodafone believes that the three strategic objectives from BEREC's medium term strategy are the right issues to focus on.

ETNO commends BEREC for largely focusing on carrying out the strategic priorities and deliverables. At the same time, ETNO takes note of BEREC's growing interest in emerging areas such as Digital Platforms, the impact of 5G on regulation, and 5G security issues. However ETNO encourages BEREC to strictly focus on subjects that belong to the Body's immediate remit and that bring significant added value to the debate.

Liberty Global notes that continued implementation of the new Electronic Communications Code (Code) relates to large portion of BEREC's WP2020. During the implementation period, BEREC will play a pivotal role in ensuring that NRAs strike the right balance between achieving the Code objectives and the level of regulation. Liberty Global calls upon BEREC to ensure that the measures will be designed and adopted in line with the text and spirit of the applicable regulations, in a way that truly supports and fosters investments in new networks.

Liberty Global strongly supports BEREC's commitment to engage with stakeholders, with the aim of focussing its work on issues that are relevant to them. Liberty Global particularly appreciate BEREC's early calls for input (including on the Work Programme) and stakeholder workshops. However, Liberty Global considers that there is still room for improvement in the level of engagement. Furthermore Liberty Global appreciates that BEREC has to take into account the interest of all stakeholders however that does not refrain BEREC from meeting with individual stakeholders.

ECTA is of the view that it is particularly important for BEREC to improve the involvement of stakeholders at all stages leading up to the adoption of BEREC deliverables. ECTA believes that early calls for input, as they have been practised ahead of some public consultations, constitute good practice, and would generally encourage BEREC to further conduct these. ECTA considers stakeholder workshops particularly useful and would encourage wider use of them.

ECTA further confirms its support for BEREC maintaining all five current Strategic Priorities as the basis for the WP2020. In ECTA's view, these priorities are in accordance – not in conflict – with the EECC, nor do they in conflict with addressing developments of the digital ecosystem and 5G in a pro-competitive manner.

MVNO Europe notes that sections of the draft WP2020 acknowledge the increasing importance of topics such as the role digital platforms, security issues especially in relation to 5G networks, and the implications that 5G may have on the ecosystem and consequently on regulation. MVNO Europe agrees that these are important topics. However, addressing these should not be to the detriment of BEREC and NRAs fully exercising their mandate as set out in legislation, notably the continued promotion of competition and safeguarding the interests of EU citizens and other end-users of electronic communications networks and services.

BEREC appreciates the significant level of response to the overall draft Work Programme 2020, and thanks all respondents for taking the time to go into such detail in their submissions. Regarding these initial, high-level comments, BEREC welcomes the support for the work it will engage in through 2020 (and 2021), and notes the commentary with respect to stakeholder engagement, which is something that BEREC has continued to work at improving and will continue such efforts as it moves from its first decade of work into its second.

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

### **1.1 Carry-over work on Guidelines on very high capacity networks**

BEUC recommends that national regulatory authorities (NRAs) should be prudent when assessing Very High Capacity Networks (VHCN). BEUC concludes that connectivity is an important objective, but the other three regulatory objectives (i.e. competition, internal market and end-user interests) must be fulfilled simultaneously and in no lesser degree than the fulfilment of the connectivity objective.

Vodafone endorses BEREC's view that access to very high capacity networks is vital for competition to continue to benefit consumers and businesses, and for the realisation of the full potential of the digital ecosystem. Vodafone therefore supports that BEREC's first priority is work relating to connectivity challenges and new conditions for access to VHCN.

ETNO believes it would also be beneficial to have a wider discussion on the impact of the future VHCN Guidelines on different policy areas. Particularly, there is currently a consultation on geographic surveys, where it would have been necessary to know more about the BEREC views on VHCN scope in order to align the outcome of both guidelines.

FTTH Council believes that perhaps the most important item in the BEREC work programme is the Guidelines on VHCN. The FTTH Council appreciates the consultation process to date and looks forward to the formal public consultation and report. FTTH Council notes that the Guidelines may set the scope for Europe's network ambitions for the next 10 years and therefore its importance is paramount.

Liberty Global strongly supports regulatory policies that facilitate private deployment of VHCN and sees itself as having a key role in the investment and deployment of VHCN in Europe. Such policies should be technology-agnostic since future networks will not be limited to the network infrastructure and technologies that we know today. Liberty Global believes that any regulatory policy should therefore be designed to reward permanent innovation investment. Liberty Global also calls upon BEREC to ensure that the Guidelines on very high capacity networks will be designed and adopted in line with the text and spirit of the applicable regulations, in a way to ensure they truly support and foster investments in networks. Furthermore Liberty Global requires that stakeholders at all times are consulted and that their interests are taken into account.

ECTA appreciates that BEREC will hold a public consultation prior to the adoption of draft guidelines at Plenary 2 2020 (prior to adoption at Plenary 4 2020). ECTA emphasises that this work is crucial to the interpretation of art. 76 EECC on co-investment. ECTA is concerned that BEREC's work thus far has not yet provided indications as to where the boundary line will be drawn and at the same time not considered potentially legitimate technological solutions, such as novel generations of fixed wireless access technology. ECTA reasserts that technologies need to be examined with regard to their capabilities at wholesale level, not only at retail level.

Eir notes that the availability and take-up of very high capacity networks (VHCNs) and connectivity, i.e. connectivity provided over FTTH/B and 5G, are now elevated to core objectives of the new European Electronic Communications Code (EECC). As such and given the levels of investment that will be required to ensure ubiquitous gigabit connectivity, Eir encourages BEREC and NRAs to keep this at the forefront of their considerations when designing the relevant Guidelines and implementing measures.

MVNO Europe asks BEREC to be particularly attentive to fixed-mobile network integration, because it is likely that this may lead to new kinds of networks, which may (at least in part) meet the definition of "very high capacity network", and may therefore be subject to the guidelines BEREC will issue.

BEREC notes the strong support and the high importance that this work is being attributed by the respondents and will consider the input within its work on the VHCN guidelines during next year.

## **1.2. Carry-over work on BEREC Study on the determinants of investment in very high capacity networks**

ETNO is concerned that as such quantitative models are very complex and BEREC's effort seems to go beyond current scientific frontier in the academic literature with respect to market modelling. Furthermore, this type of modelling risks delivering unpredictable and inconsistent results, which raises questions about the utility and the employability of such model. ETNO believes that it is critical for different stakeholders to be closely involved in the development of the model.

GSMA is worried that no consultation has already occurred, and that no consultation is planned for the phase 2 of this initiative. Last year GSMA already provided the same comments with the suggestion of at least submitting the modelling to an independent body of economists to validate the reliability and robustness of the model.

Liberty Global already provided information in the development of this report, however it is not clear whether the report will become public. Liberty Global urges BEREC to both make the report public and provide stakeholders a chance to provide feedback. Liberty Global also urges BEREC to recognise the inherent unreliability of such a model, and to have the model tested by a group of independent economists to ensure that it is as reliable and robust as possible.

ECTA expresses concerns on potentially one-sided findings, notably where these are due to a lack of representativeness in terms of business models (e.g. B2C, B2B, B2B2C/IoT), and calls on BEREC to ensure that the findings be subject to stakeholder examination and feedback prior to drawing any regulatory conclusions.

Eir believes that the intention is that the model will potentially be used by NRAs to aid in decision making with regard to appropriate regulatory interventions, therefore eir is concerned that the work programme does not envisage a consultation for the latter phase of this project.

BEREC notes the concern expressed by stakeholder regarding the lack of consultation and the eventual use of the VHCN investment model within BEREC or by its member NRAs. We want to clarify that this work is an external study produced on behalf of BEREC and as such it is not something that BEREC would normally subject to public consultation at this stage. The next step is for BEREC to consider if and how the model could be used (Phase II) and in the event that this model is put to internal use, BEREC will provide the opportunity for stakeholders to provide their further input.

### **1.3. Carry-over work on Guidelines on the identification of the network termination point**

BEUC welcomes BEREC having a separate consultation on network termination points. BEUC strongly encourages BEREC to further develop its views on mobile termination points since the definition of termination points takes an additional important dimension in the context of the Internet of Things.

Liberty Global welcomes the consultation of the draft BEREC Guidelines on common approaches to the identification of the network termination point. Liberty Global believes that a solid set of guidelines will be able to address the current regulatory divergence in this domain. However, Liberty Global is of the opinion that, given that BEREC indicated this project



will be based on the results of the BEREC report “Location of the network termination point”, which BEREC published in October 2018, the latter report should have been publicly consulted as well. Liberty Global holds that this report contains several factual inaccuracies.

BEREC notes that the public consultation of this work is welcomed and that the work is considered important by the respondents. The public consultation will provide the opportunity to give input on the final guidelines, including on what is deemed as the presence of factual inaccuracies.

#### **1.4. Carry-over work on Guidelines on the criteria for a consistent application of Article 61(3)**

Liberty Global notes that BEREC issued an initial call for input in mid-2019. However, there appear to be no additional foreseen opportunities to comment until the draft guidelines are published in Q2 2020. Liberty Global would welcome an opportunity to discuss this topic, it would be useful to hold at least a stakeholder workshop given the importance of this topic.

ECTA appreciates that BEREC will hold a public consultation prior to the adoption of draft guidelines at Plenary 2 2020 (prior to adoption at Plenary 4 2020). ECTA cannot emphasise enough how crucial this topic is to the evolution of the EU regulatory framework for electronic communications, and for its members which might both be providers and/or takers of symmetric access.

BEREC notes the request/appreciation by respondents to be further involved in this work prior to the adoption of the final guidelines. BEREC can confirm that a public consultation will be held prior to the finalisation of this work.

#### **1.5. Carry-over work on Guidelines on the consistent application of the co-investment criteria**

ECTA insists that it is fully involved in any workshops, and expects to be able to participate in a full public consultation on the exact text of proposed Guidelines on this key subject. Art. 76 EEC is market shaping, and indeed will shape the role of NRAs going forward. This is a topic of utmost importance to challenger electronic communications network and services operators.

BEREC notes the request by ECTA and welcomes all stakeholders to be involved in the workshop and public consultation planned for this work during next year.

#### **1.6. Opinion on the review of the EC Recommendation on Relevant Markets**

PSC Europe requests that the Public Safety Communication mobile broadband and Public safety IoT markets are considered. Public Safety is a new customer to mobile broadband and IoT markets, mostly concerning the sharing of commercial mobile infrastructure.

ECTA recommends that BEREC enhance its own influence and create productive transparency, by initiating its own public consultation, or at least by publishing BEREC's Opinion well ahead of the European Commission's decision-making deadline, inviting stakeholder input, thereby encouraging the European Commission itself to seek stakeholder input based on the BEREC Opinion before finalising the review of the Recommendation.

MVNO Europe notes that BEREC does not intend to conduct a public consultation on this workstream. We ask BEREC to change its position, such an important BEREC Opinion should be subject to public consultation which is especially important given that the European Commission may not consult stakeholders about revised text of the Recommendation.

BEREC notes the interest by stakeholders in this work. While BEREC won't be conducting a public consultation on its opinion, it will become publicly available once approved by the Board of Regulators. Hence, BEREC has clarified in the work programme that the BEREC opinion will be published.

## **1.7. Carry-over work on Guidelines for geographical surveys of network deployments**

GSMA suggests to ensure investment certainty and to best address end-user interests, data from surveys on NGN deployment, which would be made available to end-users, should not concern future deployments, but only focus on existing networks and already confirmed plans of networks deployments.

Liberty Global notes important that any Guidelines on this topic has a highly confidential nature of network information (particularly build forecasts). Liberty Global considers that very little weight can be placed on long range forecasts and therefore would not support a forecast for longer than 1 year as the information is likely to be very unreliable past this point. Additionally, network coverage information and particularly planned deployments is highly sensitive commercially and its disclosure is likely to have serious implications for operators.

ECTA is worried about potential regulatory over-reach by BEREC and by NRAs (and other competent authorities) regarding this work item. ECTA is concerned that BEREC's work on Article 22 EECC might imply an undue administrative burden on challenger operators, and, worse, that it could seriously harm competition. ECTA recalls here that the European Commission, when proposing this provision, sought to prevent SMP operators from damaging new entrant's network deployment by threatening or engaging in overbuild.

Eir notes its concerns in relation to the period for forecasting that is currently foreseen by BEREC and the uncertainty resulting from the case-by-case assessment as to whether deployment information is considered to be confidential or otherwise. According to Recital 62 of the EECC, the relevant forecasts should concern periods of up to three years. However,

BEREC recommends that the forecast period should be at least 3 years. Eir believes that the decision as to whether information is confidential or otherwise should ultimately be at the discretion of the network operator, regardless of size.

BEREC notes the strong interest and the concern expressed by the respondents and will consider the input within its work on the guidelines for geographical surveys of network deployment during next year.

## 1.8. Expert workshop with OECD - QoS

Liberty Global supports BEREC's commitment to international cooperation and the sharing of experiences which generate insights and facilitate evidence-based decision and policy making. Liberty Global encourages BEREC to undertake initiatives such as the planned expert workshop with OECD. Subsequently, in the opinion of Liberty Global BEREC should also hold at least a stakeholder workshop to discuss the outcomes of the OECD expert workshop.

PSC Europe notes that QoS and QoE are crucially important in the Public Safety domain. Intelligibility of voice, for example, has been and will continue to be a crucial factor. QoE is important for the end user of the information services.

ECTA notes that BEREC – OECD workshops held previously were open to stakeholders, and were very focused on the Internet ecosystem and notably on interconnection between internet service providers. Therefore ECTA expects to be invited again.

BEREC welcomes the interest expressed by the respondents on the topic of QoS and QoE. To accommodate the request for participation at the workshop, BEREC will keep the workshop open for stakeholders and the work programme has been updated accordingly.

## 1.9. BEREC Report on Access Regulation (including prices) based on EU State Aid

FTTH Council believes that the public sector can act as a vital catalyst to accelerate the roll out of infrastructure by lowering entry barriers and facilitating competition. This can be developed based on access to passive infrastructures and the ability to pursue independent deployment strategies. According to FTTH Council investments in passive infrastructures lower entry barriers for all operators and provide for any operator to move first which in turn may create its own dynamic. The FTTH Council believes that this competitive race can be the best mechanism for ensuring mass-market deployment in an appropriate and timely manner. FTTH Council notes that NRAs have already had some time to implement the measures contained in the BCRD therefore FTTH Council believes that the Commission and NRAs could learn from best practices developed in Europe by the leading NRAs.

Liberty Global acknowledges that there will be some limited areas in which private investment will never be viable and which may require State intervention. However the use of public funds should be avoided as much as possible. Liberty Global believes that state subsidies have a distortive effect on competition and disincentivise private investment. They should therefore be used as a measure of last resort, and limited to the small percentage of areas.

ECTA expresses its surprise regarding this work item, even though ECTA intrinsically welcomes it being a very relevant work item. ECTA suggests to include this 2021 item in the BEREC WP2020. Furthermore ECTA believes that this topic should be subject of a call for input and public consultation on a draft BEREC document.

Eir believes that there is a need to speed up VHCN deployment and reduce unnecessary costs and associated bureaucratic barriers. Timely and consistent implementation of the EECC as well as a revision of the Broadband Cost Reduction Directive (BCRD) will aid in this. Eir assumes that a specific request for input from BEREC will emerge during the course of any review of the BCRD and the weight that such input holds, Eir urges BEREC to consider engaging with all relevant stakeholders in advance of its deliberations with regards to its position.

BEREC thanks the respondents for their input and will take it into consideration within its work on the guidelines during next year and the year after that. A public consultation is not foreseen in this work at this stage but this may change once it has been concluded what additional information may be needed to complete this work.

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

### **2.1 Update to the Guidelines on intra-EU communications**

BEUC welcomes that BEREC will consult on the updated guidelines on intra-EU communications. BEUC recalls that exceptions to the intra-EU communications' caps are highly unlikely to occur because the maximum prices are clearly above the costs for providing intra-EU communications. BEUC also urges BEREC that additional charges only to be based on actual, justifiable, objective and fair costs.

BEREC thanks BEUC for the input and welcomes its participation in the public consultation.

### **2.2 Intra-EU communications Benchmark Report**

No comments received.

## 2.3 Report on Market & Economic issues of Digital Platforms

Article19 welcomes BEREC's initiative to monitor the development of digital platforms and their potential impact on competition dynamics, consumer privacy and security concern. Article19 calls on BEREC to undertake further reflections and actions in coordination and cooperation with other relevant enforcers, in primis competition, data protection and consumer protection authorities. Moreover, Article19 believes that BEREC's work streams under the strategic priority 2 and strategic priority 5 (consumer empowerment) should be strongly coordinated and should mutually reinforce one another.

BEUC encourages BEREC to consider in its report several issues related to device neutrality, building up on ARCEP's and other NRAs' work. Furthermore, BEUC encourages BEREC to conduct this work in cooperation with competition, data protection, market surveillance and consumer protection authorities.

Vodafone considers to extend the proposed areas of the work programme on digital platforms to include the post-2021 work on the Internet Value Chain (monitoring the effects on the internet value chain of factors such as mobile Handsets, Operation Systems and Application stores).

ETNO agrees that the distribution of powers and the identification of bottlenecks in the distribution of digital services including electronic communications services are crucial topics that are rightfully undergoing broad discussions both at EU and national level, both from the regulatory and competition standpoints. When considering ex-ante tools for digital platforms, ETNO recommends BEREC to ensure that providers of ECS do not fall under a duplicate set of ex-ante rules but that new rules focus areas of market failures.

GSMA welcomes the efforts of the relevant public authorities to evaluate how the digital economy has evolved and restates the importance of the identification of new potential bottlenecks. BEREC's input to the policy debate could be very relevant for instance, in the event decision-makers were to assess ex-ante tools.

DigitalEurope considers that issues around the market and economic dynamics of digital platforms should remain the purview of the responsible competition authorities. DigitalEurope urges BEREC to modify the proposed workstream in order to avoid regulatory overlap and ensure that any competition issues digital platforms may give rise to should be addressed by competent authorities in a coherent manner.

Liberty Global understands that BEREC, with its significant experience in the telecommunications sector, can assist policy makers with regards to understanding and regulating complex markets. However, Liberty Global believes that BEREC's role in this arena should be limited to sharing knowledge to help policy makers rather than to assume any particular role. We have not seen any justification for a possible extension of ex ante SMP regulation to digital platform markets.

Telefónica notes that In a platform era where two-sided markets are becoming pervasive, digital services are usually zero-priced in exchange of customers personal data in one side of the market that will be monetized in other markets, mainly for targeted advertisement purposes. This situation allows an extreme accumulation of data turned into insights and knowledge of customers' behaviour, which in turn leads into an extraordinary market power. Since the mere ex-post application of competition law is proving insufficient to address this situation, not only because of the length of the procedures, but even more because of the difficulty to design and impose ex-post remedies for effective market repair, some form of ex ante regulation seems inevitable.

Telefónica strongly encourages BEREC and NRA's to pursue a deeper understanding of digital markets and leverage on their experience in order to guarantee competition across the value chain, as well as, to avoid any market power abuse by digital gatekeepers.

ECTA considers it justified for BEREC to examine the specific links between electronic communications networks, services, markets and the digital ecosystem, this must not distract BEREC and NRAs from fully exercising their statutory duties and implementing actions to fulfil their priorities on electronic communications markets.

Eir notes that the issues related to the nature of potential bottlenecks in the provision of digital services is currently being widely discussed at both the EU and Member State level and it has become clear that the EU needs the same rules for digital as well as traditional services, rules that should be proportionate and harmonised across Member States. Eir is also concerned that given the numerous work streams on issues related to bottlenecks in the digital services space at both EU and Member State level, there will likely be some level of duplication of effort.

BEREC thanks all the respondents for sharing their thoughts about the scope and relevance of the planned work on Digital Platforms. BEREC wishes to underline that the aim of this work is to provide BEREC with a better understanding of digital platforms and that due consideration will be taken not to overlap the work in areas for which BEREC lacks the relevant competence.

## **2.4 Workshop on data collection from Authorised Undertakings and OTTs**

BEUC expects BEREC to open this workshop to consumer organisations. BEUC also urges BEREC to put its intended work on the Internet Value Chain back into its 2020 work programme, in particular to address device neutrality.

ETNO for a long time called on regulators to collect information from providers of number-independent interpersonal communications services (NI-ICS) in order to improve their ability to carry out comprehensive, accurate market analysis. According to ETNO a workshop on data collection from authorised undertakings and OTTs will be a useful step toward elaborating objectives and parameters for the collection of market data from NI-ICS.

GSMA supports additional collection of information by regulators from providers of number-independent interpersonal communications services (NI-ICS) in order to improve their ability

to carry out comprehensive, accurate market analysis. A workshop on data collection from authorised undertakings and OTTs will be a useful step forward.

ECTA asks to be invited to this workshop to understand BEREC/NRA intentions and projects as well as to ensure competitive equality of opportunity between old and new providers of electronic communications. ECTA considers that this subject will be critical to ensuring effectiveness of the new legislative framework for electronic communications, and accordingly welcomes that this topic will be the subject of a BEREC public consultation in 2020.

Eir particularly welcomes BEREC's separate work on a potential proposal for Guidelines on the collection of data from OTT service providers. However, given BEREC's limited remit with regard to the provision of services other than ECS and the numerous other obligatory work items, Eir is concerned that an overt focus on the potential manner in which to regulate such services may come at the expense of the work required to ensure a consistent application of the existing and forthcoming frameworks by NRAs. Eir welcomes BEREC's plan to organise a workshop for stakeholders to be consulted on data collection. Given the nature of OTT services and the manner in which they are used by consumers, it is important for NRAs to gain an additional understanding of the ways in which they influence the competitive dynamics in the market.

BEREC thanks the respondents for their inputs and notes the interest to participate in the workshop. To accommodate the requests to be involved in this workshop, BEREC has clarified in the work programme that the workshop will be open for stakeholder participation.

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

#### **3.1 Carry-over work on the impact of 5G on regulation**

Article19 believes that allocating local licences for spectrum can allow more vertical uses, boost innovation and lead to better quality and more choices. Thus, Article19 suggest that BEREC closely monitors this trend and supports its uptake as a best practice within the EU. Article19 urges regulatory authorities within the EU to better follow the work of standard setting organisations. Technical standardization plays a fundamental role as it determines whose technologies and whose intellectual property rights will bring in revenue and spur on future innovation in next generation networks.

BEUC welcomes BEREC's commitment to work on 5G in cooperation with other EU bodies. BEUC recommends BEREC to clearly identify aspects that fall within its competence, refer to the work done by other authorities and to undertake a bigger cross-sector cooperation with other authorities.

Vodafone welcomes BEREC's further study of the impact of regulation on 5G. In particular, Vodafone believes that despite Europe's ambition to create a Digital Single Market, the terms for award of 5G spectrum across Member States to-date have been quite diverse.

Governments and regulators tend to be pursuing various, and often conflicting, objectives. For example, Vodafone mentions the case of raising excessive revenues for Treasury, therefore changing market structure through the reservation of spectrum.

ETNO invites BEREC to adopt a neutral approach on the relationships between verticals and Mobile Network Operators in its effort to support 5G deployment in the EU. ETNO notes that NRAs should not introduce any bias in the definition of relationships between these commercial parties especially considering the early stage of 5G launch.

Openfiber expresses its appreciation for the work that BEREC planned to carry out to address the strategic priority to enable 5G and promoting innovation in network technologies, as indicated in the draft “BEREC 2020 Work Programme”. In particular, Open Fiber welcomes that BEREC is considering further explorative work by organizing a stakeholder workshop, which would represent an occasion to also address the topic of Neutral Hosts.

PSC Europe remarks that Service coverage is more important for Public Safety and other critical users who then provide specific vertical services to their users. Service coverage should also be mapped as they become available. PSC Europe recommends to carry out an initial study regarding the regulatory needs to support the adoption of 5G based upon the specific vertical sector case for pan-European Public Safety Mobile Broadband.

ECTA cautions BEREC against treating 5G in any way differently from previous generation networks when addressing competition and end-user interests. Where BEREC refers to ‘a review mechanism to keep up with market development’, this can be subject to interpretation. ECTA expects BEREC and its members to conceive of a balanced strategy to ensure that the transition to a 5G-enabled wireless ecosystem does not bear prejudice to still ongoing improvement and calibration of existing networks.

Eir notes that 5G vertical ecosystem models are not yet ready and plans are therefore not concrete. Eir considers that it may be too early to focus on detailed frameworks for specific verticals or indeed the definition of separate mobile network indicators for use by verticals.

MVNO Europe calls upon BEREC to actively collect data and report on the wholesale dimension of 5G: (i) availability (or lack thereof) and take-up IoT/5G wholesale international roaming; (ii) availability (or lack thereof) and take-up of 5G Full MVNO access; (iii) availability (or lack thereof) and take-up of ‘network slices; (iv) the barriers to and benefits of enabling new business models. MVNO Europe reminds BEREC that in many EU Member States, MVNOs were prevented from launching 4G simultaneously with their host operator(s), with delays on network capability parity often exceeding 18 months.

BEREC thanks the respondents for their valuable input and will take it into consideration in its work on looking at the impact of 5G on regulation during next year.

### 3.2 Peer review process



ETNO believes that the peer review process will be important element in order to create an investment-inducing environment with a view to accelerate 5G implementation in the EU. ETNO feels that the peer review process would benefit from wider stakeholder engagement and ETNO would be happy to provide inputs and share our practical experience.

DigitalEurope sees benefits in the peer review process as a basis for improved collaboration and harmonisation of practices in Europe in the spectrum auctions domain, stakeholder workshops and the annual report will also increase transparency and provide more information to the overall mobile industry.

In ECTA's view, it is essential for stakeholders to understand how and by whom BEREC may be represented in this context, and what its contributions are likely to be. If peer reviews on radio spectrum assignment occur in practice (since it is essentially optional) and imply material changes to draft decisions that previously have already been the subject of national consultation, ECTA believes that these need to be subject to a new national consultation.

BEREC thanks the respondents for their input and agrees with the importance of the peer review process for improved collaboration and harmonisation.

### 3.3 Workshop on infrastructure sharing

Zerofiber notes that shared spectrum and easier access to spectrum at lower cost are key priorities to encourage higher ICT investments and enhanced market performance.

Article19 believes that in the absence of regulatory incentives in the direction of separating authentication from the base infrastructure, the mobile network operators, who own and operate the network, have the spectrum licenses and provide end-consumer access services. Thus, they will continue to be de facto central pillars of all digital service provision.

BEUC notes that when considering network sharing agreements, it is important to consider that these can raise competition concerns when they take place between undertakings with significant market power since such agreements can also reduce the incentives to invest and diversify infrastructure. BEUC suggest that NRAs should closely monitor and act within their powers so this worry does not materialise.

ETNO believes that the infrastructure sharing will be important element in order to create an investment-inducing environment with a view to accelerate 5G implementation in the EU. ETNO feels that the infrastructure sharing would benefit from wider stakeholder engagement and ETNO would be happy to provide inputs and share our practical experience. Regarding network sharing, BEREC's recent work provided for a backward-looking approach, missing the positive elements and also the increased need for cooperation in a 5G-environment.

DigitalEurope supports a BEREC-coordinated campaign on EMF-related issues aiming at a better understanding of the compliance of general public exposure to radiofrequency limit values and removing artificial barriers in the rollout of 5G networks.

ECTA welcomes that BEREC will organise a workshop, but also cautions against BEREC making rapid insufficiently considered changes to its Common Position on account of 5G somehow being different.

BEREC thanks the respondents for sharing their thoughts on the challenges and benefits of infrastructure sharing and welcomes their further participation in the planned workshop.

### **3.4 Report on security issues related to 5G implementation**

Article19 notes that current actions by different EU bodies are blocking mobile network operators and equipment manufacturers from advancing security and privacy for end-consumers and European companies. Article19 proposes to include in the scope of future investigations a thorough mapping of legal bases invoked by member state authorities to justify limitations of security or privacy features in 5G, and that BEREC actively monitors whether adequate legal bases exist for proposals advanced by governments that actively participate in 3GPP standardization activities.

Article19 suggests BEREC to consider requesting, in its national context, that operators disclose their ability to implement already standardized privacy and security features, in a manner similar to already well-tested performance measurements for network coverage and broadband speed. Article19 notes that BEREC could consider cooperating with ENISA in this regard. Article19 also recommends BEREC to include in its work plan a work stream dedicated to 5G the analysis of likely challenges related to authentication in case of network slicing.

ETNO supports a European approach to the security of 5G and of its supply chain. A harmonised approach will be conducive to ensuring resilience of 5G networks across Europe and trust in digital services enabled by 5G.

DigitalEurope supports a harmonised European approach that should ensure resilience of networks across Europe and trust in digital services enabled by 5G. Sharing of existing practices between Member States can contribute to a better common understanding of and approach to 5G risks and to identifying ways to address them effectively.

MVNO Europe welcomes that BEREC aims to inform other EU and national institutions dealing with security aspects on the functioning of electronic communications markets. MVNO Europe expects BEREC and NRAs to remain mindful of their statutory duties to protect competition and choice, at all levels of the ecosystem. MVNO Europe regrets that no public consultations are planned in this workstream.

Taking into account the Commission Recommendation of 26 March 2019 on Cybersecurity of 5G networks, Liberty Global is of the opinion that BEREC's involvement in the identification of both risks and appropriate specific measures to mitigate these risks is to be welcomed. Given its excellent relations with stakeholders, both directly and through national regulators, BEREC can contribute significantly to the policymaking in this domain. However, Liberty Global holds that BEREC should pay close attention so not as to go beyond its mandate.

ECTA welcomes that BEREC aims to inform other EU and national institutions dealing with security aspects on the functioning of electronic communications markets. In doing so, ECTA

expects BEREC to protect competition and choice, at all levels of the ecosystem, to avoid damage to competition, hence competition and ultimately end-user interests. ECTA regrets that no public consultations are planned.

BEREC thanks the respondents for their input and notes the thoughts shared on what role BEREC can play in this work and where it can best contribute.

## **4. Strategic Priority 4: Fostering a consistent approach of the open internet principles**

### **4.1 Carry-over work on update to the Guidelines on the Implementation of the Open Internet Regulation**

BEUC is supportive of BEREC's work on the implementation of the Open Internet Regulation. BEUC considers that the final updated guidelines can be an opportunity to preserve good points included in the current guidelines and improve or clarify others.

ETNO appreciates that the Open Internet Regulation sets out important principles on the provision of Internet Access Services (IAS) and welcomes the review of the current BEREC Guidelines on the Open Internet.

Liberty Global holds that a substantive amendment of the Guidelines at this stage is premature and risks upsetting regulatory stability. In addition, Liberty Global fears that the prioritization of updating the Guidelines will lead to deprioritisation of other overdue work items in this domain.

BEREC welcomes the support for the update of the guidelines and would like to highlight that the update is not intended to result in substantive amendments, but rather clarifications in order to further facilitate a harmonized application of the Regulation. Moreover, the update will aim to increase regulatory certainty by providing more detailed guidance based on the practical application of the Regulation and current guidelines.

### **4.2 Report on the implementation of Regulation (EU) 2015/2120 and BEREC Guidelines on the Implementation of the Open Internet Regulation**

Article19 believes that BEREC should look with favour at DNS-over-HTTPS (DoH), which is a new protocol for DNS provisioning that may guarantee stronger security and privacy for end-

users, as well as more transparent choices on who to trust for an end-user. Article 19 recommends BEREC looks to DoH as a best practice to be supported.

Liberty Global holds that the reporting on the implementation of the Open Internet should be BEREC's key priority since further efforts can be made to ensure the harmonized application of the Regulation by the regulators. Liberty Global supports BEREC's initiatives on IPv6 deployment and on the technical assessment of traffic management techniques in the context of zero rating offers. However, procedurally, Liberty Global is concerned that these initiatives do not appear to be open to stakeholder engagement and that the annual report is not open to public consultation either.

ECTA notes that transition from IPv4 to IPv6 is included in Section 4.2. Some ECTA members have serious concerns about this transition, in particular as this entails risks to competition, potentially harming smaller operators focused on delivering services to businesses and public administrations while relying on wholesale inputs from SMP operators.

BEREC notes the importance of the implementation work as perceived by stakeholders and ensures stakeholders that the report of the implementation is a priority for BEREC. With regards to the work foreseen for 2020 on traffic management techniques in the context of zero rating and similar offers, the objective is for NRAs to learn from each other and exchange experiences, which in turn will increase knowledge as well as harmonization of the supervision process. Regarding IPv6, similarly, the workshop is intended as an exchange on expert level in order to share best practices in the deployment of IPv6 and BEREC will publish a summary report following the workshop. Finally, the work stream on implementation covers all sorts of implementation issues and as such impacts of increased encryption, e.g. new variants of DNS, will also be discussed.

### **4.3 NRA Deployment support and sharing of practical experiences of the Net Neutrality Measurement tool**

BEUC is looking forward to the first results of the Net Neutrality Measurement tool, which we hope will improve the enforcement of EU's net neutrality rules.

Vodafone proposes to include testing and feedback with operators to the NRA Deployment support and sharing of practical experiences of the Net Neutrality Measurement tool. Allowing for testing and feedback with operators would ensure that the tool is accurate.

GSMA notes that the NRA Deployment support and sharing of practical experiences of the Net Neutrality Measurement tool workstream should include testing and feedback with operators to ensure that the tool is accurate.

Eir welcomes BEREC's carry-over work on the net neutrality measurement tool and that BEREC envisages external co-operation with stakeholders as part of its deliverables in this regard. The inconsistencies across Member States are not currently being addressed by NRAs, which is negatively impacting on those operators who are compliant in relation to non-compliant providers.

Liberty Global supports BEREC's work stream aimed at deployment of the Net Neutrality Measurement tool. In view of the need to ensure a consistent implementation of the Regulation, as laid down above, Liberty Global supports BEREC's intention to facilitate the exchange of experiences and the monitoring of how this tool can be best utilized to support regulators' supervisory roles.

ECTA has doubts about the costs/benefits of imposing BEREC or NRA mandated net neutrality measurement tools. The external deliverables for this workstream (i.e. towards network operators and service providers) are unclear.

BEREC notes the interest in the Net Neutrality Measurement tool and confirms that once finalized, BEREC will, as set out in the Work Programme, seek to co-operate with stakeholders e.g. via giving presentations and via stakeholder workshops. The exact form of this cooperation, or external deliverables, will be communicated by BEREC once the tool is finalized and BEREC has formed a better understanding of how this interaction may be carried out.

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

### **5.1 Carry-over work on Guidelines on common criteria for undertakings other than ECN/ECS to manage numbering resources**

ECTA considers this work item to be fundamentally misplaced and calls on BEREC to move it under Strategic Priority 2 regarding the monitoring of potential bottlenecks to the distribution of digital services.

BEREC ensures that although one work stream is considered to be primarily focused on one of BEREC's Strategic Priorities, most of BEREC activities are in fact related to several Strategic Priorities.

### **5.2 Carry-over work on Guidelines detailing quality of service parameters**

Liberty Global notes that the Guidelines should also take heed to ensure consistent interpretation of the core concepts of QoS, in line with the Open Internet Regulation. Liberty Global urges BEREC to maintain a dialogue with stakeholders to ensure these Guidelines remain up-to-date, in view of the rapid technological developments in this domain.

ECTA notes that these workstreams are at early stages, and therefore ECTA will consider its position on these as part of examining the specific BEREC consultations. ECTA asks BEREC to be cognisant of the fact that alternative operators relying on wholesale access to SMP operators' networks (or other operators' networks) do not control the most essential elements of the quality of the service provided. Therefore, ECTA considers it necessary to accompany the legally mandated work under the EECC by explicit workstreams focusing on proving non-discrimination on QoS between wholesale access providers and access takers.

BEREC appreciates the input to the QoS Guidelines, and on the specific request of keeping them up to date, BEREC recalls that the process of undertaking a review of the Guidelines will commence two years from the publication of the Guidelines. Subsequent reviews will be determined by BEREC and will be agreed and set out in future BEREC work programmes. With regards to non-discrimination on QoS, this is a subject matter which BEREC has listed as potential work item for 2021 and beyond in the BEREC Work Programme for 2020.

### **5.3 Carry-over work on Report on Member States' best practices to support the defining of adequate broadband internet access service**

Liberty Global notes the extent that there remain concerns about availability and quality, we consider that these are more adequately addressed through alternative regulatory measures and the universal service obligations are a tool of last resort. According to Liberty Global the list of basic services should not be expanded to additional services that go beyond this purpose, or seek to achieve Gigabit-society goals. These are more appropriately achieved through promoting private investment in network infrastructure.

BEREC thanks for the input on the matter but recalls that the Report on Member States' best practices to support the defining of adequate broadband internet access service is called for by the EECC (Article 84(3)). In light of this, BEREC will fulfilled its duty in line with the Code but does not aim to expand the report more than what is asked for.

### **5.4 Carry-over work on Guidelines on how to assess the effectiveness of public warning systems transmitted by alternative means to mobile NB-ICS**

DigitalEurope notes that considering many of the services that may in the future fall in scope, as either NB-ICS or NI-ICS, are pan-European services by nature, it is imperative for industry to have a clear and consistent view across Member States to avoid the same service being regulated differently in different Member States. Therefore DigitalEurope invites BEREC to develop Guidelines to ensure consistency across Member States concerning the definitions of number-based interpersonal communications services (NB-ICS) and number-independent

interpersonal communications services (NI-ICS) and also provide NRAs with Guidelines on the technical feasibility assessments that the EECC requires for access to emergency services from network-independent NB-ICS.

PSC Europe suggests that a short recommendation regarding the guidelines be prepared for the Implementation of EECC Article 110. The guidelines should recommend which 110(1)-PWS systems, are considered to be the 'benchmark' against which 110(2)-PWS systems should be assessed. The guidelines will need to define a number of criteria against which ECSPWS' should be assessed in terms of coverage and capacity to reach end-users.

ECTA expects BEREC to provide further details on this subject in the context of the public consultation schedules for after P4/19.

BEREC appreciates the input received from respondents and agrees on the importance of avoiding differences in regulation between Member States. BEREC further confirms that the guidelines will define a number of criteria against which ECS-PWS' should be assessed in terms of coverage and capacity to reach end-users. In order to assess the effectiveness of the 110(2)-PWS', the guidelines shall assess the performance of 110(1)-PWS against these criteria, as far as possible in order to create a benchmark. The criteria will be described and recommendations on aspects to be taken into account for each criterion will be given.

## **5.5 Report on how to handle third party payment charges on mobile phone bills**

BEUC notes that BEREC's report on how to handle third party payment charges on mobile phone bills is scheduled to be published only in 2021. In other words, there is no substantive work foreseen on this strategic priority for 2020.

Vodafone notes that the workstream focussing on third party payment charges on mobile phone bills should consider overlaps and contradictions between telecoms and financial regulation. For example this could include restrictions on offering the ability to charge for third party services and the requirement to provide access to a directory enquiries service.

GSMA argues that that the workstream of third party payment charges on mobile phone bills should consider overlaps and contradictions between telecoms and financial regulation. For example this could include restrictions on offering the ability to charge for third party services and the requirement to provide access to a directory enquiries service.

Liberty Global supports initiatives for BEREC to better understand specific issues in the telecommunications and to work towards a harmonised European approach to consumer issues. BEREC specifically has a key role in promoting evidence-based policy, and should undertake these discussions with a view to obtaining relevant consumer-based data to inform decision-making. Any over-regulation will have a chilling effect on investment, innovation and consumer welfare. For example, Liberty Global refers to the increasingly burdensome national consumer transparency obligations which are leading to information overload.

ECTA notes that the proposed work on this subject matter is principally exploratory in nature and that a public consultation will be forthcoming in 2021. ECTA is concerned that inclusion of this work item lacks identification of a clear problem analysis justifying the expenditure of scarce administrative resources on this subject at a time when Code implementation is fully ongoing. ECTA suggests therefore that this item be carried forward to the BEREC Work Programme for 2021 and that a stakeholder workshop be organised in the interim to scope the need for action.

BEREC recognizes that stakeholders have different views on the timing and urgency of this work item, and ensures respondents that effective implementation of the Code and delivery of the various guidelines are key priorities for BEREC in 2020. Still, there are other subject matters, which are of importance, and the timing of the different workstreams as set out in the Work Programme is carefully crafted in order to allow for both Code- and non-Code related items. As such, in order for BEREC to have a document to put forward for public consultation at Plenary 1 2021, this work will have to commence in 2020, why concerns that no work will be undertaken in 2020 are unfounded. BEREC notes respondents believe the workstream should consider overlaps and contradictions between telecoms and financial regulation and will consider this, and other respondent input, in the work going forward.

## 5.6 Report on Penalties

BEUC welcomes BEREC's important and very welcomed forthcoming report on penalties seems it will not be public or be subject to consultation. BEUC asks to make BEREC's report on penalties public. This can help improving the implementation and enforcement of applicable rules.

MVNO Europe expresses its surprise on the inclusion of the new topics on 'third party payment charges on mobile phone bills and NRAs' enforcement powers when it comes to penalties' (Sections 5.5 and 5.6). MVNO Europe urges BEREC to handle these topics prudently, and to interact with stakeholders such as MVNO Europe on this as early as possible in the development of BEREC deliverables, in order to avoid introducing new overly bureaucratic rules and penalties, which might end-up harming competition rather than promoting it.

Liberty Global notes that it is not clear what specific issues relating to penalties that BEREC intends to examine as part of this report. Liberty Global considers that more information is needed to assist stakeholders to identify whether they are likely to be affected by the proposed report, and the level of engagement necessary. In any case, we believe it may be premature, in light of the new end-user rights provisions of the Code.

ECTA considers that national legislation and rules on penalties, NRA enforcement powers, and NRAs' approaches to imposing penalties for non-compliance are extremely variable between Member States, and would benefit from comparison in a BEREC report. ECTA is of the view that such a report must clearly distinguish between penalties imposed at retail and wholesale level, and examine the basis for applying penalties in either domain. ECTA considers the plan of adopting a report solely for internal use a lost opportunity.



BEREC notes the interest in this workstream and would like to reassure respondents that no additional or new regulation in the area is foreseen as a result of this internal workstream. Rather, NRAs have identified a need for cooperation in order to benchmark between the different national systems and practices when it comes to enforcement on both retail and wholesale level, also in relation to the new provisions as set out in the Code. At this stage though, in order for the work conducted to be informative and helpful for BEREC NRAs, the outcome will remain internal. BEREC understands the interest from respondents to take part of the results, and will in the future consider if any additional work in the area can be shared with stakeholders through various means.

## 6. BEREC obligatory work and stakeholder engagement

### 6.1 Ad hoc input to the European Union institutions or NRAs

Article19 welcomes BEREC's willingness to cooperate closely with the European Union institutions and the national regulatory authorities. Nevertheless, Article19 encourages BEREC to broaden the range so as to include other enforcers dealing with digital markets.

EATA suggests that BEREC's Work Programme for 2020 contains an analysis for a consistent interpretation and application of the concept of Electronic Communications Service ("ECS") in the European Electronic Communications Code ("EECC"). When applied to Cooperative, Connected and Automated Mobility, market participants and members of EATA would appreciate concrete guidance on the ECS concept. EATA and its members call on BEREC to investigate under item 6.1 of its Work Programme for 2020 how to clarify the scope of application of the EECC to ensure that ECS providers and M2M service providers can engage in the development of intelligent transport solutions and promote EU leadership in this domain without either side being subject to inappropriate and disproportionate regulatory obligations.

MVNO Europe wishes to expressly thank BEREC for its June 2019 Opinion on the functioning of the roaming market and its September 2019 supplementary analysis on wholesale roaming costs. MVNO Europe trusts that BEREC will continue to collect data and to make its voice heard as and when the roaming regime comes up for discussion again among the EU institutions.

ECTA considers that all BEREC input to the European Commission should be subject to public consultation, or at least be published early, to enable stakeholders to rely on it in their representations to the European Commission and other EU institutions during the EU decision-making process.

BEREC appreciates and welcomes that stakeholders understand the need for BEREC of close cooperation with EU institutions and among NRAs. As to the suggestion to widen cooperation, BEREC would like to point to sections 6.19 and 6.20 in the Work Programme which further set out the intended collaborations for the year to come. The list is however not exhaustive, and other organisations and institutions might also be relevant. In response to the suggestion that BEREC should undertake to clarify the concept of Electronic Communications Service ("ECS")

in the EECC, BEREC agrees and have included an explicit reference so that this and other notions stemming from the Code will be subject to BEREC discussion and possible definition. With regards to the suggestion that BEREC input and opinions to the EC should be consulted on, BEREC would generally not see public consultations as the right tool when BEREC is tasked to give a BEREC opinion/input on proposals. BEREC will, however, consider to publish any opinion or input as early as possible in line with what has been suggested.

## **6.2 Carry-over work on Database of E.164 numbers of European emergency services**

Vodafone supports this carry-over work item. Vodafone recalls that there has been significant recent discussion in relation to the use of numbering for eCall services. Vodafone proposes that the scope of this platform is extended to cover eCall.

BEREC welcomes the support for the workstream and notes the suggestion on inclusion of eCall although BEREC cannot at this stage commit to such inclusion; BEREC will consider the suggestion in the work going forward.

## **6.3 Carry-over work on Database of numbering resources with a right of extraterritorial use within the European Union**

Vodafone supports BEREC's carry-over work on Database of numbering resources with a right of extraterritorial use within the European Union. Vodafone asks BEREC to ensure that guidance to NRAs is in place such that barriers to extra-territorial use do not arise on a day-to-day basis.

BEREC thanks for the support and agrees that barriers to extra-territorial use are not desirable, this workstream is however focused on the database with the purpose of enabling NRAs/OCAs to more easily check the undertakings' compliance with the conditions associated to using numbers.

## **6.4 BEREC input to the setting of single EU-wide maximum fixed/mobile voice termination rates**

MVNO Europe welcomes that BEREC will play a role in this workstream. MVNO Europe feels that industry stakeholders are largely sidelined, and must rely on the willingness of NRAs to

involve them. MVNO Europe considers that a public consultation on this item is essential, to ensure an open public policy debate on this high-impact subject.

ECTA considers it essential for BEREC to conduct a public consultation on its proposed inputs to the European Commission on wholesale fixed and mobile call termination markets, covering all elements and issues at stake, i.e. not only the per-minute rates, but also the recurring wholesale interconnection port charges, for meaningful discussion in good time to have effect on the European Commission's ultimate decision-making process. ECTA therefore insists, that this work item needs to be subject to public consultation.

BEREC notes the concerns from stakeholders vis-à-vis the single EU-wide maximum fixed/mobile voice termination rates. As previously explained in section 6.1, BEREC generally interprets the request for a BEREC opinion as just that – not something to publicly consult on and get feedback on. In this specific case, the BEREC opinion is expected to assess the evolution of fixed and mobile termination rates, the changes in consumption patterns for fixed and mobile services, and the potential effects on operators of setting single maximum EU-wide wholesale termination rates for both fixed and mobile voice. BEREC would encourage stakeholders to participate through the means open to them, e.g. workshops and data collection.

## **6.5 BEREC input on the weighted average of maximum mobile termination rates across the EU**

No comments received.

## **6.6 International Roaming benchmark data report**

ECTA welcomes that BEREC will produce two benchmark reports on the evolution of prices and volumes. As the forthcoming review of the wholesale roaming charges is an important milestone and the Commission will present a report to the European Parliament and the Council, ECTA considers that BEREC should attach particular importance to the functioning of the wholesale roaming market and publish an analytical report on its functioning that should be subject to a public consultation.

BEREC thanks for the support and notes the suggestion of publishing an analytical report on the functioning of the wholesale roaming market.

## **6.7 Transparency and comparability of international roaming tariffs**

No comments received.

## 6.8 Ad hoc works – Inputs to any potential legislative proposals of the EC on roaming

Liberty Global expects that industry will be consulted with respect to any potential legislative proposals relating to the Roaming Regulation. However, given that BEREC is committed to engage with stakeholders and this initiative to provide input to the Commission impacts stakeholder interests, Liberty Global calls upon BEREC to ensure that stakeholders at all times are consulted and that their interests are taken into account.

BEREC thanks for the support and notes the suggestion of publishing an analytical report on the functioning of the wholesale roaming market.

## 6.9 Termination rates at the European level

No comments received.

## 6.10 Article 7/7A Phase II process

ECTA considers that BEREC has a key role in assessing cases where the European Commission escalates an NRA notification. Unfortunately, in ECTA's experience, the BEREC process on Art. 7/7a cases has been particularly lacking in transparency, without any possibility of engaging on cases that by their nature have had wider relevance beyond the individual market. ECTA believes that such high-stake cases should benefit from open discussion.

BEREC understands the interest in cases that may have effect and relevance beyond the individual market. BEREC however follows what is set out in the Framework Directive concerning the Article 7/7a process and no stakeholder involvements is foreseen at the stage of BEREC's contribution.

## 6.11 Report on regulatory accounting in practice

No comments received.

## 6.12 WACC parameters calculation and Report and VHCN Notice Opinion

GSMA noted that the Working Programme provides for the adoption in the plenary 1 2020 of a Report on WACC parameters. Even though BEREC will calculate the parameters according to the methodology set by the forthcoming European Commission notice, GSMA believes that BEREC should give stakeholders the opportunity to comment on this report through a public consultation.

Liberty Global considers that the remuneration of investment in VHCN (including through the WACC) is an extremely important issue. In particular, we urge BEREC to ensure that the WACC parameters cater for a premium for investment in VHCN in a technology-neutral fashion.

In ECTA's view, this proposal appears as an envisaged artificial mechanism to inflate wholesale access charges for access to SMP operators' networks, which is likely to damage competition and ultimately end-user interests. ECTA urges BEREC to be very cautious in discussions with the European Commission and avoid participating in such a mechanism, which will not only reduce competition and end-user benefits, but also harm take-up of VHCN connectivity where end-user affordability is at stake.

Eir notes that although BEREC will calculate the WACC parameters following the methodology laid down in the Commission's WACC Guidance, the work stream would likely still benefit from providing for stakeholder engagement in the form of a public consultation.

BEREC thanks for the contributions to this workstream and appreciates the interest, especially for the WACC in relation to VHCN investment. For the report, which will be adopted at plenary 2, as set out in the Work Programme, BEREC is tasked with calculating various parameters of the WACC formula according to the methodology laid down in the EU WACC Notice, and as such no public consultation is foreseen. For the other part of the workstream, which is a potential opinion to the EC, BEREC reiterates what it stated above about generally not consulting on its own opinions but will strive to publish any opinion or input as early as possible. In addition, BEREC would like to encourage stakeholders to take the opportunities to engage which might be offered by the EC, such as workshops or consultations.

## 6.13 BEREC Annual reports

No comments received.

## 6.14 Stakeholder Forum

BEUC suggests that BEREC's 2020 Stakeholder Forum should ensure gender, geographic and stakeholder balance in its sessions. Stakeholder engagement should never jeopardise BEREC's independence.

ETNO recommends rethinking the overall concept of the BEREC Stakeholder Forum in order to make it more meaningful and effective for both BEREC and its stakeholders. In ETNO's view, the Forum should facilitate a series of expert discussions around a set of defined topics between BEREC issue leads and experts from participating parties.

MVNO Europe encourages BEREC to enable MVNO Europe to also participate in panels at these recurring BEREC events. However, MVNO Europe does consider it appropriate to comment that the panels did not contain as diverse a representation of stakeholders as we consider necessary, notably in terms of those providing wholesale access, and those who take up wholesale access.

ECTA wishes to express its conviction that BEREC's key stakeholders, those that are fundamentally affected by BEREC's and NRA decision-making practice on a day-to-day basis, should be given far better opportunities to make their point of view clear at BEREC's Stakeholder Forums.

BEREC welcomes the reflections on the Stakeholder Forum and truly appreciates all suggestions that may improve BEREC's interaction with stakeholders. BEREC strives to have a balanced representation of participants over time and this is something BEREC tracks and evaluates. For the 2020 Stakeholder Forum, BEREC is considering how to make room in the agenda for more expert discussions and will try to accommodate stakeholders wish to have time set aside also for presentations by stakeholders.

## **6.15 BEREC Communications Plan 2020-2021**

No comments received.

## **6.16 BEREC Work Programmes 2020-2022**

No comments received.

## **6.17 Review of the BEREC Medium-Term Strategy**

Article19 welcomes BEREC's willingness to cooperate closely with the European Union institutions and the national regulatory authorities. Nevertheless, Article19 encourages BEREC to broaden the range so as to include other enforcers dealing with digital markets.

Article 19 encourages BEREC to include the cooperation with these actors in its considerations for the Medium-Term Strategy.

BEUC recommends BEREC to strengthen consumer protection and empowerment as a strategic pillar and a priority reflected not only into a particular workstream, but in all BEREC's activities. BEUC also recommends to strengthen collaboration and cooperation with other authorities not to step into the competences of other EU regulators, bodies and agencies.

ECTA As regards the current Medium-Term Strategy 2018-2020 (MTS), which is the framework within which the WP2020 is to be developed, ECTA insists that the objectives remain specified in accordance therewith. A reference at this level to 'promoting connectivity across Europe' should therefore be removed so as to not retrospectively amend the current Medium Term Strategy.

ETNO lists the following forward looking initial reflections based on current market trends and ongoing work and discussions at EU level. Promoting competition and investment should remain a key principle, focusing specifically on reducing 5G and fibre rollout costs. Competitive situation in the telco market is evolving due to changing business models (partially backed up by regulation). The infrastructure wholesale model is gaining ground, but there is discussion about risk of monopolisation. According to ETNO 5G should be integrated into "competition and investment" priority rather than singled out as a separate priority. Furthermore a priority objective should be the establishment of structured cooperation mechanisms with competent authorities in emerging areas like Digital Platforms.

MVNO Europe asks BEREC to redefine the title of Strategic Priority 3 (2018-2020) in the MTS 2021-2023, to read 'Enabling IoT/5G, promoting innovation in network technologies, and achieving a competitive and diversified 5G ecosystem'.

MVNO Europe expects BEREC's 2021-2023 Medium-Term Strategy (MTS 2021-2023) to maintain and enhance its pro-competitive stance. 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. MVNO adds that it is key in the context of IoT and 5G, and new integrated products and services in which connectivity is an underlying component, that the businesses whose products and services necessarily include connectivity have genuine choice among providers of the underlying telecommunications services, including European MVNOs. BEREC's MTS 2021-2023 needs to reflect the above, by ensuring a 'home market' at European scale for European businesses, including European MVNOs.

MVNO Europe notes that problems relating to achieving full functionality for some devices (notably iOS devices) for end-users using MVNOs' services have arisen, harming the MVNO customer experience. MVNO Europe requests the help of BEREC and NRAs and the EU institutions to resolve these problems, and to ensure that they do not arise again for 5G.

ECTA agrees that it is good practice for BEREC to periodically adopt a Medium-Term Strategy, rooting itself in principles and objectives it will adhere to, guiding its own more punctual decision-making, avoiding to be unduly influenced by the technological hype of the day, lobbying, and short-term political pressures. Given that the new European Commission has

not yet taken office, ECTA would suggest delaying the public consultation on the Medium-Term Strategy 2021-2023 until mid- 2020 and scheduling the final adoption for Plenary 4.

BEREC thanks respondents for all valuable input in this early call for input on the new BEREC Strategy. The suggestions will be considered in development of the draft Strategy. BEREC looks forward to continuing the dialogue with stakeholders on the Strategy, both at the 2020 Stakeholder Forum as well as in the public consultation on the Strategy.

## 6.18 Programming

No comments received.

## 6.19 Cooperation with EU institutions and institutional groups

Article19 calls on BEREC to widen the space for cooperation in order to include other actors (national regulator, the national competition authority and the national data protection authority). As for the concrete modalities that this cooperation could take, Article19 suggests to look at best practices at the national level.

BEUC warmly welcomes the inclusion of this point. BEUC encourages BEREC to systematically cooperate with other relevant authorities. BEUC misses explicit references to collaboration with the European Data Protection Board (EDPB) and the European Data Protection Supervisor (EDPS), the Consumer Protection Cooperation Network (CPC), the European Competition Authorities Network or the Council of European Energy Regulators (CEER).

BEREC appreciates respondents' understanding of the importance and value for BEREC of its cooperation with EU institutions and institutional groups. BEREC mainly cooperates on EU or international level, leaving for its member NRAs to cooperate with national competition or data protection authorities for example. In the Work Programme, BEREC has added detail as to which co-operations that will be prioritised next year, EDPB, EDPS and ECN being among them. However, and as stated above in this document, the list should not be seen as exhaustive and BEREC is ready to add or increase contacts with other groups if need will arise.

## 6.20 International cooperation

No comments received.



## 6.21 Possible work for 2021 and beyond

Article 19 welcomes the suggestion and encourages BEREC to monitor all likely bottlenecks in the Internet value chain, not only those related to mobile handsets, operation systems and application stores.

BEUC encourages BEREC to include in its 2020, 2021 and subsequent work programmes a workstream on a joint vision for Europe's telecoms consumers. According to BEUC this work should ideally be conducted not only by BEREC's end-user working group, but by other working groups as well.

Vodafone notes that the work programme does not appear to have a reference to the IoT indicators study that BEREC announced earlier this year. BEREC has previously stated in the context of its earlier IoT Indicators work that a third party study should be commissioned by BEREC on the second half 2020, prior to the deadline for the EECC transposition. Vodafone urges BEREC to include in the work programme the IoT study prior to the deadline for the EECC transposition into national law initially planned during Q2 2020.

Vodafone proposes that the work programme should include an item that aims to deep dive into ways to drive simplification of consumer driven regulation in an Enterprise context. This will also link into the transposition of the EECC and ensure that the context of business markets is adequately considered (enterprise markets).

Openfiber appreciates that BEREC intends to include in its Outline BEREC Work Programme 2021 some of the topics that we proposed in response to the initial call for input. Openfiber welcomes the inclusion of the migration and copper switch off topic among the suggested ones for the BEREC Work Programme 2021, although it could have already been one of the main topics for 2020, as the definition of proper migration processes is crucial for end users.

Regarding the wholesale replicability test, Open Fiber strongly supports its introduction, which should ensure that the wholesale price charged by an incumbent operator does not exclude an equally efficient wholesale operator from the market and should take cost orientation principles as a reference. Open Fiber proposes again that BEREC runs a specific workshop on the topic in order to compare and to share European practices or proposals, to be followed by the adoption of a report.

FTTH Council is pleased that the issue of copper switch off is listed as a work item under 6.21. Possible work for 2021 and beyond The FTTH Council believes that this is an issue, which needs considerable time for development and believes that the work should start already in 2020.

The FTTH Council Europe urges BEREC to take action with regard to misleading fibre advertising as it risks undermining one of the new legislative framework and National Regulators' key objectives. FTTH Council witnesses "fake fibre" advertising practices in the several Member States where certain firms are using "fibre" or "fibre speeds" in

advertisements for copper-based broadband, when the advertised product is not genuinely based on a full fibre connection.

Liberty Global believes it is unclear what is being proposed by BEREC in the wholesale replicability test work stream. Liberty Global notes that changes or additions to the margin squeeze and economic replicability tests impacts stakeholders and Liberty Global would therefore request that BEREC more clearly outlines the type of conduct that is sought to be addressed by this new test and how it is envisaged to work to assist stakeholders to assess the potential market impact of such a new regulatory approach.

Regarding the compensation in case of early termination of contracts workstream Liberty Global notes that it is again not clear what specific issues relating to early termination that BEREC intends to examine as part of this work stream and what would be the likely output. Liberty Global considers that more information is needed to assist stakeholders to identify whether they are likely to be affected, and the level of engagement necessary.

PSC Europe suggest an initial study should be carried out in 2020 to consider potential regulatory issues surrounding the provision of pan-European Mobile broadband for public safety.

ECTA welcomes that BEREC intends to address non-discrimination on QoS and wholesale replicability testing, as well as in the context of potential copper switch-off fit-for-purpose wholesale access and sharing solutions relating to fibre networks, and related challenges. ECTA calls on BEREC to turn these into real workstreams, not just intentions.

BEREC thanks all respondents for their contributions under this section. Listing potential work items for the following years is a new approach for BEREC and the potential work items are intentionally not fully developed but rather general ideas. BEREC understands that several respondents would like to have seen some of these work items commenced already in 2020 but having regard for the still quite intense work load coming from the Code, BEREC has been very careful when adding discretionary work items to the programme for 2020. If some of the listed work items are taken forward in 2021 and beyond, these will naturally be more thoroughly described in coming Work Programmes and stakeholders will have more opportunities to comment in upcoming public consultations.