



SUBMISSION TO CONSULTATION ON BEREC'S DRAFT WORK PROGRAMME 2019

United Group

This document contains the submission from United Group B.V. to the consultation about the draft Work Programme 2019 of BEREC, and more specifically with regard to chapter 6.17 concerning International Cooperation.

While headquartered in the Netherlands, United Group is the leading vertically integrated private sector telecommunications and media company in the Balkan region, with operations in Serbia, Slovenia, Bosnia & Herzegovina, Croatia, Montenegro and Macedonia. The current majority shareholder of United Group is private equity investor KKR, who is in the process of selling the majority stake to another private equity investor, BC Partners.

Its major cable, fixed telephony and internet operations are SBB in Serbia, and Telemach in Slovenia (also mobile telephony), Bosnia & Herzegovina, and Montenegro. TotalTV is United Group's satellite DTH business across the region. United Media is United Group's Luxembourg-based media content and advertising business, which is distributed through SBB, Telemach, TotalTV and also through competing telecom distributors. NetTVPlus is the leading OTT-based content platform aimed at the worldwide ex-Yugoslav diaspora. Lastly, United Cloud is a subsidiary focused on technology innovation.

United Group contributed *directly* to the economies of its four main countries by providing €473 million of telecommunications services and €117 million of media services in 2017. In total, United Group made a direct contribution to these economies by providing telecommunications and media services valued at €590 million, equivalent to 0.59% of GDP in the four core countries of operations. The total *direct and indirect impact* of United Group operations, so taking account of direct and indirect effects, was €1,452 million in 2017 or 1.44% of the GDP of the four core countries of its operations.

United Group also invested more than €493 million throughout the region in advanced technology in 2017, providing the basis for the provision of pay-TV services, broadband connectivity and fixed and mobile telephony and other innovative telecommunications services. On a daily basis, United Group strives to offer its users the most modern telecom services, the highest quality media content and the very best consumer service. Throughout the Balkan region, this ambition helps deliver all key elements of BEREC's strategic priorities.

Considerations on Key Principles

United Group welcomes BEREC's dialogue with NRAs based outside the EU, in particular since in spite of the efforts undertaken in the Western Balkan region, business in general, and United Group in particular, today still encounters many hurdles that have to do with varying degrees of adherence to the rule of law by policymakers, as well as the National Regulatory Authorities (NRAs), the National Media Regulators (NMAs) and the National Competition Authorities (NCAs). These hurdles protect the incumbent operators, contribute to market fragmentation, hamper competition in the Western Balkans, and ultimately prevent consumers and business users to fully take advantage of top quality services.

United Group would like to highlight in particular the importance of the following key principles, which should be promoted by all NRAs, including those in the Western Balkans:

- **Rule of law:** The importance of NRAs acting in a manner consistent with the rule of law, providing legal certainty and fair treatment to all market players, not just incumbents;
- **Proper implementation of EU rules whenever Western Balkans NRAs refer to them in their positions and decisions:** The need for a consistent application of EU principles when implementing mechanisms inspired by the EU regulatory frameworks; regulatory principles inspired by EU rules should not be misapplied. Both the letter and the spirit of the EU regulatory framework should be taken on board by NRAs.
This should be the case in particular for the Significant Market Power (SMP) methodology as clarified by the recent updated version of the SMP Guidelines. United Group calls for a more thorough approach relating to:
 - forward-looking market definition(s) and analysis,
 - distinction between wholesale/retail assessment,
 - assessment of joint or single SMP operator status,
 - definition of proportionate *ex ante* obligations.
- **Higher standards in line with EU NRAs' practice and European Commission guidance and independence of NRAs:** The importance of a more coherent interpretation across jurisdictions and greater convergence of practices across EU and Western Balkan NRAs, as well as true independence of NRAs;
- **Market-oriented approach:** The importance of NRAs action aiming at less fragmentation of the markets, allowing a level playing field to compete in, and taking more into account recent technological and market developments – such as the ones highlighted in the new 2018 SMP Guidelines of the European Commission.

Practical Examples

Below is a non-exhaustive overview of some specific examples, demonstrating that the practice on the ground is not in accordance with the principles listed above. They show how legitimate businesses continue to face important hurdles in the Western Balkan region.

Bosnia & Herzegovina

- On the basis of a *demonstrably flawed analysis*, the NRA proposes to declare that United Group has Significant Market Power in the retail market for the distribution of audio-visual media services and media services (pay-TV) in order to regulate it ex ante.
- Without a proper process, the NRA simply *does not make decisions* to approve United Group's innovative digital services for over a year.
- The NRA confirmed that they *do not issue any MVNO licences* at the moment.
- The NRA found the *incumbent operators* to have *Significant Market Power* in the segments of mobile and fixed telephony and the telecom leased lines market, but there is *no follow-up* to open up the latter's infrastructure and impose relevant ex ante obligations on those SMP operators.
- The NRA *does not decide on an industry complaint* after the incumbent acquired sports broadcasting rights and broadcasts sports without a broadcasting license; this creates a legal vacuum, which conveniently allows the incumbent to continue its broadcasting.

Serbia

- The NRA RATEL has declared *all nationally licensed TV stations as "must carry"*, even though only RTS is the public broadcaster and the four others are *privately owned*; all five stations are now asking for carriage fees with the invalid argument that they are "must carry".
- The NRA RATEL surprisingly proposes to declare United Group as having *single Significant Market Power (SMP)* for the wholesale central access broadband market provided in fixed location for products for the mass market, *in addition to the incumbent operator*, which also has been declared as having *single SMP*, in order to regulate United Group ex ante.



Suggested Policy Initiatives

In view of the above, United Group calls on BEREC to further coordinate practice and guidance at European level among NRAs, including those from the Western Balkans. In particular, United Group welcomes measures in support of a Digital Agenda for the Western Balkans, which can be implemented at BEREC level.

United Group notes the meeting with the BEREC Board, which took place in June 2018, and urges BEREC and NRAs to continue organising such cooperation and to work towards a greater alignment of regulatory practice in the Balkan region with that of the European Union.

United Group calls for sharing of practices with and continuing to provide technical guidance to the Western Balkans NRAs, in order to achieve a truly consistent application of the regulatory framework in line with the rule of law. This should be done through regular workshops with the European Commission, BEREC, EU NRAs and Western Balkan NRAs.

From its perspective of managing a business on the ground, United Group insists that such efforts are urgently needed, in order to better promote an effective market in the telecoms sector in these countries, which will greatly benefit both eager private and business users across the region. Obviously, United Group would be happy to elaborate on this submission as and when suitable.

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