

Telefónica response to BEREC Public Consultation on BEREC Work Programme for 2020

Overall, Telefónica agrees with GSMA and ETNO's individual contributions to BEREC's Work Programme for 2020. We would just like to stress and emphasise even more the need to significantly develop Strategic Priority 2 where BEREC is in a praiseworthy position to develop further work on how new bottlenecks could be tackled along the digital value chain through the foreseen report on Market & Economic issues of Digital Platforms.

Strategic priority 2. Monitoring potential bottlenecks in the distribution of digital services.

More than ever, digital markets require a level playing field across the value chain among all digital players. The recently approved Electronic Communications Code was a timid improvement on such a relevant topic without achieving a true level playing field, which will be critical for our EU telecoms sector competitiveness and innovation capabilities in the digital space. In this scenario, in the past months new objectives have been set by President designate of the European Commission Ursula von der Leyen in favour of a new industrial policy and EU digital sovereignty strategy which require a more ambitious approach towards regulatory and supervisory powers over the digital economy and a revamp of the level playing field concept.

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. Moreover, some big platforms leverage their dominance in one market to penetrate in other platform markets, benefiting from network effects and forming conglomerates which are almost impossible to challenge. 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 that should be exercised with responsibility by digital gatekeepers and under strict regulatory scrutiny. Big platforms are using their ability to collect large quantities of data combined with the power to process, interpret, and learn from those data to avoid being disrupted by expanding into markets beyond their core business and further secure their positions. This could severely harm competitive outcomes across different digital markets and therefore, will negatively impact customers, industry and EU competitiveness as a whole. 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.

Digital markets characterised by non-transitory entry barriers, no natural evolution towards effective competition and where the mere application of competition law is ineffective should be subject to an ex ante regulatory control mechanism that could be inspired in the long standing telecommunications regulatory framework, using a threshold for dominance that could be inspired in the SMP regime and leading to the imposition of remedies to ensure for instance non-discrimination, interoperability or data portability.

Currently telecoms NRA´s and BEREC are the best positioned to accomplish this mission due to their long experience on regulating markets, cost effectiveness and flexibility when intervening markets. We strongly encourage 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.

Brussels, November 6, 2019