



GSMA response to the BEREC public consultation on the BEREC Work Programme for 2020

6 November 2019

The GSMA, which represents the interests of mobile operators worldwide, welcomes the opportunity to comment on BEREC's draft Work Programme for 2020.

As a general comment, GSMA deems it appropriate that the Work Programme for 2020 only includes the workstreams of the year, without including additional items for the year 2021 (e.g. the Report on how to handle third party payment charges on mobile phone bills), which are not carry-over works of activities started in 2020.

We hope the following detailed comments can serve as a constructive contribution to BEREC's deliberations on its draft.

Strategic priority 1: Responding to connectivity challenges and to new conditions for access to high-capacity networks

GSMA comments:

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

BEREC intends to develop a quantitative model of the competition and investment dynamic between actors, which would be used to test different regulatory options and would result in a dynamic non-linear system modeling. We find this is worrying due to the complexity of the modeling and because it goes beyond the current scientific frontier in the academic literature with respect to market modeling. Furthermore, this type of modeling is known to be chaotic, meaning that its global evolution is dependent on infinitesimal variations of initial parameters giving rise to random fluctuations.

Consequently, we consider it of utmost importance that stakeholders are involved in the development of the model. It is particularly worrying that no consultation has already occurred, and that no consultation is planned for the phase 2 of this initiative.

Last year, the GSMA 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. Unfortunately, we do not find any echo of this suggestion or the proposal for involving the stakeholders.

As far as the planning of the consultations are concerned, we have a remark regarding the current consultation on BEREC Guidelines to assist NRAs on the consistent application of geographical surveys of network deployments, phase I. It would have been appropriate, in order to better address this consultation, to know more about BEREC's views on the definition of VHCN.

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

The GSMA will take the opportunity of the current consultation to further elaborate on this topic but we would like to reiterate previously submitted comments.

Mobile coverage is a competitive issue and disclosing future network deployment plans – being highly sensitive information – should be treated with strict discretion. Deployment of mobile networks has a low degree of predictability beyond the short term and plans are always changing depending on market developments and competition.

Data collected on future mapping represents market intervention and public disclosure of it may lead to less investment, as operators will be reluctant to commit to investments that may be inefficient.

Therefore, in order 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.

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

GSMA comments:

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The GSMA 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 the EU and national level, both from the regulatory and competition standpoints.

Keeping in mind the general need to assess the crucial role of digital gatekeepers, we welcome relevant public authorities' efforts to evaluate how the digital economy has evolved and restate the importance of the identification of new potential bottlenecks (devices, Operating Systems, App stores, digital platforms). Most importantly, this analysis requires the assessment on how market power is distributed in the digital market, the existence of competition failures and how these can be best addressed, taking into consideration the role of data in the market dynamics. Ideally, the work highlighted for after 2021 (Internet Value Chain, monitoring the effects on the internet value chain of factors such as mobile Handsets, Operation Systems and Application stores) should be included within this report.

In so far, we welcome BEREC's endeavor to acquire a wider understanding of the digital market and of its competitive landscape, beyond traditional telecommunications services and providers, to develop a comprehensive view on the digital market. BEREC's input to the policy debate could be very relevant (for instance, in the event decision-makers were to assess ex-ante tools). We also support 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 toward elaborating objectives and parameters for the collection of market data from NI-ICS.

We would encourage BEREC to map out the existing and ongoing work carried out by other competent authorities (e.g., competition authorities, data protection authorities) and to strengthen cooperation with them in order to provide useful insights when needed.

Mobile network operators (MNOs) are increasingly becoming enabling platforms for a wide range of sectors and services, competing within their national markets across the EU. This is done within the boundaries of the European regulatory framework, the Code, containing specific elements to ensure competition in an already highly competitive sector, access rights to competitors, pricing controls as well as to provide a high level of protection of end-users. In addition, MNOs comply with a wide range of rules related to ensuring the protection of content rights and horizontal

consumer rights. Accordingly, the legal and competitive environment of MNOs is not comparable to many other digital platforms.

When considering ex-ante tools for digital platforms, the GSMA would recommend BEREC to ensure that providers of ECS do not fall under a duplicate set of ex-ante rules but that the new rules strictly focus on areas of market failures. The potential aim of having a regulatory playing field addressing platform specific issues should not lead to unintended consequences on providers of competing ECS.

Strategic priority 3: Enabling 5G and promoting innovation in network technologies

GSMA comments:

3.1. Carry-over work on The impact of 5G on regulation

We have a remark about the current consultation on the BEREC Feasibility study on development of coverage information for 5G deployments. The consultation mentions the following: “it is envisaged that NRAs may have a role to play for example in the provisioning of coverage information and QOS aspects of future 5G networks that cater for the needs of the verticals”.

While we understand that NRAs can help to foster 5G deployment, notably by contributing to efficient spectrum allocation and through measures supporting investment, we question the goal of this study.

Network operators and verticals will work together in the framework of commercial agreements. Therefore, we consider this BEREC objective rather intrusive in what should be commercial relations. Furthermore, the temptation to provide elements of 5G networks to verticals in some sort of regulated form will potentially introduce a bias in the relations between these actors.

Strategic priority 4: Fostering a consistent approach of the net neutrality principles

GSMA comments:

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

Strategic priority 5: Exploring new ways to boost consumer empowerment

GSMA comments:

On the workstream relating to third party payment charges on mobile phone bills, this should also consider overlaps and contradictions between telecoms and financial regulation e.g. restrictions on offering the ability to charge for third party services and the requirement to provide access to a directory enquiries service.

BEREC obligatory work and stakeholder engagement

GSMA comments:

We see 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, we believe that BEREC should give stakeholders the opportunity to comment on this report through a public consultation.

We thank BEREC for the opportunity to comment on its draft 2020 Work Programme and look forward to working with BEREC on these important topics.