

eir

**Response to BEREC Consultation on the BEREC Work Programme for
2020**

BoR (19) 183



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eir recognises the importance of economic regulation and BEREC's role in safeguarding consumer, citizen and commercial interests and welcomes this opportunity to comment on BEREC's draft Work Programme for 2020.

RESPONSE TO CONSULTATION

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

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, we would encourage, BEREC and NRAs to keep this at the forefront of their considerations when designing the relevant Guidelines and implementing measures.

There is a clear 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. Since it is assumed 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, we would urge BEREC to consider engaging with all relevant stakeholders in advance of its deliberations with regards to its position. For example, in eir's experience, the Directive has not been consistently implemented and the manner in which certain aspects have been transposed in specific member states has led to a scenario where the provisions have proved ineffectual for granting access to infrastructure.

eir notes that some, but potentially not all, of these issues may be addressed by the access obligations for non-replicable assets foreseen under Article 61, in that NRAs may impose such obligations regardless of any findings of significant market power (SMP). In that regard, eir welcomes the forthcoming Guidelines and associated consultation on the criteria for a consistent application of Article 61(3).

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

Given the complex interplay of the factors that affect investment in VHCNs and the difficulty in isolating the true effect of such variables combined with the fact that the intention is that the model

will potentially be used by NRAs to aid in decision making with regard to appropriate regulatory interventions, eir is concerned that the work programme does not envisage a consultation for the latter phase of this project. eir would urge BEREC to reconsider and ensure that stakeholders are involved in the development of the model.

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

While eir will separately provide a response to the relevant consultation, we would like to note our 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. At the level of granularity proposed and given the uncertainty associated with forecasts over longer periods, even the maximum 3 year period envisaged by the Code is ambitious but the period of at least 3 years proposed by BEREC is even more so and will create numerous difficulties for operators.

With regard to confidentiality, BEREC states that the assessment of whether a piece of information constitutes confidential information should be made on a case-by-case basis by the relevant authority. eir submits that more certainty in this regard is required and given the sensitive and commercial nature of deployment plans, the decision as to whether information is confidential or otherwise should ultimately be at the discretion of the network operator, regardless of size.

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

2.3. Report on Market & Economic issues of Digital Platforms

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. It is also increasingly clear that competition law needs to be updated for the digital age and that EU policies and antitrust enforcement should ensure that digital platform markets remain contestable and contested.

eir welcomes BEREC's efforts to gain a better understanding of the issues at hand and the potential role for BEREC. As mentioned later in this response, we particularly welcome 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, we are 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.

We are 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. We would therefore encourage increased cooperation with other regulatory bodies to ensure that the work streams are not approached in a siloed manner and that providers of ECS do not, as a result of the on-going work on platforms, become subject to multiple sets of ex ante regulation.

2.4. Workshop on data collection from Authorised Undertakings and OTTs

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, which is not possible without the collection of information similar to that regularly provided by traditional operators,

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

eir notes that concerns are increasingly being raised in relation to the health impacts of 5G, particularly at the Member State and regional level. Given the importance of community and municipal buy-in in relation to minimising deployment barriers and ensuring widespread and ubiquitous coverage as envisaged by the EECC and the Gigabit Society Goals, eir would suggest that it may be useful for BEREC to consider examining this issue and aiding in the development and encouragement of further research in this area.

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

Given 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.

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

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

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, due to such providers gaining an unfair and anti-competitive market advantage.

BEREC obligatory work and stakeholder engagement

6.12. WACC parameters calculation and Report and VHCN Notice Opinion

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.