

eir

Response to BEREC Consultation on the BEREC Work Programme 2021

BoR (20) 163



5 November 2020

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 2021.

RESPONSE TO CONSULTATION

Strategic Priority 1: Promoting full connectivity

1. eir welcomes BEREC's position that ensuring that very high capacity networks (VHCNs) and 5G services are available in a timely manner is a key policy objective and in particular that work that promotes full connectivity should be prioritised. In the current context of the ongoing COVID-19 pandemic, the absolutely crucial nature of communication networks and the necessity of digital connectivity have been repeatedly demonstrated.

1.1 Report on a consistent approach to migration and copper switch-off

2. eir welcomes the development of a Report aiming to develop a consistent approach to migration and copper switch-off. The retirement of copper services is an important part of the business case for the roll-out of fibre networks and the faster that customer migration from copper to fibre occurs, the stronger the business case for investment in fibre becomes.
3. As recognised by BEREC, the renewed focus on promoting VHCNs within the European regulatory framework "*means prioritising work that improves the general conditions for the expansion and take-up of secure, competitive and reliable high-capacity networks (both fixed and wireless) across Europe while ensuring a smooth transition from legacy infrastructures.*" The focus of regulation should therefore shift away from legacy services and it is important that regulatory best practice in this regard is adopted in a harmonised manner across Member States.

1.2 Report on regulatory treatment for backhaul

4. BEREC has signalled that it intends to distribute a questionnaire to NRAs and organise a workshop with the main stakeholders' associations to collect their views on different aspects related to backhaul regulation and that based on this information a draft Report will be published in Q3 2021 with a final Report to be published early in 2022.

5. eir notes that as part of this work item, BEREC will also assess the need for a common position (CP) on the regulatory treatment of backhaul. However, if the need for a CP arises, it is unclear when work on this would begin or indeed when such a CP might be published.
6. Given that this work stream and the possible eventual publication of a CP will be important in the context of the next round of market reviews, eir would urge BEREC to consider whether it may be possible to advance this work item.

1.4 Workshop on NRA experiences with 5G

7. BEREC plans to host a workshop so that the NRAs and other competent authorities can share experiences on the subject of 5G monitoring in order to draw up common indicators and metrics for same.
8. Given the importance of community and municipal buy-in in relation to minimising deployment obstacles and ensuring widespread and ubiquitous coverage as envisaged by the EECC and the Gigabit Society Goals, eir considers that this workshop would also benefit from the collaboration of mobile operators and other stakeholders.

1.5 Workshop on EMF: How best can BEREC promote science based EMF exposure limits recommended by experts?

9. BEREC intends to hold a workshop with other invited expert bodies, in particular from the health sector and radiation authorities, to consider possible future approaches with regard to improving the ability of citizens to distinguish between scientific and non-scientific claims on EMF and 5G.
10. As noted by BEREC, there has been widespread distribution of misinformation related to 5G and mobile technology across social media platforms. The spread of misinformation has led to telecom workers being verbally harassed while performing their duties as well as numerous arson attacks on critical telecoms infrastructure in many Member States.
11. eir therefore welcomes BEREC's aim to promote science-based EMF exposure limits and address information gaps on 5G and EMF. eir notes that a recent study, carried out by IPSOS on behalf of ETNO, found that telecom operators are a trusted source of information and along with governments can have a large impact on attitudes towards 5G. We therefore

consider that this work stream could also benefit from a workshop with other stakeholders e.g. operators in order to consider their views and experiences.

1.6 Report to enable comparable national broadband coverage indicators throughout Europe

12. BEREC will deliver a Report issuing recommendations to enable comparable national broadband coverage indicators throughout Europe, given that the BEREC Guidelines on Geographical Surveys do not provide detailed indications on how to aggregate grid/address information so that national figures are comparable.
13. eir considers that this report should be subject to a public consultation in the same way that the BEREC Guidelines on Geographical Surveys were. In addition, eir notes that BEREC foresees a workshop with OCAs in Q3 2021. eir is of the view that other stakeholders should also be part of this discussion.

Strategic Priority 2: Thriving sustainable and open digital markets

2.1 Report on digital platforms - Market & Economic analysis (carry-over)

14. eir notes that the issues related to the nature of potential bottlenecks in the provision of digital services will be key to the Commission's upcoming Digital Services Act and Digital Markets Act. It has become increasingly clear over the last couple of years that competition law and regulatory frameworks should ensure that digital platform markets remain contestable and contested.
15. The growing diversity and functionality of social networks and online platforms has continued to impact traditional consumer and business behaviours. The increased economic importance of digital services has profoundly changed the structure of telecommunications and media markets globally. Working across traditional operator boundaries has led to much greater network effects for OTT players and formed a strong defence against the reactionary strategies enacted by traditional telecommunications service providers (SPs).
16. eir therefore welcomes BEREC's efforts to continue to build its knowledge and expertise in the digital economy.

2.2 Report on the harmonised collection of data regarding OTT services relevant to electronic communications markets (carry-over)

17. 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.
18. eir therefore welcomes BEREC's intention to issue a Report in 2021, which will identify the services that NRAs wish to collect data on, specify the particular metrics of interest, and provide definitions for same.

2.4 Collaboration on the Net Neutrality Measurement tools and evolution of the regulatory assessment methodology

19. eir welcomes BEREC's work on the net neutrality measurement tools. 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

5.1.2 BEREC Opinion on the Review of the Broadband Cost Reduction Directive

20. The renewed focus on connectivity and the heightened sense of urgency in this regard, are evident at both the Member State and EU level. As such and given the levels of investment that will be required to ensure ubiquitous gigabit connectivity, eir welcomes the review of the Broadband Cost Reduction Directive and BEREC's past work on implementation.
21. 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. For example, in Ireland there is no requirement for non-SMP operators to publish a reference offer, which only serves to undermine the objectives of the BCRD.

22. To address inconsistent implementation, eir considers that the provisions in the BCRD should be strengthened and that remaining barriers to the Single Market could be addressed by eliminating divergent rules and practices regarding joint use of existing infrastructure, civil works, permits and related administrative procedures and prices/fees at national and sub-national levels.

5.1.7. Ad hoc work relating to the Recommendation on Connectivity

23. eir welcomes BEREC's focus on promoting full connectivity and any engagement with the Commission and Member States on this important topic, including the development of a common approach, in the form of a toolbox of best practices,

5.2.1.1 Review on End user rights – BEREC Opinion

24. BEREC is due to publish an Opinion by 21 December 2020 on the market and technological developments regarding the different types of electronic communications services, which will feed into the Commission's Report on the application of the end user right provisions in Title III of the EECC, which could lead to the submission of a legislative proposal to amend that Title, where necessary.
25. Given the likely impact of any potential readjustments of obligations and the impact on regulatory certainty, the cost of compliance for providers of electronic communications services and innovation, eir considers that there needs to be early and substantive engagement with stakeholders.