

Input to the public consultation on the Draft BEREC Work Programme 2025

1. General remarks

Connect Europe welcomes the opportunity to provide input to the draft BEREC Work Programme for 2025. Overall, we would like to stress that BEREC should, in general, primarily focus its ongoing tasks on the issues mandated by EU legislation. These include but are not necessarily limited to, the EECC, the BEREC Regulation, the Open Internet Regulation, the Roaming Regulation, Digital Markets Act, as well as any future legislation, such as the Digital Networks Act. BEREC should also perform its activities in a way that aligns with and enables the achievement of the Digital Decade targets for 2030. We support BEREC's commitment to establish structured cooperation mechanisms with EU institutions and other competent authorities.

However, a notable concern about the upcoming Work Programme is the limited emphasis on promoting the need for efficient investment capabilities. This aspect should be more prominently featured, given the challenges faced by the sector and recent assessments regarding competitiveness captured by the Letta and Draghi reports. This absence is particularly evident in the relatively low frequency of the term 'investment' throughout the document. We further elaborate on this issue below.

a. Investments into connectivity networks

While we appreciate BEREC's continued focus on promoting full connectivity, we find there is a general lack of emphasis on promoting investment and creating the right regulatory environment that provides the appropriate incentives to accomplish the strategic vision and policy objectives set out by the EU Commission. Among the mentions of investment, most pertain to the fact finding report on competition indicators and regulatory highlights in different jurisdictions (point 1.9) and co-investment and commitments. Only a few references relate to investment in new infrastructures and technologies, as well as the need to close connectivity investment gap to enable the application of future digital products and services.

Moreover, we would like to point out that the work carried out each year by BEREC to calculate the WACC parameters, according to the methodology developed by the EC, leads to the adoption of inappropriate WACC levels. This is a major problem for operators' remuneration, as a correct WACC is necessary to ensure margin stability and investment risk coverage. We need to consider a more flexible and forward-looking methodology (especially concerning the risk-free rate calculation), taking into account the inflation effect on the economy as well as the evaluation also produced by investors.

b. Importance of highlighting fibre roll-out

Furthermore, the draft Work Programme 2025 has a limited focus on fibre roll-out, with only a few mentions of 'fibre' or 'FTTP'. These references predominantly concern the issues related to copper

switch-off, physical infrastructure access and a workshop on the competitive effects of strategic fibre network deployment (including, again, in the context of copper switch-off). A stronger overall focus on the importance of creating the incentives for investments into fibre infrastructures would be greatly necessary.

We would therefore urge BEREC to take a more forward-looking approach and to consider adjusting relevant work items to truly promote connectivity and fibre roll-out in line with BEREC's strategic objectives and with the general policy and regulatory goals as stipulated in the Digital Decade Policy Programme (DDPP) and the EECC.

c. Achievement of the digital single market

Since the adoption of the EECC, technological developments and market realities have significantly evolved: copper-based state network and service monopolies have been almost ubiquitously replaced by competing network operators rolling out their own gigabit infrastructures.

The characteristics of today's markets require a fundamentally reformed regulatory framework that only focuses exceptionally on addressing any remaining challenges in an agile and proportionate manner, by supporting investment and the achievement of the digital decade targets. Such an approach should comprise the following elements:

- Firstly, ex post competition law and the Gigabit Infrastructure Act (GIA) should be the default regime applicable to telecoms.
- Secondly, as a consequence of the above, the EC Recommendation on 'Relevant Markets' should rightly be repealed and SMP regulation abandoned as SMP-based regulation is increasingly unfit-for-purpose
- Thirdly, in exceptional cases when a 'safety net' is still necessary, a new approach—instead of SMP—should apply symmetrically to all market players addressing local bottlenecks

The current regulatory and bargaining asymmetries in the internet value chain should be corrected and the regulatory intervention introducing a dispute resolution mechanism between ISPs and large CAPs is necessary to ensure that large CAPs pay a fair and adequate price to ISPs for a valuable IP data transport services.

2. Strategic priority: promoting full connectivity

a. Update of criterion 3 of the BEREC Guidelines on very high- capacity networks

We believe that current thresholds are still fit-for-purpose and, above all, they are aligned with the digital compass target that refers to 1 Gbps download speed. Departing from current thresholds would create a misalignment between EECC and Digital Policy programme objectives and negatively impact the coherence of policy and regulatory measures adopted so far. In addition, we believe that, in view of the forthcoming review of the UE Code, it would be useful for BEREC to analyse in which manner the guidelines have been applied by NRAs or other competent authorities and whether criterion 3 has been used to identify VHCNs different from FTTB/H networks and the related impact in some countries.

b. Report on the regulation of physical infrastructure access

Connect Europe welcomes BEREC's plans to explore the physical infrastructure access imposition in an asymmetric regime in relation/by reference to symmetric regulation. In this regard we deem that symmetric regulation should be the preferential approach to be adopted in order to ensure level-playing field and foster investments in VHCNs, in line with the EECC objectives. Any BEREC recommendation shall not deviate from the EECC provisions that require the application of the modified greenfield approach and a proper justification for the imposition of SMP PIA obligation (i.e. the insufficiency of symmetric PIA obligation should be proven before imposing any asymmetric obligation).

c. Opinion on the review of European Commission's Recommendation on relevant markets susceptible to ex-ante regulation

We consider the review of the Relevant Market Recommendation to be of the utmost importance, particularly to reflect current competitive evolution across the EU and the need to avoid the imposition of unjustified SMP ex ante remedies in markets that have become competitive so far in many geographical areas throughout the national territories of Member States. NRAs will have to focus regulatory intervention only in the presence of a proven bottleneck and primarily in a symmetric way, without predefined markets susceptible to ex ante regulation, as also envisaged by the Commission in the White paper.

3. Strategic Priority: Thriving sustainable and open digital markets

a) Internal workshop on the consideration of 5G differentiated services and network slicing

This topic is very important for the Industry and BEREC's considerations would benefit from interaction with operators and other relevant stakeholders. We therefore suggest BEREC to open the workshop to other stakeholders and, if a report is adopted on the conclusions of the workshop, open it for public consultation.

In general, we see many internal and external workshops on a number of topics that are not open for feedback. We therefore urge BEREC not to derive conclusions and recommendations in the related reports, without the possibility for stakeholders to comment on them.

4. Strategic priority: Empowering end-users

Regarding the aspects of empowering end-users, we are concerned that there is no recognition that European consumers are already the most well-protected in terms of sector specific regulation that has been layered with new requirements on providers for more than three decades. It is concerning that there is no indication of thinking within BEREC as to whether the sector specific consumer protection rules are subject to a much-needed overhaul, removing obsolete requirements, and general alignment with horizontal consumer protection within the EU. For more than a decade, consumers' uptake of various number-independent services (iMessenger, Snapchat etc.) demonstrates that regulators and consumers have very different observations of what is needed from transparency and information requirement levels. On some of these aspects, we see again that BEREC

will work in a silo with no public consultation of those companies who are most impacted by the regulation. We encourage BEREC to increase on transparency and ensure that their own information level is balanced reflecting relevant parties in their work.

5. Stakeholder engagement

Connect Europe would like to stress that BEREC's work would greatly benefit from more transparent processes and a more open debate on its internal work, starting from the earliest stages of a legislative initiative. This could be supported by increased interaction between BEREC and industry members. Additionally, we would also welcome increased stakeholder involvement in the preparation of BEREC opinions, for instance through public consultations of the draft text addressed to the Commission.

In our view, the inconsistent dialogue between BEREC and stakeholders is partially an unintended consequence of the office's functioning with only four plenaries a year to adopt and release documents and public consultations. Typically, the June plenary introduces a large workload for stakeholders during the summer break. We believe that a better planning of plenaries, or a different process allowing for more regular approvals and consultations, would make a significant difference.

Regarding the collected stakeholder input to public consultations, it is rather rare to see them taken into consideration via modifications to the proposed draft text. Usually, this is done without any explanation as to why the arguments were not included.

Finally, we would like to iterate that BEREC should encourage and facilitate a platform for important dialogue between Member States to exchange good practices regarding the implementation of the regulatory initiatives. This would allow countries to learn from each other's national experiences. We would like to emphasise that BEREC should include stakeholders in this exercise to capture different perspectives from the earliest stage of a legal assessment.

For questions and clarifications regarding this submission, please contact Benedict Gromann, Public Policy Manager (gromann@connecteurope.org) or Angela Coriz, Policy Officer (coriz@connecteurope.org).