

The Consumer Voice in Europe

BEREC DRAFT WORK PROGRAMME 2018

BEUC comments



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BEUC welcomes the opportunity to provide input into BEREC's draft Work Programme 2018. Over the past years, BEREC's work has been of crucial importance in the work towards building competitive telecom markets and ensuring consumer benefits. As Europe moves towards a Digital Single Market where digital products and services permeate consumers' everyday lives, and in particular with the advent of the Internet of Things, BEREC's role will become increasingly important.

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

A vibrant, competitive telecom sector is necessary for Europe's Digital Single Market. Regulators' role will be as important as ever to guarantee a competitive environment throughout the value chain. As markets consolidate, regulators will be increasingly faced with new forms of anticompetitive situations. Solving the undesirable anticompetitive dynamics of oligopolies, carefully analysing the merits of planned mergers, and importantly, continue to strategically use the regulatory toolbox necessary to protect and strengthen competition across the value chain are all important objectives where BEREC and NRAs will play a key role.

We welcome that BEREC rightly recognises the importance of its and NRAs' role in achieving this objective and encourage you to make sure that the strategic objective includes monitoring and resolving new forms of anticompetitive dynamics in telecom markets.

The planned reports on access to physical infrastructure and pricing for access are welcome. In particular, the planned report on "benchmarking of technical and economic replicability assessments in the context of symmetrical access" is of key importance. It is likely that the European Electronic Communications Code (EECC) currently under co-legislative process will include a regulatory tool for NRAs to address anticompetitive oligopolies through a symmetrical access remedy. Although the EECC will not have entered into force yet, analysing the current situation and evaluating the barriers that NRAs face when doing economic replicability assessments will be helpful as the EECC comes into force.

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

BEREC should not only look into competition within the telecoms markets, but also across other adjacent markets, and in particular within the Internet value chain. As BEREC has correctly identified, online service providers and Internet service providers increasingly offer joint services, and the competitive dynamics of such practices needs to be carefully scrutinised. This situation has two dimensions:

First, on cases of vertical integration by telecoms and content providers and of exclusive licensing practices of sport events and premium content, which can be used to attract consumers to telecom offers (e.g. in the form of triple play). This is because only big operators can afford such licenses, competitors find it very difficult to compete on an equal footing when the content offered by the operators becomes the most attractive part of the offer. In that context, we welcome BEREC's draft report on convergence and encourage BEREC to continue evaluating this trend.

Secondly, in relation to practices of zero-rated content, where online applications and services get a preferential treatment within a fixed or mobile provider's Internet access service offering. In the context of BEREC's role in monitoring the implementation of the EU's recently adopted net neutrality rules, it is of particular importance that BEREC looks into the competitive effect of zero rating practices, so we welcome BEREC's intention to do so.

Other competitive bottlenecks may exist in the digital value chain that impede consumers from benefitting from competition in a truly neutral and open internet, such as those linked to their devices. For example, the European Commission is currently investigating Android to assess whether Google is engaging in illegal behaviour to create an anti-competitive advantage for its own products (such as Google Search and Chrome) in detriment of those of competitors. Identifying similar bottlenecks and anti-competitive practices and putting in place policies to address them in close collaboration with competition authorities will be essential to protect consumers over the coming years.

Regarding the different workstreams under this Strategic Priority:

1. Data Economy

- We welcome BEREC's plan to analyse the impact of the data economy on the telecom sector. In particular, BEUC agrees on the need to make an assessment of how data aggregation can raise barriers to entry in the communications sector, including OTTs, and how the NRAs together with the competition authorities can address such competition concerns.
- The data economy is bringing new problems and challenges that need to be addressed from a consumer perspective. Therefore, BEUC would like to participate at the Heads Workshop as well as in the seminars with stakeholders to be able to provide first-hand input on the consumer dimension of the data economy.

2. Location of the network termination point

- We welcome BEREC's plan to analyse the different application of the definition of the location of the network termination point, but strongly encourage BEREC not to limit itself on the fixed termination point, but also include mobile. The definition of termination point takes an additional important dimension in the context of the Internet of Things.
- It is important that BEREC does a public consultation on the draft report on the location of network termination point, so BEUC and its members can provide input into how consumers and consumer associations have been affected by different approaches in this area.

3. Internet of Things Indicators

- We welcome BEREC's plan to survey NRAs on the data they are collecting on the IOT, and encourage BEREC and NRAs to make such data available through the open data platform project.
- Additionally, BEREC should consider a common methodology for all NRAs on how to measure IoT network traffic to be able to produce comparable results. NRAs should also carefully monitor the developments in the IOT connectivity market in terms of competition as well as Quality of Service. With billions of connected objects, it is crucial that QoS is ensured and competition is vibrant, so consumers have choice at affordable prices. Communications in the IOT should be encrypted by default. To achieve this, the final EECC should guarantee encryption by default for all electronic communications.

- We encourage BEREC to enter into a discussion about the NRAs role and competences regarding security features of connected products, such as for example the devices/products covered by the Radio Equipment Directive (RED), with the aim to ensure a consistent application of the EU's horizontal but also relevant sector specific regulatory framework for an effective internal market in electronic communications networks and services. In a significant number of Member States the market surveillance authorities in charge of overseeing the RED are the Telecom NRAs. We underline the importance of this directive and thus the role of the NRAs in ensuring not only the security but also the safety of connected products as stipulated under the directive.

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

On top of its work to follow the development and deployment of 5G and accompanying network technologies, BEREC should focus closely on the development and deployment of the Internet of Things.

The Internet of Things is an area that requires a thorough policy analysis to make sure consumers are well protected. Issues related to connectivity, privacy, security, and affordability to name but a few need to be addressed. BEREC's role in providing expert insight and policy recommendations on this front will be very helpful.

We welcome BEREC's workstream "5G, IoT and security" and would appreciate being able to participate in the planned Joint BEREC-ENISA workshop to provide the consumer view on the IoT and cybersecurity.

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

BEREC's role in securing net neutrality in Europe is fundamental. On top of ensuring the consistent application of Regulation 2015/2120 and the BEREC Guidelines, BEREC and NRAs will have a fundamental role in supervising and monitoring markets to look out for any deviations and new practices that might be cause for concern.

Regarding the different workstreams under this Strategic Priority:

1. Development of a net neutrality measurement tool

- The development of a net neutrality measurement tool is necessary and welcome.
- BEREC should follow up on its obligation under Article 4(4) of Regulation (EU) 2015/2120 to certify measurement software that allows consumers to test their internet connection and assess whether they are receiving get the contractually agreed minimum, average and maximum speeds they are paying for.
- These adequate speed measurements are necessary for consumers to exercise the relevant remedies accorded to them in national law. BEREC should be ambitious in this regard and adopt technical specifications that will allow certification of top-class speed measurement tools in each market.

- Data generated by such tools should be able to enable comparisons both within national markets but also across Europe.

2. Implementation of the net neutrality Regulation

- We welcome the continuous monitoring of the implementation of the Regulation, and encourage BEREC to do so actively and including all forms of zero-rating detected in the market.
- BEUC would appreciate taking part in the forum that will be set up to discuss national cases and questions relating to the consistent application of the net neutrality Regulation.

3. Input to an evaluation

- As BEREC prepares its input to the European Commission's mandatory evaluation of Regulation 2120/2015 that it must complete by 30 April, we encourage BEREC to publicly consult on its Opinion before finalising it. BEUC's and its members' input about the problems that consumers have faced on the ground can be of great added value to BEREC's Opinion.

Strategic Priority 5: Exploring new ways to boost consumer empowerment

BEUC warmly welcomes BEREC's decision to elevate consumer protection and empowerment as one of its Strategic Priorities. All other Strategic Priorities relate to specific market elements or particular technology areas and they all have one thing in common: they all need strong, future-proof consumer protection and empowerment policies to succeed.

From ensuring consumers are well-informed in future digital markets, to enabling efficient comparison and seamless switching, BEREC's role in helping to roll out the new wave of consumer protection policies is essential. Making market data available to NRAs available for developers of comparison tools to enable easy comparison services for consumers is an important idea that we encourage following up on.

We suggest that a systematic and regular co-operation of BEREC / NRAs with consumer organisations at EU and national level become a strategic element within this priority (please see below for more details).

Regarding the different workstreams under this Strategic Priority:

1. Report on termination of contracts and switching provider

- Switching is one of the biggest challenges in this sector so we welcome BEREC's intention to carefully analyse the telecom market and identify all the barriers to switching that may exist.
- In particular, BEREC is right to focus on bundles of multiple services as it is a common place practice across the EU and a recurrent barrier to switching. Bundles are also increasingly taking place across different markets, which complicates the situation for consumers from a legal perspective. Please see further below for recommendations on how to address this.
- As BEREC runs this exercise, the proposed EECC will have most probably been finalised but will not have entered into force yet. BEREC should nonetheless run the evaluation exercise with the new consumer protection and switching obligations in

mind to identify any persistent problems that may be solved when the EECC enters into force.

2. Report on contractual simplification

- We welcome BEREC's plan to look into contracts of telecom services across the EU, provide a benchmark report, and produce a single European contract information sheet that should help consumers to better understand telecom offers and easily compare between them. In doing such exercise, BEREC should also screen the transparency and fairness of the terms used by companies in the market, including terms linked to Roam Like at Home and the use of Fair Use Policies.
- As BEREC runs this exercise, the EECC will have most probably been finalised but will not have entered into force yet. BEREC should nonetheless run the evaluation exercise with the new contractual information and transparency obligations in mind to identify any persistent problems that may be solved when the EECC enters into force.

3. European Benchmark on the pricing of bundles

- BEUC warmly welcomes BEREC's plan to run a realistic comparison of bundled services and the prices that consumers are really paying. This exercise should be as extensive as possible to cover bundles that include telecom services, but also telecom services and services from other markets.
- As the 2-phased project rolls out, we encourage BEREC to reach out to consumer organisations to provide feedback on pricing policies of bundles and the impact on consumers.

What's missing – make RLAH a success

There is one very important thing that we think is missing in BEREC's draft 2018-2020 Strategy: the monitoring and enforcement of Roam Like at Home (RLAH) rules. BEREC's role will be key in ensuring that the new RLAH rules are implemented correctly and respected by the entire industry. It will also have a key role in identifying areas where consumers are not being adequately informed or are not able to duly exercise their newly acquired rights. When looking into contracts used in the market, BEREC should also screen clauses linked to Roam Like at Home (see point 2 above).

It is good that BEREC will produce its 5th Report on Transparency and Comparability of Roaming Tariffs, but it is not enough to look at how transparent and comparable tariffs are. BEREC and NRAs need to actively monitor the market to ensure telecom operators are compliant with the rules and evaluate whether they follow BEREC's implementation Guidelines. Additionally, BEREC should also produce a mapping of the level of compliance with the RLAH rules in the different member states.

Institutional aspects

Enabling close cooperation between NRAs and consumer organisations

Importantly, we encourage BEREC and its members to work more and better with our members, the national consumer organisations that know consumers best. We would like

to, together with BEREC, strengthen the relationship between each NRAs and the consumer organisations in their market – drawing inspiration on what we have done in the energy sector.

As a first step, the Council of European Energy Regulators (CEER) and BEUC developed a joint Vision (first in 2012, updated in 2014) that outlines the direction the sector should take by 2020 so it delivers maximum benefits for consumers¹. This joint Vision was endorsed by 17 umbrella organisations representing different industry sectors and other NGOs, which then prepared concrete action plans on how their community would work towards achieving our joint Vision.

As a second step, CEER and BEUC worked together on a joint consultation process where all energy National Regulatory Authorities (NRAs) and our national members were asked questions that aimed to evaluate the involvement of consumer organisations in the national regulatory process and to identify areas where collaboration between NRAs and our national members could be improved².

Enhancing the co-operation in between NRAs and consumer organisations with regards to digital and telecom markets following the model of the energy sector would be an interesting initiative that BEUC would be interested to explore with BEREC.

In October 2017, BEREC and BEUC co-organised a workshop to discuss the first months after the entry into force of Roam Like at Home. The workshop allowed NRAs and BEUC and its members to have a fruitful exchange of views and sharing of experience and knowledge. We believe such structured dialogues are helpful to deepen cooperation between NRAs and consumer organisations and encourage BEREC to work with us in the future to repeat this successful experience.

Stakeholder engagement

BEUC welcomes BEREC's renewed intentions to engage and cooperate more effectively with stakeholders. We would like BEREC to systematically consult on all its policy papers. The BEREC Net neutrality guidelines is a good example of a properly-timed consultation that allowed for adequate stakeholder input from civil society.

On the other, we regret the fact that no consultation was undertaken on BEREC's guidelines on retail roaming (Regulation 531/2012 as amended by Regulation 2015/2120 and Implementing Regulation 2016/2286). Very important interpretative rules for consumers were decided in those guidelines and we are disappointed that we could not feed our feedback into BEREC's final outcome.

Closer collaboration with other authorities is evermore necessary

Protecting and empowering consumers in the digital age requires ever more efficient and effective enforcement. This enforcement must happen increasingly across different sectors, especially in light of increasingly common-place cross-sector bundles. BEREC and its NRAs will need to collaborate closely with other relevant national and EU authorities such as the Article 29 Working Party (data protection), the Consumer Protection Co-operation Network (consumer protection), the European Competition Authorities Network (competition policy), the Council of European Energy Regulators (energy), etc. In an ever more complex digital world where bundling of products and services from different markets is becoming

¹http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab3/CEER-BEUC%202020%20VISION-joint%20statement_Long_v161014.pdf

² See status review of this process by CEER -

http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/2013/C13-CEM-65-03_SR%20on%20involvement%20of%20consumer%20organisations%20in%20the%20regulatory%20process.pdf

the norm, it is essential that these groups of authorities work closely together to uphold consumers' rights.

Most recently, CEER has launched a project called PEER ("Partnership for the Enforcement of Energy Rights") to bring regulators from various sectors together. We welcome that BEREC is already involved in this promising project to which we are an associated partner.

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