5 November 2021

ETNO's submission to the BEREC public consultation on the draft BEREC Work Programme 2022

ETNO welcomes the opportunity to provide comments on the draft BEREC's Work Programme 2022. We believe that BEREC should in general focus on the ongoing tasks as mandated by EU legislation, as defined in the EECC, the Open Internet Regulation, roaming and intra-EU calls, for example. We support BEREC's commitment to establish structured cooperation mechanisms with EU institutions and other competent authorities.

Concerning the strategic priorities and work items for 2022, ETNO will hereby provide some comments and suggestions:

- **Strategic priority 1: "promoting full connectivity"**

ETNO strongly supports BEREC's strategic priority 1 that aims at promoting full connectivity and access to electronic communication networks. To achieve that, a successful implementation of the EECC should be pursued and pro-competitive infrastructure sharing promoted. ETNO supports BEREC's intention to take stock of national experiences of the implementation of the EECC and to exchange good practices in this regard. We would also encourage BEREC to include stakeholders in this exercise to capture different perspectives in the initial assessment.

- In the light of European Commission Digital Compass, 5G and Gigabit connectivity goals remain a priority for Europe and its economic recovery. However, as already indicated in previous ETNO submissions, ETNO believes that 5G does not trigger a general need for additional regulation. While ETNO acknowledges that 5G is important for the European economy and society as a whole, we firmly believe that market dynamics will ultimately determine the balance between supply and demand as well as any new business models. ETNO has been consistently highlighting the importance of new and innovative business models to accelerate roll-out of VHCN and 5G networks. We would urge BEREC to let the 5G ecosystem reach maturity and to then carry out a proper analysis before concluding on any action. ETNO members are open to contribute to the discussion on the current status and experiences of 5G deployment based on existing use cases.

- As stated in the ETNO-GSMA response to BEREC's 5G Radar, we agree that the role of 5G in the digitisation of wide sectors of the economy could result in changes in the value chain,

giving telecom operators the opportunity to provide new services beyond connectivity, particularly in the business segment. Conversely, providers of IT solutions and technology are a potential new provider of connectivity services. We caution BEREC from taking a silo approach to the detriment of providers of ECN and ECS and any action that is not complementary to the overall direction the EU will take in this space. Voluntary wholesale agreements between mobile operators and new intermediaries are a possible welfare enhancing development that should not be prevented by BEREC or NRAs. Room must be given for potential new business models and value chains to actually emerge. Considering this evolution of roles along the value chain, it would be premature to regulate before the market has even properly developed or markets (namely mobile markets) where commercial agreements already in place have so far not required and continue not to require regulatory intervention. Any intervention should be based on analysis of the market and the need for regulatory intervention to be demonstrated with the three criteria test.

- As stated in previous contributions, we also agree that 5G features such as slicing can potentially facilitate the provision of enhanced virtual private networks, for example. Telecom operators will be able to flexibly offer their business customers the related new flexibility/functionalities as it is the case today. We think wider choice is beneficial for customers and should not be prevented by regulators. We believe that these potential applications are not yet mature, so space must be left for potential new business models and value chains to actually emerge. We urge caution against any premature action in the absence of concrete market problems and evidence.

- Concerning spectrum allocation, it is necessary to ensure operators get sufficient amount of resources (spectrum) for providing various 5G services, including needs for vertical sector. Before considering any rules on spectrum set-aside for private/local networks, a detailed analysis on demands, costs and benefits and the functioning of the market should be carried out. In this context, it should also be noted that regulatory measures such as wholesale obligations should not be imposed ex ante without a market analysis and detection of market failure e.g. through spectrum awards. Finally, due to respective competences, we support more collaboration and information sharing between the competent authorities including the RSPG. ETNO calls for collaboration also with MNOs in particular in peer review process, and notes that MNOs as key stakeholders in spectrum awards have currently no possibility to challenge the national award decisions in the process. A more open and transparent peer review process would help adopting the best practices in use throughout Europe and would focus spectrum awards on common EU digital goals, avoiding bias of short term national political agendas.

- ETNO welcomes BEREC's continued work on Open RAN. While still being evaluated and trialled by operators and vendors alike, Open RAN aims at creating a virtual infrastructure that is interoperable and vendor neutral. The operator community sees the potential benefits of Open RAN, and several industry initiatives are underway to accelerate innovation and commercialization. ETNO would gladly share its initial views on Open RAN with BEREC.

- Regarding BEREC's planned work and reports on competition amongst operators in the same geographical regions and on regulatory treatment of business services, ETNO would like to endorse the use and usefulness of good practices as a policy tool. ETNO looks forward to contributing on these reports.

- **Strategic priority 2: "Supporting sustainable and open digital markets"**

We encourage BEREC's work on improving the functioning of digital markets. ETNO is fully invested in ensuring contestable and fair markets in the digital economy.

- We welcome BEREC's intention to monitor the evolution of the internet value chain, in terms of contestability and fairness for business and end-users, in a way that citizens can enjoy an Open Internet along the whole internet value chain. Therefore, we think it is very useful for BEREC to carry out economic analysis of various aspects of digital markets and formulates recommendations to improve the functioning of those markets for all participants, network operators, OTTs, different service providers, and specially consumers. This will contribute to the debate on important and far-reaching legislative files including the harmonised ex-ante instrument for gatekeepers, the Digital Markets Act (DMA), that has the potential to create a more competitive, more innovative markets improving the well-being of the European consumers, and will also contribute to the identification of potential problems, failure or bottleneck.

- Open Internet remains an important element of the digital policy landscape. Given the recent developments on this front and the business critical nature of the Open Internet regulation to operators, ETNO wishes to express its interest to take part in the discussions on the review of the BEREC Open Internet Guidelines.
- Artificial Intelligence: we welcome BEREC's assessment of the important benefits which artificial intelligence applications can bring to the telecommunications sector. However, it must be borne in mind that the regulatory framework for the development and use of AI, as well as the updated liability regime for AI, is still early in its development in the EU. Furthermore, AI-enabled solutions in the telecoms sector, and innovation in this field, should be driven by market forces and technological innovation. As such, we consider it premature to undertake a study of the state of play of AI use cases in the telecoms sector, and the challenges

and benefits which this presents. BEREC should rather postpone such an activity at least until the EU has established specific rules on AI.

- **Strategic priority 3: "Empowering End-users"**

We believe that some of the planned work items relating to this strategic priority would benefit from assessment by BEREC. However, since the EECC is still in the implementation phase in the Member States, BEREC should refrain from making new proposals that risk legal certainty for operators. Concerning BEREC's considered work on "Compensation in the case of early termination of contracts", ETNO believes that operators would benefit from guidance to clarify the flexibility for telecoms operators with regard to this provision of the EECC, and ensuring a balance of the interests of the parties and ensuring that the value of the contract is respected.

Finally, regarding the report assessing BEREC's contribution to limiting the impact on the environment, we want to highlight the crucial importance of this horizontal and high-level priority for ETNO.
European telecoms sector has a long-standing commitment to reducing its carbon footprint, while promoting connectivity services and digital tools to reduce emissions across many sectors to benefit the environment and society. As reported by the newly published BCG report prepared for ETNO[1], the enabling potential for the telecoms sector could reduce carbon emissions in other sectors by up to 10-15%. It must be also reminded the potential of carbon reduction in many sectors due to the use of ECN.

Already at this stage, ETNO members would welcome the possibility to contribute to the on-going BEREC report (item 5.3.2), and provide with the factual evidence that would complement BEREC's compilation of different aspects of sustainability in the digital sector.

ETNO would like to make some clarifications regarding the ICT carbon footprint figures at page 6 of the draft BEREC Strategy 2021-2025. First, the ICT sector account for roughly 2-4% of the global as well as EU greenhouse gas emissions only if the percentage also includes media, the entertainment sector and end user equipment. Furthermore, we believe the comparison with the aviation sector is misleading and requires to be adjusted if not removed. Indeed, the aviation sector refers to fuel consumption, whereas the ICT footprint is LCA based i.e. Full Life Cycle and therefore including devices manufacturing and production.
Lastly, the stated "8-10% rising trend" refers to The Shift Project projections that have had a tendency to overestimate such projections.

[1] Downloadable here https://etno.eu/library/reports/96-connectivity-and-beyond.html

The ICT energy consumption trend as we have seen in various internal research is quite flat, and at the same time the CO2 footprint is decreasing due to the ICT sectors investments in renewable electricity sources. The ICT sector is by far the biggest investor in renewable electricity and that makes a fundamental impact on the actual carbon footprint trends. Those important activities tend to be underestimated by the Shift Project, and therefore we believe it cannot use as the only reference source in the BEREC strategy.

Furthermore, we believe that BEREC's long-term objective to identify a possible harmonised methodology measuring the environmental sustainability of ECNs/ECSs (item 5.3.3) is a valuable effort. The same goes for considerations on circular economy, especially in relation to life cycle of devices and equipment. In principle, having a unified set of indicators might help bringing consistency and harmonization across the EU.

However, setting a common EU framework might also risk turning into an extremely complicated exercise when it comes to decide on which appropriate and feasible indicators should be included. On the one hand, there are specificities among Member States to be taken into account. One the other hand, while assessing and evaluating the environmental sustainability/circularity performance of ECNs/ECSs, we believe it would be important to take into consideration also the ICT enabling potential and not focusing on direct emissions only. Already today some ETNO members have started to develop indicators to assess such enabling potential, and an EU framework will be set up by the recently launched European Green Digital Coalition. ETNO would like be involved in the BEREC process and therefore consulted if sector-specific indicators are to be developed.

- **Ad-hoc work**

Workshop on the Digital Divide: Following on from the work in 2021 on the impact of COVID-19 on the electronic communications markets, we welcome the ongoing effort of BEREC to study the various aspects of the digital divide, spanning not only connectivity questions, but also the social educational issues. We regret that the workshop will be internal-only, and will not include at this stage the opportunity for stakeholder consultation. ETNO has longstanding experience in contributing to the narrowing of the digital divide from this angle, notably through our membership of the Commission-funded project DUFA (Digital Upskilling For All), in addition to the work of our members across the EU. More broadly, ETNO supports the European Commission's connectivity targets, putting the citizen at the centre of the digital transformation. This includes supporting initiatives to ensure that disabled users are able to fully benefit from connectivity and digital services.