

General remarks

VATM, the Association of Telecommunications and Value-Added Providers presenting the interests of 120 pro-competitive companies active in the German market welcomes the possibility to comment on the draft BEREC strategy 2015-2017 and draft BEREC Work Program 2015-2017.

Regarding the approach taken by the current Commission, VATM welcomes BEREC's focus on promoting competition and investment (Pillar 1 and pillar 2 of the strategy). Especially against the background of the paradigm change which the current EU Commission promotes forward, the work and strategic position of BEREC will be essential to safeguard competition and foster investments by all market players. Promoting competition and ensuring regulatory predictability will therefore be essential. "Continuing on as in the past" must not be considered as an extremely dangerous experiment which impedes investments, it is necessary to increase stability with negligible cost. Once competition has been curtailed, few options are left to revive it. Such a move is difficult to reverse. This not only calls into question investments already made but the paradigm change promoted by the outgoing Commission and profiting industry players also does not offer a foundation for long-term investment decisions.

VATM has convincingly explained to the Commission that strengthening competition in the telecommunication markets has led to increased investments in telecommunication networks¹. Increased competition promotes the demand for telecommunication services. In economic terms, stagnating demand is a rational reason for an increased reluctance to invest.

One key question will probably be to explain what approaches could be used in the future to encourage demand. While the availability of, for instance, fast internet connections have steadily increased in the past, the dissemination and use of innovative services has lagged behind this development. Therefore, stronger emphasis should also be placed on areas outside the streaming services which are particularly important for the increased demand. But in situations where demand would allow for investments, it is precisely the fact that pro-competition policy is not pursued consistently and steadily weakened which turns out to be the greatest obstacle to private investments. Forgoing regulated wholesale products do not solve the problem; it is the problem trigger instead.

The next periodic review of the EU regulatory framework is therefore the right opportunity to assess the extent to which the EU's pro-competitive framework has been consistently

¹ TK-Investitionen, Investitionsprojektionen und Erreichung der Ziele der Breitbandstrategie:
http://www.vatm.de/uploads/media/WIK_Investitionen_2018_0614.pdf;
Wachstumsfaktor Telekommunikation: Ökonomische Studie zur Ermittlung des Beitrags der
Telekommunikationsbranche zur wirtschaftlichen Entwicklung in Deutschland (DIW ECON GmbH):
http://www.vatm.de/uploads/media/Wachstumsfaktor_Telekommunikation-Kurzfassung.pdf

implemented and whether new challenges need to be tackled. We therefore ask BEREC to focus on the right balance on promoting competition and investment.

VATM calls on BEREC to help to sharp the focus on the following:

- **Concentration on Europe's strengths:** The existing regulatory framework focusing on strengthening European oversight and consistency of national market regulation, has served its objectives well. This success needs to be continued and developed and not disturbed through a hasty paradigm change.
- **Access is local and diversity is strength:** Europe is not unified centralized nation-state but a Union of different states and different people. Whereas there is a lot of merit in creating harmonized access products – for example for business solutions – to reduce the inherent cost of diversity, not every access or service needs to be provided by a European champion.
- **The permanent comparison with USA or Asia falls too short:** A careful analyses based on an accurate diagnosis is essential to prevent the wrong prescription. Any strategy and legislation should focus on the benefits and target clearly identifiable failures
- **Balanced view:** The future politics in telecoms must further enforce competition on a pro-competitive market-driven approach, instead of reducing regulation in favour of European incumbents

In VATM's opinion BEREC will play a key role to create the right background conditions in which innovation and investment of all market players are possible. As the new Commission will start its work, it can be expected that 2015 will offer particular challenges and opportunities for BEREC.

VATM therefore welcomes that the draft program 2015 already addresses many of the key issues to ensure the right reflections regarding the common framework, the development of the internal market by safeguarding a strongly pro-competitive environment.

The following points of the Work Program 2015-2017 are of key importance to the VATM:

Wholesale products (3.1.1)

VATM would insist on the importance of key wholesale access products. It should be remembered that activities for European standardization of wholesale products to replace an unbundled local loop are the wrong way and that national unbundling obligations must not be suspended. As a replacement for an ULL we therefore reject a standardization of bitstream wholesale product, as initially suggested in the proposal of the European Commission introducing a Digital Single Market. Nevertheless, these products have merits in the realm of business services. Physical unbundling remedies require more investments by alternative operators than virtual ones but also allow further differentiation at the retail level. Favoring virtual products over physical ones runs counter the principle of promoting infrastructure based competition. Preventing alternative operators from investing deeper in the networks by

e.g. rolling out fiber until the street cabinet (FTTC network) and then unbundling the copper sub-loop, will stall competitive dynamics, certainly in the areas not covered by other competing infrastructure(s). Shielding the dominant operators from competition will not incentivise them to invest in better technology and services.

VATM is seriously concerned about the lack of clarity within the distinction between physical and virtual unbundling products. In this regard, BEREC should reinforce actions aimed at ensuring the consistent availability of key wholesale access product. This means that BEREC should focus on defining characteristics and specifications for key wholesale access products as ULL, terminating segments of leased lines and also virtual access products in a pro-competitive manner. Furthermore, access to wholesale products for carrier selection and premium services is crucial for a fair competition in favor of end customers and sustainable competition. We therefore urge BEREC to continue supporting NRAs which deem it necessary to analyze and regulate former markets 1 and 2 due to different market characteristics and legal regimes. The services provided using such regulatory interventions (carrier selection, origination services to virtual numbers, WLR) continue to be necessary for business services and a lot of retail customers.

With regard to business customers harmonization of wholesale products may be helpful as they enable customers to offer their products across Europe. Quality is a key factor when it comes to harmonization. It has to be designed in such manner that each member state will actually be able to provide competitive offerings and quality is not limited by incumbent's offering. This is imperative if European companies are to benefit from an improved single market in telecommunications. In the private customer sector competitors can profit from quality increase by identifying and implementing best practice so far this does not lead to discrimination to incumbent. Therefore VATM would like to encourage BEREC to set up specifications in guidelines for business wholesale access products and without prejudice to the imposition of physical access obligations.

Oligopoly analyses and regulation (3.1.5)

VATM welcomes the recent BEREC position on how to tackle joint dominance and oligopolistic market structures. As recognized within the proposal of creating a Telecom Single Market, the Commission obviously proceeds from the assumption that the existence of two NGA networks (duopoly) is sufficient for achieving the goals of the Digital Agenda. And yet, experience from the US shows that in that country, retail prices are considerably higher because of reduced competition. However, excessive retail prices are counterproductive to a fast penetration and use of high bit rate connectivity. Even according to the EU Commission's own scorecard 2013, the Commission is farthest from its goals when it comes to the use of high bit rate connections. The Commission does not take into consideration that currently 40 % of fixed broadband connections across Europe exist based on physical access at the wholesale input level which means that the competitors drive the market.

We therefore believe that BEREC must continuously address the problem of joint dominance, especially in the context of ex-ante regulation. The question on how to tackle joint dominance and oligopolistic market structures ought to be an important pillar within the next framework review.

Next framework review (3.2.3 b)

It can be assumed, that the next framework review in 2015 will result in substantial changes to the current legal framework for electronic communication. As there are no reasons whatsoever to hastily taken radical measures to consolidate and reduce competition at this point, it is vital to ensure a public consultation on this important, far reaching and complex proposal. This will allow all stakeholders – industry, National Regulatory Authorities, end users, SMEs, large businesses, public administrations, etc. – to share and discuss their views on a publicly available policy proposal.

Brussels, 24.10.2014