



ECTA RESPONSE

TO THE PUBLIC CONSULTATION BY BEREC

ON THE

DRAFT BEREC PRELIMINARY REPORT IN VIEW OF A

COMMON POSITION ON MONITORING MOBILE COVERAGE

BoR (17) 186

8 NOVEMBER 2017

1. Introduction

ECTA, the European Competitive Telecommunications Association, representing over 100 challenger telecoms operators and digital communications companies, welcomes the opportunity to comment on BEREC's preliminary report on monitoring mobile coverage, and hereby provides its brief comments, addressing matters of principle.

2. Comments

ECTA at this stage has limited comments on the draft of BEREC's preliminary report, given its predominantly technical emphasis and the preliminary nature of the findings reported.

We understand, and broadly agree with, BEREC's proposed subsequent steps, which entail:

- (a) making a full inventory of NRA practices (measurements, data processing, mapping, etc.),
- (b) specifying metrics and methodologies that represent best practices, and
- (c) ultimately agreeing a BEREC Common Position containing a Recommendation of Best Practices for monitoring mobile coverage, and publication of comparable monitoring results.

ECTA to emphasise the following points, on a forward-looking basis:

- ECTA considers that BEREC's work on mobile coverage monitoring must explicitly recognise that such monitoring does not occur in a competitive vacuum as a purely technical exercise. Coverage is a topic that shapes and is shaped by competitive reality: Operators may use coverage as a differentiating factor in their strategic positioning, and their choice where to invest in coverage may depend on perceived competitive dynamics or alternative offers available to them. Where, for example, a wireline SMP operator offers competitors national roaming at such favourable conditions that they choose roaming over maintaining, upgrading and expanding their own mobile networks, this is likely to also impact mobile coverage. The monitoring of mobile coverage is necessarily impacted by these competitive dynamics – and is, in turn, likely to influence them, when its results are publicized. ECTA therefore encourages BEREC to acknowledge this, in line with its focus on the market-shaping dimension of spectrum management, elaborate such links where appropriate in the report, and confirm its continued attention to the competitive embeddedness of mobile coverage monitoring, notably by introducing suitable wording into the recommendations of the report.
- We believe that further work may create a realistic prospect for:
 - (a) agreeing common definitions (of coverage in its own right, and of a few simple categories associated to quality, e.g. 'outdoor', 'indoor', 'in-vehicle', and 'limited', 'good', 'very good'),
 - (b) better alignment of what is measured,
 - (c) better alignment of how measurement is carried out, and
 - (d) better alignment on whether and how monitoring results are published, including on a comparative basis.

At the same time, ECTA notes with surprise the relatively thin evidence base on NRA monitoring practices reported in Annex B of the draft report and therefore encourages BEREC to explicitly state the response rate and to put future work on a significantly broader basis in terms of the inputs received. This should notably serve to further clarify key aspects such as the scope and purpose of existing monitoring obligations, the distribution of responsibilities between operators and NRAs in this context, the regulatory resource requirements involved and their financing, as well as any scale-specific aspects that may affect the appropriateness of mechanisms identified to particular Member State contexts. ECTA would advise against further work being conducted without NRAs' implementation capacity, including the need for and, where applicable, current functioning of, cooperation between multiple authorities, having been considered.

- ECTA believes that the finality of mobile coverage monitoring must be given more explicit consideration in developing this draft report towards a Common Position. While the draft report does distinguish between the provision of independent and reliable information on the one hand, and assurance of coverage obligations being met by licensed MNOs on the other, and proposes to focus exclusively on the former, it remains entirely unclear how the relations between the two, and other functions for which coverage measurement may be pertinent (e.g. emissions and EMF monitoring, network integrity testing), are to be conceived. Efficiency considerations suggest that artificial separation of these two purposes is likely to increase cost, create discontinuity between different data sources and leave potential synergies un(der)utilized, and thereby increase the risk of disproportionate administrative burdens for operators. This lack of clarity threatens to undermine not only the utility of the work item in its own right, but also calls into question follow-up work scheduled under the draft Work Programme for 2018.¹ ECTA therefore calls on BEREC to clarify the relation between monitoring for compliance and for information purposes as a matter of urgency. This should include a differentiated analysis of how data requirements vary according to who the target audience to be provided with information is. ECTA is particularly concerned that competitively relevant information, which includes information about compliance with licence conditions, may be misrepresented or misperceived due to inconsistent reporting standards and contexts, and therefore calls on BEREC to address these concerns carefully and explicitly.
- We observe that the document contains many references to 'consumers' / 'consumer audience' / 'consumers and citizens'. This should be extended to explicitly cover professional users. The document does refer to 'industry' and 'IoT' which is welcome, but a more systematic inclusion of businesses, non-profit and public sector organisations (e.g. in education, healthcare, transport, safety) is required.
- ECTA also believes that the aspect of end-user empowerment needs to be thoroughly examined before a common position can be agreed. This should include notably a discussion of available metrics not only with regard to their possible technical harmonization, but also with regard to their information value for end-users, including different end-user subgroups

¹ BoR (17) 176, work item 3.5, p. 16.

where such groups have specific coverage needs, notably for provisioning of time- or mission-critical services. In this regard, ECTA suggests dedicating additional efforts to conceptual clarification of coverage characteristics and their communicability, before investing further resources into presentational aspects.

- Where operators have different spectrum portfolios (e.g. several challenger mobile operators have a spectrum deficit compared to incumbents/earliest entrants, and several have a lack of < 1 GHz spectrum which is crucial for indoor and in-vehicle coverage), this needs to be appropriately reflected and measures need to be taken in other areas of regulation to correct spectrum deficits that are harmful to competition. BEREC rightly states that comparison between network operators facilitates switching from an operator to another and thus promotes competition, but ‘naming and shaming’ operators which never had the formal ability or a realistic ability to acquire ‘sweet spot spectrum’ may harm challenger operators and thus result in reducing the competitive pressure they can exert. Where challenger operators have to rely on national roaming, this needs to be appropriately reflected, to avoid presenting a distorted picture to the addressees (users, industry and policy-makers) of the monitoring work. In particular, the monitoring of coverage through national roaming should not only establish whether or not national roaming arrangements are in place, but clearly seek to identify the conditions to which they are subject and assess the limitations that these impose for delivering on coverage targets. In communicating the results of coverage surveys, due regard should be had to the difference between self-provided and contracted coverage.
- ECTA stresses that even if the above concerns, and other concerns identified in this response, were to be addressed, any improper use of mobile coverage data must be rejected. In particular, the availability of such data must not give rise to any form of unwarranted product market substitution between fixed and mobile broadband. As ECTA has consistently argued, and clearly recalled in its response to the public consultation on the review of the SMP Guidelines,² unwarranted geographic segmentation of markets (including on a potentially impracticably granular level, which introduces ‘leopard spots in regulation’), poses a severe risk of lasting competitive prejudice to alternative operators and end-users benefitting from their competitive offers. Such segmentation is prone to undermine alternative operators’ ability to compete on markets that are in actual fact nationwide in scale in terms of pricing, marketing, advertising, bundling, acquisition of content rights, etc.
- We are concerned about the potential impact of this initiative on the focus of regulation. BEREC and NRAs should ensure that any modified or enhanced monitoring of mobile coverage does not occur to the detriment of NRAs’ core market analysis work. Resources should not be diverted away from market analysis work.

² Cf. ECTA’s response to the European Commission’s public consultation on the Review of the Guidelines for Market Analysis and Assessment of Significant Market Power, available from: <https://www.ectaportal.com/images/Positions/ECTA-submission-to-SMP-Guidelines-review-consultation.pdf>.

- We are concerned about costs of regulation, which in most cases are ultimately borne by industry. BEREC and NRAs should ensure that any modified or enhanced monitoring of mobile coverage (and extensive proactive technical supervision of net neutrality – section 2.3.2.2), does not impose significant new costs on operators, and that any costs of regulation are apportioned in accordance with the revenues generated by operators.
- Appendix A lists frequency bands, describes technologies and reflects on reporting conventions for coverage information. The added value of this appendix is unclear. Once this has been identified, it should be appropriately referenced in the body of the text and its title revised to meaningfully convey its contents. ECTA would also point out that several other appendices (B, D and E) equally lack cross-references in the body of the report, and should be integrated in the next revision.

ECTA stands ready to engage constructively with BEREC and NRAs on issues relating to mobile coverage, and to bring about realistic and logical EU-wide harmonisation in this area. We emphasise that this work, while useful, should never detract from the thorough, diligent and unfettered discharge of NRAs' core task of ex ante market regulation.