

Press Release

6 October 2021

BEREC will update Guidelines following the Court of Justice rulings on zero-rating, publishes recently adopted reports and calls for stakeholders' input.

BEREC strongly supports the European Commission's (EC) ambition to create contestable and fair markets in the digital sector for the benefit of European citizens and businesses. To demonstrate its commitment, today, during the public debriefing on the outcomes of the BEREC 48th plenary meetings, the BEREC Chair Michel Van Bellinghen (BIPT, Belgium), together with the BEREC Working Group Co-chairs, introduced multiple documents adopted by the Board of Regulators.

BEREC to update the Open Internet Guidelines on the topic of zero-rating

During its 48th BEREC plenary meeting on 30 September 2021, the Board of Regulators discussed the three decisions of the European Court of Justice of 2 September 2021 concerning "zero-tariff" options proposed by two German ISPs (Telekom Deutschland and Vodafone).

BEREC observes that the way in which the Court of Justice tackled the cases calls for an update of BEREC's guidance on zero-rating. However, the exact extent of this change needs further scrutiny, as it brings up important legal questions.

BEREC also notes the Guidelines on the Implementation of the Open Internet Regulation must, according to that Regulation, be adopted in close collaboration with the European Commission. The Board of Regulators therefore plans to adopt an update of the BEREC Guidelines in June 2022, and will put forward a consultation on draft documents, containing BEREC's detailed view on zero-rating, in March 2022.

BEREC also decided to launch immediately a [call for input](#) to give stakeholders the opportunity for an early involvement and to contribute, on equal footing, to its ongoing analysis.

Michel Van Bellinghen, BEREC Chair 2021, concludes: *"At this stage BEREC thinks it is likely that less kinds of zero rating are allowed than under the interpretation of the Open Internet Regulation in the current BEREC Guidelines. However, our duty of care as regulators and our responsibilities towards end-users and industry call for a thorough assessment of the rulings and its implications, before redacting new Guidelines on this topic."*

For more info:

https://berec.europa.eu/eng/news_consultations/ongoing_public_consultations/8955-call-for-stakeholder-input-to-feed-into-the-incorporation-of-the-ecj-judgments-on-the-open-internet-regulation-in-the-berec-guidelines

Implementation of the Open Internet Regulation

BEREC adopted its fifth [Report on the implementation of the Open Internet Regulation](#).

The Report gives an overview of the activities of the NRAs implementing the Open Internet Regulation and the associated [BEREC Open Internet Guidelines](#). The Report focuses on the period between 1 May 2020 and 30 April 2021. The Report reveals that zero-rating services are offered in 25 Member States and confirms that all NRAs may now impose penalties in cases of infringements of the Regulation.

The Report also describes how NRAs have monitored the impacts of the Covid-19 crisis on the internet capacity and illustrates that networks have performed well. Covid-19 did not create issues for the availability or the general quality of internet access services.

The Report further shows that the adoption of monitoring methods has increased. Finally, six NRAs reported progress in Open Internet related court proceedings during the past 12 months.

Third-party charge on mobile phones' bills

In many European countries, mobile operators allow third-party providers to charge their customers for goods or services via their mobile phone bills. This payment type can be considered an easy and suitable option for paying for goods or services, such as parking and public transportation tickets, newspapers subscriptions and other services. Such charges applied to various services offered by phone call (voice call) or via text message (SMS/MMS) are known as premium rate services (PRS). Usually, they are charged at higher rates than those generally applied to phone calls and texts.

Nowadays, such charges are also applied to the purchase of goods and services by Direct Carrier Billing (DCB). DCB is also used for charging for a good or a service via the mobile phone bill of the end-user. However, unlike some traditional PRS, DCB does not rely on a premium rate number or specific shortcodes to apply the charge. But instead, the end user's account is directly charged for the purchased good or service when clicking on a link on the Internet.

The Board of Regulators approved a [report on how to handle the third-party charge on mobile phone bills](#). The approved document helps to benchmark and to get insight into how the Member States currently handle this topic and what protections are available to end-users. The same exercise will be considered as part of the BEREC Work Programme in 2023.

Public consultation on BEREC Work Programme 2022

Promoting full connectivity for consumers and businesses will remain a key priority for BEREC in 2022. During the BEREC public debriefing, the incoming BEREC Chair Annemarie Sipkes (ACM, the Netherlands) presented the [draft BEREC Work Programme 2022](#) and invited

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stakeholders to actively engage in the [public consultation](#). Ms Sipkes also added that, in line with the European ambition to create a Europe fit for the digital age, BEREC would contribute by facilitating the roll-out of very high capacity networks, stimulating their contribution to close the digital divide.

The public consultation will conclude on 5 November, and the final BEREC Work Programme will be adopted during the BEREC plenary meetings in December 2021. Stakeholders are invited to join the discussion on the BEREC Work Programme 2022, also during the [BEREC Stakeholder Forum](#) on 28 October in Brussels.

Other Reports and draft reports

At the public debriefing, the BEREC Chair also presented three additional reports that were issued regarding the [regulatory treatment for fixed and mobile backhaul](#), the [ex-ante regulation of digital gatekeepers](#) and the [harmonised definitions for indicators regarding OTT services](#).

A [full list of public documents](#) adopted at the 48th plenary meeting is available on the [BEREC website](#). The 49th BEREC plenary meeting will take place on 9-10 December 2021 in Stockholm, Sweden.

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