

OTT (Over-the-Top) services, such as streaming media and VoIP, are not subject to the same regulatory requirements as traditional telecommunications services. This regulatory gap has led to a competitive imbalance between OTT providers and traditional telecommunications providers, who are subject to a comprehensive regulatory framework. The Commission has taken several steps to address this imbalance, including the implementation of net neutrality rules, which prohibit broadband providers from blocking, throttling, or discriminating against internet traffic. Additionally, the Commission has adopted a framework for regulating broadband providers as common carriers, which would subject them to the same regulatory requirements as traditional telecommunications providers. This approach is technology neutral and platform agnostic, ensuring that all market participants are treated equally.



Specific comments to main elements of the BEREC draft report

In this section we provide comments to some of the main elements of the BEREC's draft report.

Definition of OTT

In its report BEREC defines an OTT service as “content, a service or an application that is provided to the end user over the open Internet.” This means that the term OTT does not refer to a “particular type of service but to a method of provision”, namely provided over the open Internet. According to this definition anything that is provided over the open Internet is considered to be an OTT service.

For the purpose of the report we broadly agree with BEREC's definition. However, we recommend using the term Public Internet instead of Open Internet, to clearly distinguish it from services provided over Private IP networks.

Indeed, from a consistency perspective, this would bring the report in line with footnote 1 (page 3) where BEREC notes that “The ‘open Internet’ here means that private IP networks are excluded”. This distinction matters particularly for enterprise service providers, such as Verizon, who predominantly provide services in Europe to large business and government customers. Those customers have specific demands for innovative and new services provided over private IP networks. Services provided over **private** IP networks should not qualify as OTT.

Taxonomy of OTT services

BEREC distinguishes three types of OTT services in its report based on whether the services qualify as ECS or compete with ECS. This results in a simple taxonomy of OTT services that consists of:

- *OTT-0 services, which are OTT services that qualify as ECS;*
- *OTT-1 services, which are OTT services that do not qualify as ECS but do potentially compete with ECS;*
- *OTT-2 services, which are the remaining category consisting of OTT services that are not an ECS and do not potentially compete with ECSs.*

This classification appears to be driven by what seems to be the main question of the report, i.e., whether and how OTT services should be regulated going forward from an ECS point of view.

The main concern we have with the approach is related to whether the cornerstone of the taxonomy, the definition of ECS, is still appropriate and future-proof (see below). As stated previously the review of the regulatory framework provides an opportunity to evaluate whether existing regulation is still necessary in line with today's market realities. Rather than including OTTs in an ever broadening ECS definition, we believe the approach should focus not only on excluding OTTs from a future ECS definition due to their evolving nature, but also lifting regulation in parallel on existing ECS which – as BEREC notes – compete with those OTT services.

Future definition of ECS

On page 21 the report takes the view that the definition of ECS should be clarified and/or reconsidered to ensure it keeps pace with technological developments, is future proof and still remains the correct foundation that determines which services are regulated under the ECN/S Framework.

BEREC rightly observes that due to the current and expected evolution of new services, the boundaries between ECS and OTT services become increasingly blurred. The ECS definition was elaborated in a different time of technological and market evolution when the internet barely existed. It has served its purpose in the context of traditional services, but poses real challenges in the new market environment.

The lack of clarity in the ECS definition, which is especially true when NRAs try to establish whether services “which consist wholly or mainly in the conveyance of signals”, opens the door to different interpretations and

inconsistencies. This is clearly something that needs to be avoided as it creates huge uncertainty for the industry as a whole (OTT and other services) and distorts the level playing field.

Verizon fully agrees that there is a need for a new future-proof foundation. However, we strongly question whether the transformative technological evolution that is the Internet and its related innovation would benefit from simply and incrementally imposing existing sector specific regulation on new OTT services or the extension of existing sector specific regulation to new OTT services.

The emergence of OTT services creates an opportunity to seriously consider a lighter regulatory regime based on horizontal generic regulation for all market participants, as opposed to a heavy sector-specific one for more market participants than before. Instead of adding some or all OTTs into an even broader ECS definition, we urge BEREC to adopt an approach that not only excludes OTTs due to their evolving nature from future ECS definitions but lifts regulation in parallel on existing ECS which (potentially) compete with OTT services.

Verizon favors moving away from the current sector-specific approach towards a more generic horizontal approach for the future, where sector specific regulations are only put in place when market failures and consumer harm cannot be dealt with by horizontal rules (such as competition, consumer protection and data protection laws).

Given the realities of today's digital market dynamics, a revised telecom package should (i) shift away from sector specific regulations towards generic horizontal regulation; and (ii) only apply regulation where necessary and proportionate and to all market participants equally, with a goal of lessening regulation to reflect the realities of increased cross-sector competition that accompany the OTT sector and Internet economy generally.

A good starting point to achieve this goal would be a **narrower** definition of ECS in a future regulatory framework. A level playing field for all market players can only be created by moving away from sector-specific regulation where appropriate.

Extended powers to collect information beyond ECN/S

BEREC notes on page 22 that Article 5 (1) of the Framework Directive provides NRAs with the competence to collect information, but that although there are national variations, this is mainly limited to collecting data from ECN/S providers (not from OTT-1/2 providers) therefore only providing a limited vision of the market. To that effect BEREC recommends extending the scope of Article 5 (1) of the Framework Directive to "all information from all relevant parties necessary for fulfilling the tasks of NRAs when regulating ECN/S" and thus remove the current ECS provider limitation.

Verizon from a principle and practical point of view does not favor an extension of the competences of NRAs to collect information beyond issues falling directly in scope of the area of regulation for which they are responsible. The mandatory powers of NRAs to collect information should continue to be fully aligned with their key area of responsibility, i.e., ECN/S providers, and not go beyond. Otherwise, NRAs would further extend their competences beyond their direct scope of responsibility and create unnecessary reporting obligations and legal uncertainty. It would also unnecessarily further stretch the NRAs resources. Moreover, from a practical point of view there is no need for such an extension. If NRAs or BEREC need information regarding OTT services there are sufficient alternative means to gather this such as making use of existing materials in the form of studies and reports or commission studies according to their needs.

Rather than further extending their powers to collect information, we would like to see NRAs and BEREC take some serious actions to address the burden that is currently imposed on the industry in this area by bringing more consistency to the type of information individual NRAs request from ECN/S providers and by making sure that NRAs do not ask for information that is duplicate or otherwise more than they reasonably need.

Differences in the treatment of ECS and OTT services

BEREC notes on pages 22-26 that although there is general appreciation of the idea that services of the same type should preferably be subject to broadly the same regulatory obligations, there can also be reasons for different regulatory treatment of services.

From a level playing field point of view Verizon believes strongly that services that have the same characteristics and functionality and which directly compete with each other should be subject to the same regulatory treatment. To do otherwise would distort competition.

However, when considering the need for regulation, legislators and regulators should always ask themselves whether sector-specific regulation is really necessary in light of already existing generic rules, such as competition law, data protection and consumer rights.

Rather than trying to bring further OTT services in scope of the EU ECS regulatory framework, Verizon strongly believes that lighter regulation for all services, both OTT services and services that are currently defined as ECS, should be promoted in the context of the current Review of the EU Telecoms Framework to further recognize and encourage competition and innovation in the EU.

This also means that maintaining existing obligations always needs to be questioned. Going forward EU regulation should move away from sector specific regulation towards an increased reliance on existing and future generic horizontal regulation. Sector specific regulation should only be imposed where necessary to address market failure or harm to consumers, and whenever imposed it should be proportionate and apply to all comparable market participants of the same type equally.

Indeed BEREC rightly raises the question of whether from a consumer protection point of view the current transparency requirements of article 20, 21 and 22 of the USD are still needed or whether the generic rules of the Consumer Rights Directive suffice. BEREC interestingly notes that sector specific and generic rules impose the same type of requirements but unfortunately falls short of concluding that sector-specific rules can therefore be withdrawn as the consumer is adequately protected by the generic rules. Verizon believes that this is a good example of where sector-specific regulation can be withdrawn as generic rules already provide the desired level of protection.

We agree with BEREC that based on proportionality considerations services or service types can be treated differently, although this should always be based on objective criteria. In this context BEREC should have also addressed the issue of whether - from a proportionality perspective - consumer protection rules should apply to all services no matter whether they are consumer or business services. Considering the specificities of business users – mainly different contractual provisions and business needs - Verizon believes that although certain obligations may make sense to protect consumers, they are unnecessary, irrelevant, burdensome and potentially disproportionate when also applied to business providers.

ECS and OTT Partnerships

BEREC on page 34-35 concludes that partnerships between ECS and OTT providers have become more common in recent years and the area will likely continue to evolve in different ways in the near future. BEREC holds that it's still too soon to conclude on their effect on competition and consumers in the ECS markets.

Verizon agrees with BEREC that partnerships between ECS and OTT providers will continue to evolve and that, as BEREC points out, it is too soon to assess the effect those partnerships might have on competition and consumers. It remains essential to avoid policy or regulatory mandates that favor one constellation over another or which could hinder the vast potential economic and societal benefits of these developments. We welcome BEREC's light touch approach in this respect, because light-touch regulation **enables** the cycles of innovation that generate

opportunity and economic growth for all, while avoiding unnecessary and counter-productive regulations that attempt to outsmart what has become a dynamic ecosystem.

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2 November 2015