

**BDI**Bundesverband der  
Deutschen Industrie e.V.**POSITION PAPER****Consultation on Draft BEREC Guidelines on  
the Implementation by National Regulators of  
European Net Neutrality Rules (BoR (16) 94)****I. Introduction**

BDI is the umbrella organization of German industry and industry-related services. It speaks for 36 trade associations and more than 100,000 enterprises with around 8 million employees. Membership is voluntary. 15 organizations in the regional states represent the interests of industry at the regional level. Our guiding principle is: BDI serves industry – and industry serves people.

German industry is committed to an open internet. A deliberate obstruction of content, unjustified discrimination and non-transparency must not be allowed to take place in any way. That said, it is important to stress that a differentiated management of data on the internet that gives some data priority over others does not conflict with this view. Therefore, German industry aims for a “both/and” rather than an “either/or” solution. The prime objectives must be to ensure freedom of choice for consumers and commercial clients, strengthen the internet’s transparency and innovative capacity, and optimise the use of the broadband infrastructure.

BDI is supportive of the aims of the EU Open Internet Regulation within the Telecoms Single Market (TSM) Regulation. An open internet which encourages innovation, competition and choice for end users and guarantees access to the internet for all users is essential for German industry. The Regulation as agreed by the European legislators strikes a reasonable balance between protecting rights of end users of Internet access services (IAS) on the one hand and ensuring freedom to continue to innovate and develop new services on the other.

## II. Main concerns about the draft BEREC guidelines

BDI is concerned that in some areas the draft BEREC guidelines compromise the reasonable balance that was achieved in the TSM Regulation by introducing restrictions and conditions above and beyond the legal text in the Regulation.

Our concerns relate to the following issues:

- 1) By creating technology mandates for how to deliver services other than Internet Access Services (Sol-AS) the guidelines reserve the right to define what services can be delivered as SolIAS to NRAs without a legal basis in the Regulation.

However, in the future, there will be further services in the business world that do not function properly if data transfer is not guaranteed to be deterministic, reliable and secure. If it is not possible or needs inadequate efforts to offer such services, the internet and the digital economy as a whole jeopardize their potential for innovation. This limitation could cause serious detriment to the ability of enterprise customers to operate their business and compete globally and will also have a negative impact on customer choice and innovation.

Open Internet rules are designed for legacy network infrastructure and do not acknowledge existing technical differences between different fixed and mobile infrastructures. Moreover they do not reflect the advent of network virtualization and do not anticipate the growing variety of quality requirements in the digital economy. It is vital that rules are implemented in a flexible way avoiding unintended consequences on innovative services and innovative technological solutions like 5G as well as related business models.

- 2) The guidelines introduce new limitations on traffic management that are based neither on the legal text in the Regulation nor on technical realities of how networks are managed.

Traffic management is in itself reasonable and essential for the efficient management of networks, thus keeping end user costs low and the quality of service high. Its importance is set to increase as networks become more and more automated. It will be machines that define when precisely network hits levels of congestion that require automated traffic management techniques to be deployed. As we move into a world, where traffic overall is expected to grow over a thousand times, traffic management will be even more necessary in order to deliver a high quality service.

The virtualization of network functions and traffic management are also at the heart of 5G. Different slices are managed differently and serve various needs of the market. Such industry verticals (i.a. transport, logistics, automotive, health, manufacturing, energy, media and entertainment) expect 5G to deliver enhanced levels of service assurance and guarantees to cater for specialised use-cases.

- 3) The guidelines recommend a retrospective application of provisions concerning the transparency of contractual obligations including customised technical parameters. This approach is based neither on technical nor on operational realities.

BEREC should refrain from including all technical parameters within the scope of contractual obligations and from fully customising offerings that address mass market. End-users would have less valid information on the available speed, ISPs less incentive to invest in high speed internet and broadband targets would be threatened.

### III. Conclusion

When finalising the “Guidelines on the Implementation by National Regulators of European Net Neutrality Rules” it is therefore important that BEREC take the following general principles into account:

- The BEREC guidelines should implement what was agreed politically and should not introduce further obligations.
- The guidelines should foster innovative business models and services emerging, keeping in mind that these are essential for Europe’s competitiveness. Thus the guidelines should focus strictly on internet access services and not limit the ability to offer further services. Furthermore, the guidelines need to be adopted with an understanding of the technical realities within the networks deploying traffic management.
- Sufficient time should be given to NRAs and ISPs to implement the transparency requirements; they should also take into account local regulation already in place.

## **Impressum**

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