**Mobile UK's comments on BEREC's draft net neutrality guidelines**

1. Internet Access Services (IAS) and the content and services accessed through an IAS enjoy a symbiotic relationship, whereby each has contributed to the extraordinary success of the other. In the last two decades, both parties have had the incentive to invest and innovate and there has been little or no requirement for external intervention to steer the market in one way or the other.

2. As the Regulation states in line 1, it is there to '*safeguard*' and '*to guarantee the continued functioning of the internet ecosystem as an engine of innovation'.* The obvious corollary is that principle of 'if it's not broke, don't fix it' must apply, placing on regulators a strong bias against intervention for fear of upsetting the intricate balance of the ecosystem in question.

3. This follows through to the guidelines, where the instinct to provided legal certainty and clarity must <u>not</u> take the guidelines beyond the reach of the Regulation.

4. It is also worth noting that the net neutrality guidelines were introduced alongside the roaming regulations and there are some significant inter-relationships.

**Roaming traffic**

5. Customers of mobile networks and customers of fixed networks differ in an important respect: the former roam (i.e. the ability for a customer to make and receive calls, send and receive data, or access other services when travelling outside the coverage area of their home network).

6. As set out in Article 6d, '*when adopting implementing acts laying down detailed rules on the application of fair use policy, the Commission shall take into account*' the matters such as *'the travelling patterns in the Union; any observable risks of distortion of competition and investment incentives in domestic and visited markets.'*

7. It follows that the practices deployed in visited markets, because of the potential impact on sustainability, must be assessed as a separate exercise to domestic traffic. This is particularly relevant when it comes to assessing what is 'reasonable traffic management'.

**Scope**

8. BEREC 's proposed definition of end user in respect of Content Application Providers in Article 1 is not quite accurate and should be amended, so that it is clear in paragraph 5 that they are end users only to the extent that are using the Internet to access their end users.

**Tethering**

9. Paragraph 25 suggests that tethering is likely to be prohibited. This goes beyond the provisions of the Regulation and this reference should be removed. It is not the purpose of the Regulation to allow multiple users to connect to a network through a single device and subscription. Products and tariffs exist to meet that need but a prohibition on tethering goes beyond safeguarding the "*equal and non-discriminatory treatment of traffic in provision of internet access services*" and "*related end-users' rights.*

**Zero rating**

10. In paragraph 38, the guidelines set out that zero rating beyond a customer's data cap infringes Article 3(3) of the Regulation. There is nothing in the Regulation to support this interpretation. Such a pre-determination is contrary to the approach described in recital 7 because a proper assessment of the impact on customer choice has not been conducted.

11. The proscription ignores the fact that there may be many beneficial uses of zero rating – not least allowing a customer to visit his/her ISP's web site to top up an expired data allowance. An *ex ante* prohibition on zero rating is not justified, or allowed, if Recital 7 is to be observed.

**Reasonable traffic management**

12. Recital 15 states: "*While it may be predictable that such temporary congestion might occur from time to time at certain points in the network – such that it cannot be regarded as exceptional – it might not recur so often or for such extensive periods that a capacity expansion would be economically justified*".

13. This recital explicitly acknowledges that there will be circumstances where capacity expansion may not always be economically justified and that viability/sustainability therefore has a strong bearing on what constitutes reasonable traffic management.

14. Paragraph 70 of the BEREC guidelines thus goes beyond the provisions in the Regulation and should be amended. It is absolutely critical (an in line with common sense) that providers of network capacity are not pushed by these guidelines into making investments that are fundamentally unviable or unsustainable. In the long term, this will only destroy the delicate balance that currently exists in the internet ecosystem to the detriment of all, including consumers.

**Ad blocking**

15. Paragraph 75 suggests that network based ad-blocking is prohibited but that ad blocking invoked by the end user through the terminal equipment is permitted. While we concur with the latter, it should also be permitted for network based ad blocking invoked by the end user

should also be permitted. This would be the logical and technologically neutral way to deal with the matter.

**Specialised services**

16. The guidelines in paragraph 106 refer to logical separation as the differentiator, which implies a technological approach as opposed to prioritisation on an IP stream. Logical separation and strict admissions control are not the only ways that specialised services can be delivered. We are concerned this definition could result in the foreclosure of innovative services. The reference to logical separation in the guidelines should be removed, and not act as an additional test to that which appears in the Regulation.

Mobile UK's members are the UK businesses of EE, Three, Vodafone and Three.

Mobile UK

[Hm@mobileuk.org](mailto:Hm@mobileuk.org)