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## **CSA response to the public consultation on the draft BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules**

*The Conseil supérieur de l'audiovisuel (CSA) was instituted under the law of 17 January 1989 with the charge of guaranteeing broadcasting communication freedom in France. The scope of the CSA's responsibilities under the law of 30 September 1986, amended numerous times, is wide-ranging: ensuring plurality in opinions expressed, organising radio and television electoral campaigns, rigorous news treatment, allocating frequencies to operators, ensuring human dignity is upheld, ensuring women's rights, protecting consumers. The CSA is also in charge of ensuring on-air defense and showcasing of French language and culture. More recently, the CSA has received new charges including, among others: making television programs accessible to hearing or visually impaired persons, ensuring that the media reflect the diversity in French society, supporting health protection public policies.*

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Net neutrality is a significant issue for audiovisual services as they are increasingly distributed through other ways than traditional distribution (DTT and satellite). Indeed, more and more television programs are distributed via IPTV through ISP's set-top-boxes or "over the top" (OTT) on the open Internet. According to Cisco, IP video traffic will account for 82 % of all consumers Internet traffic by 2020, up from 70 % in 2015.

The power of ISPs to facilitate or hinder access to communications networks is even more critical in the context of digital convergence between Internet and audiovisual media services that Europe is currently undergoing. Although this may be an opportunity to ensure better exposure of media content, vertically integrated telecommunications operators have a greater influence on the value chain (for instance in pushing their own content).

Net neutrality raises many issues. For CSA, the main challenges to face consist in being sure that the distribution of audiovisual services will not be limited or restricted and in ensuring that the objectives of cultural diversity, pluralism and financing of audiovisual creation are fulfilled.

CSA welcomes the opportunity to comment on the draft BEREC guidelines on the implementation by national regulatory authorities (NRAs) of European net neutrality rules and aims at highlighting two particular questions that may interfere with the objectives of public interest the CSA must enforce.

### On specialized services

Article 3(5) of the Regulation<sup>1</sup> allows certain services to be optimized for specific content, such as linear broadcasting IPTV services for instance. BEREC provides guidelines to help the NRAs

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<sup>1</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015

assessing whether or not a service needs a high level of quality and might be optimized (as long as it meets the strict requirements of the Regulation).

The TV and radio channels authorized in France by the CSA (whatever the delivery mode) have to fulfill general interest obligations aiming among others at guaranteeing pluralism, protection of audiences, cultural diversity, women's rights, and content financing.

The CSA pays very close attention to make these "virtuous" actors stand out. Thus, given the role they play in the achievement/fulfilment of general interest objectives, the CSA agrees that specialized services must include, at least, IPTV live stream of these players authorized in France.

From a technical point of view, catch-up television services do not require the same high degree of quality (people are used to a short buffering time when watching catch-up TV). However, they must be treated without discrimination, compared to other video content services, since they also contribute to pluralism and cultural diversity.

### *On commercial practices*

Article 3(2) of the Regulation states that agreements between ISPs and end-users on commercial and technical conditions, and the characteristics of Internet access services such as price, data volumes or speed, and any commercial practices conducted by ISPs are allowed as long as they do not limit the rights of end-users laid down in Article 3(1).

For instance, there is a commercial practice called "zero-rating" where an ISP does not count up the data traffic associated with a particular application or category of applications. At first, it appears to be beneficial to consumers as people watch more and more video content on their mobile devices. But these practices may involve risks that must be identified and evaluated by NRAs and other competent authorities before assessing, on a case-by-case basis, whether they can be authorized or not.

BEREC has established a list of criteria to clarify how these practices could limit or not the exercise of end users' right. The CSA welcomes this list and is particularly attentive to considerations regarding diversity of contents / applications, freedom of expression and media pluralism.

Indeed, such commercial practices could prevent/hinder the use of certain services by encouraging consumers to prefer/favour those that are not deducted from the data traffic. The CSA wants to make sure these practices do not reduce the access to certain services, that are not included in these specific packages, in particular those which contribute to cultural diversity.