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Dear BEREC team,

Below are LeaseWeb's contributions to the draft BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules.

LeaseWeb is a provider of global Cloud Hosting and Content Delivery Network services, headquartered in the Netherlands, operating in Europe, North America and Asia. Our customers use our services to run their applications or serve their content to consumers and businesses worldwide. We employ about 350 employees (250 in Europe) and operate out of 16 data centers worldwide. Our customers include companies active in e-commerce, online gaming, OTT/media services, PaaS/SaaS and other IT services. In the context of the Guidelines we can be considered as a CAP (Content and Application Provider).

Our main concern in relation to Net Neutrality is that we increasingly see that large ISPs monetize their market position by forcing CAPs and Tier 1 internet networks ("IP Transit Providers") to pay for exchanging the internet traffic requested by the ISPs customers. Furthermore we experience that the Interconnection capacity between these ISPs networks and those Tier 1 networks and CAPs that refuse to pay for such traffic, is deliberately restricted by these ISPs. Customers of these ISP's suffer from reduced quality and speed of many internet applications and content.

Example: the cost of serving content to a consumer customer of some large German ISP's is >5x higher than the average cost of serving any other European consumer. Although IP Transit market prices and the costs to build and operate networks continue to decline, some of these ISPs even increase their prices.

With both ISPs and CAP's investing 15-20% of their infrastructure related revenues in capital expenditures (capex) to upgrade their networks and hosting infrastructures, there is no justification that ISPs off-load costs and investments in their networks to CAP's.

LeaseWeb is concerned that:

- consumers increasingly "don't get what they pay for";
- IP Interconnection charges not only create an immediate cost increase for CAP infrastructure providers like LeaseWeb, but also create financial roadblocks for the services on that infrastructure, which typically compete with services offered by these large ISP (e.g. Video on Demand services) – which would be in breach with the principle of equal and non-discriminatory treatment of traffic;
- this will reduce competition in the both ISP and CAP market ("big ISP's and big CAP's can do big deals", small ISP's and CAP's will just be confronted with an increased cost base);
- this will ultimately lead to reduced investments in new content and applications (as research of the Open Technology Institute in the US has shown);
- this harms consumer interest and hurts end-users rights.

We therefore endeavor BEREC to:

- change Article 1 / clause 6 into: "NRA's will pro-actively monitor and take into account the interconnection policies and practices of ISPs... (page 4);
- remove Article 3(3) first subparagraph / clause 47 (page 13);
- keep all other clauses that enable NRA's to take appropriate measures in place.

Kind regards,

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