

## **Telekom Austria Group response to the public consultation on draft BEREC Guidelines on the implementation of net neutrality rules**

Telekom Austria Group welcomes the possibility to comment on the draft BEREC Guidelines under consultation. The TSM Regulation lays down new rules on net neutrality in Europe. Telekom Austria Group would like to express again that the necessity of Europe-wide rules on net neutrality is indisputable. Still, it can be stated that the TSM Regulation suffers from severe shortcomings and impedes legal certainty particularly for the European telecommunications industry. According to the TSM Regulation, it is BEREC's task to clarify many issues left open due to the vague legislation and we expected BEREC to bring light into the tunnel. However, the current BEREC Guidelines do not meet these expectations. Instead of fulfilling its role and clarifying the respective open issues, we are faced with new uncertainties. This clearly has a negative impact on the European telecommunications industry, hinders its competitiveness and hampers innovation and investments so necessarily needed.

Consequently, Telekom Austria Group would like to present here three additional issues that urgently need to be addressed and considered by BEREC:

### **1. BEREC Guidelines urgently need to meet the expectation of delivering clarifications of the vague TSM Regulation**

The BEREC Guidelines should have delivered clarifications of the vague TSM Regulation which should have led to common EU net neutrality rules being equally interpreted and implemented throughout all 28 European Member States. In our point of view, this is the overall objective when choosing the legal tool of a Regulation in the EU. Obviously, this goal has been missed by the current version of the draft guidelines as they leave too much room for national deviations of interpreting the provisions.

Thus, we urge BEREC to revise the guidelines in order to come up with one European approach to the EU net-neutrality rules and to comply with the principles of a Regulation which ultimately aims at boosting the Telecoms Single Market. The guidelines also need to contribute to fostering legal and investment security in Europe.

Furthermore, Telekom Austria Group urges BEREC to define a process that strengthens the cooperation and the flow of communication between all 28 European NRAs when it comes to assessing a net neutrality case. Before the respective NRA decides on a service, this European assessment needs to be taken into account.

## **2. BEREC Guidelines urgently need to adopt a balanced approach towards Specialized Services, Zero Rating and reasonable services for end-users**

The BEREC Guidelines do not follow the principle of creating a level playing field in Europe as the provisions as well as the BEREC Guidelines are only valid for the telecommunications industry and not for OTTs. This leads to severe market distortions and will hamper operators in their innovation activities.

### **2.1. On Specialized Services**

Unfortunately, Specialized Services have to be assessed on a case-by-case basis and according to the five criteria laid down in the TSM Regulation. When it comes to clarifying and defining Specialized Services, we need an approach that takes two important perspectives into consideration: a harmonized European approach as well as the long term dimension of the business cases of the telecommunications industry. In concrete terms: If one NRA allows a specialized service brought to the market by an operator considering the European dimension, consequently this very service should be allowed in the whole telecoms single market and for the whole product life cycle.

### **2.2. On Zero Rating**

An intervention - which must only be the ultima ratio anyway and must wisely consider the European impact - against commercial practices that answer consumers' needs like „Zero Rating“ should only be done ex-post as stated in the Regulation. Again, we urge the legislators to ensure that in case a decision is made by a certain NRA for a specific case, this decision needs to be applicable in all 28 EU member states and needs to be kept on a long term basis in order to grant legal certainty.

### **2.3. On reasonable services for end-users**

Child Protection services, ad-blocking and similar services are consumed based on an individual buying decision of a well-informed customer and in many cases meet a reasonable social or public interest. Regulatory interventions leading to limitations for operators to offer those are discriminatory and are not technology neutral. This again leads to an uneven playing field as app based and cloud based solutions for the very same purpose are allowed whereas network based services are discriminated. Therefore BEREC should find a way to allow such network based services using the scope of interpretation of the Regulation.

### **3. The BEREC Guidelines do not define meaningful transparency measures**

From our point of view, BEREC's interpretation of the TSM Regulation is too vague in order to support end-users in making informed buying decisions. The BEREC Guidelines do not follow the principle of technology neutrality as they allow a different approach towards fixed and mobile internet services and completely neglect satellite or other ones. Thus, we urge BEREC to come up with a congruent interpretation of the currently deviated definitions per technology regarding the bandwidth the end-user finally gets. Internet access is a technology-averse service with competing (dedicated or shared) network technologies behind. Transparency rules should duly inform the customer, but must not distort competition.