



ECTA RESPONSE

BOR (17) 112

**NET NEUTRALITY
REGULATORY ASSESSMENT METHODOLOGY**

5 JULY 2017

1. INTRODUCTION

ECTA, the European Competitive Telecommunications Association, representing over 100 challenger telecoms operators and digital communications companies, welcomes the opportunity to comment on this BEREC consultation, and hereby provides its brief comments, addressing matters of principle.

2. COMMENTS

ECTA has consistently pointed out the prominent role that competition and transparency play in net neutrality issues. Hence, effective and sustainable competition, transparency and ease of switching should ultimately render problems relating to net neutrality irrelevant. Therefore, a strict and unfailing application of non-discrimination, EoI and cost orientation for regulated wholesale inputs should be enforced. Moreover, the gradual deployment of very high capacity data connectivity with significantly improved performance on quality parameters catering to future needs in terms of speed, reliability, latency and energy efficiency might render the need for a Net Neutrality Regulatory Assessment Methodology less relevant in the medium term. ECTA therefore encourages BEREC to review and update the proposed methodology in light of the evolving state of network technologies in use, also taking account of IP interconnection practices, on which BEREC is consulting in parallel.

When applying the Net Neutrality Regulatory Assessment Methodology, NRAs should ensure that any measurement is statistically representative and avoid placing disproportionate burdens on smaller/challenger operators.

Likewise, when measurement yields `problematic` results, NRAs should always engage in a constructive dialogue with the ISP to identify the possible root causes, particularly those causes that cannot be independently controlled by the ISP. Indeed, the document describes many examples of such issues that might arise (e.g. factors dependent on end-user behaviour). If the root cause is clearly identified and the ISP can address it with reasonable resource efforts, it should be afforded an opportunity to do so within a reasonable period of time. After the ISP has taken action, the measurements should then be repeated, ensuring that the identified root cause(s) is/are effectively being controlled for.

Where measurement results cannot be conclusively established beyond reasonable doubt or any substantiated doubt about the root causes persists, NRAs should revisit

them to determine whether the doubts can be addressed by adjustment of the measurement methodology. If it is found that no adequate remedies are likely to be available, the NRA should discard the measurement results (by a reasoned decision).

Furthermore, quality of service measurements should duly take into account the differences between fixed and mobile networks, considering for example that the first depends on the quality of the existing access networks (typically the one of the incumbent) and the latter is based on a shared access used by customers in mobility. Hence, the Net Neutrality Regulatory Assessment Methodology should be updated to provide clear guidance on how to consider poor measurement results due to wholesale access and backhaul for fixed and mobile networks, respectively. Indeed, operational experience in many countries has demonstrated strong quality limitations due to wholesale passive¹ and virtual/active products, whether regulated or not. Hence the Net Neutrality Regulatory Assessment Methodology should provide guidance for NRAs on how to effectively and swiftly address and solve those issues when they occur on regulated wholesale inputs provided by SMP operators.

In the same vein, NRAs should carefully consider the consequences of capacity-related wholesale price structures that would force alternative operators to limit capacity from an economic and financial perspective for them to avoid wholesale charges outweighing retail revenues. NRAs should quickly solve those issues by preventing those wholesale pricing structures and by refraining from accepting them as remedy. Under no circumstances should NRAs impose such price structures of their own volition.

Additionally, it is ECTA's view that, in order to minimize the burden for smaller/challenger operators, the Net Neutrality Regulatory Assessment Methodology should also: i) explain how this methodology relates to the BEREC Report on IP-Interconnection practices in the context of Net Neutrality BOR(17) 111 and ii) explain how measurement results should take into account findings related to issues on IP-Interconnection.

Finally, ECTA refers to its 2012 contribution to the public consultation on the draft guidelines for quality of service in the scope of net neutrality: "ECTA Contribution to the Public Consultation on the Draft Guidelines for Quality of Service in the scope of Net Neutrality"².

¹ Wholesale passive products encounter quality issues e.g. provision of an indirect copper pair versus a direct pair that significantly increases the length of the local loop, interferences etc.

² <http://ectaportal.com/policy-publications/positions/327-ecta-contribution-to-the-public-consultation-on-the-draft-guidelines-for-quality-of-service-in-the-scope-of-net-neutrality>