

AGORIA

Agoria paves the way for all technology-inspired companies in Belgium which seek to contribute to the world's advancement by developing or implementing innovations.

Agoria *Telecom Industries* regroups the biggest telecom operators, active in Belgium and investing in electronic communications networks in Belgium.

Input of **Agoria Telecom Industries** on the BEREC questionnaire for the evaluation of the application of the BEREC Net Neutrality Guidelines in the context of the Net Neutrality Regulation.

Introduction

Agoria Telecom Industries, gathering most representative telecom operators operating and investing in networks in Belgium, welcomes the consultation organized by BEREC. It is necessary to anticipate the evaluation exercise that the European Commission plans early 2019.

Our member companies are supportive of an open internet that encourages innovation, investments and competition and enables operators to propose a large choice of services in terms of prices and quality. Adopting an overly restrictive interpretation of the Net Neutrality Regulation (“regulation”) can have the opposite effect. The European Framework in place and especially also the one that will be finalized shortly resulting in the European Electronic Communications Code should aim at stimulating the internet ecosystem, while establishing at the same time a level playing field.

When finalized in August 2016, our member companies evaluated the BEREC Net Neutrality guidelines (“guidelines”) as going beyond the mandatory rules described in the regulation. It concerned new obligations because of a too strong focus on technical criteria rather than providing guidance on how to implement the obligations set forth by the Regulation. It concerns for example :

- Definition and prohibition of sub-internet
- Definition of zero rating and specialized services although the Regulation had refrained from defining the concepts in order to remain futureproof.

One should not lose sight of the aim of the Regulation which is to safeguard an open internet. It remains important that NRA’s only intervene where a market failure has been established and where end-user right for an open internet have been abused.

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A. General experience with the application of the Regulation and BEREC NN Guidelines

(Questions 1 -> 6)

As already indicated in the introduction, guidelines that go beyond the mandatory framework of the regulation do not help the NRA's to apply the Regulation in a consistent, coherent and correct way. Too precise (technical) requirements in the guidelines contradict with the principle-based approach sought by the regulation. It will furthermore be very important to check the consistency, once the EEC adopted, with the definitions and principles enshrined in the new Code.

The Regulation and the Guidelines should enhance the level playing field rather than enlarging the freedom to innovate by companies established outside the EU to the detriment of companies established in the EU.

We urge to refrain from a too prescriptive way of how NRA's should intervene and on what. It was in essence that NRA's were entitled to interpret the principle based regulation while assessing ex post the market conditions and compliancy of the service offerings that are on the market. NRA's should take utmost account of not restricting unduly a new innovative service. Furthermore when in one member state such a service would be forbidden, it should not always be by definition forbidden in another member state. It will always be important to analyze the situation on a case-by-case basis, taking into account the principle-led approach established by the regulation, the market situation in the concerned member state before drawing conclusions on the yes / not compliancy of a service offer.

Certain products/services were not launched: restricting tethering is prohibited jeopardizing unlimited data bucket offers, zero-rating of music streaming services, opt-in services to block unwanted content, fully zero rated customer service applications because of the in-build customer loyalty program.

It seems to us that the NRA's could work more together on instruments that could help to certify for ex. speed measurement systems, rather than on ex ante evaluations of possible service offers that could endanger the principle of net neutrality.

There should also be a reference that the Regulation allows for differentiated traffic management between different IAS subscriptions for example to fulfil contractual agreements on data volumes and speeds.

B. Definitions (article 2 of the Regulation)

(Question 7)

The definitions in the regulation have been well debated and considered over many years. It is important not to add in the guidelines new definitions that are not present in the Regulation.

We see the same way of creating confusion by the interpretative guidelines written by the WP Art 29 regarding to the GDPR interpretation. It should never be the case that guidelines go clearly beyond the intentions established by the EU legislators. Cfr. Data portability guidelines of the WP art 29 that were pointed out by the EC as going beyond the GDPR.

C. Commercial practices such as zero-rating (articles 3(1) and 3(2))

(Questions 8 --> 11)

Commercial practices must be analyzed on a case-by-case basis based on their effect on end-users rights as defined under article 3(1). At several places, the guidelines presents examples of commercial practices that are likely to be acceptable or on the contrary that are to be forbidden, without any such analysis.

The Regulation does not prohibit zero-rated offers as such. The guidelines take a negative standpoint to differentiated offers - different prices for different content and services – if data cap is applied while a zero-rated application is not blocked. However, the data cap is based on the chosen offer, end-users can always continue to surf by buying top-ups. The prohibition of zero-rated offers will block innovative & competitive offers, it would prevent end-users to have free access to their customer zone or free consultation of their level of consumption, etc.

Zero-rated offers should be assessed by the NRA, ex-post, on a case by case basis taking into account the conditions mentioned in Recital 7, without being over prescriptive, inter alia in relation to competition law aspects which should be dealt with by National Competition Authorities or the European Commission.

Choice is a key concept throughout the regulation. Users should be free to choose the quality that they want and operators will then have more freedom to provide a range of solutions, at different prices levels, to suit every customer need.

D. Traffic management (article 3(3))

(Questions 12 --> 15)

The regulation acknowledges the multi-faceted nature of traffic management and provides the flexibility to providers of IAS to implement reasonable traffic management and providers of ECS to offer services other than IAS optimized for specific content, application or service where such optimization is necessary to meet a specific level of quality.

Net optimization via traffic management has to remain possible.

E. Specialised services (article 3(5))

(Questions 16 --> 18)

The guidelines may not introduce definitions of new terms and may not adopt restrictive approaches if not mandated by the Regulation itself.

Different types of services, optimised to meet specific use cases will become more prevalent as many sectors embrace digitalisation and connectivity. The guidelines introduced unnecessary additional criteria in the assessment of these types of services (“do not provide connectivity to the internet”, “logically separated from the traffic of IAS”). The revision procedure should really abolish those elements in the guidelines that stifled innovation even without concrete ad-hoc ex post impact assessments. This should be evaluated taking into account the next generation networks that include network slicing and network virtualization as a core network feature. Operators should have the flexibility to dynamically configure the slices to meet the variety of use cases and the ability to manage the allocation of network resources between the slices.

QoS and prioritization techniques will be exploited with 5G. Regulatory predictability is of major importance for the

5G deployment, the EC is pushing for it and NN rules should be applied in a flexible and predictable way to foster it. BEREC should signify its support to 5G by concentrating on the strict scope of the Regulation.

F. Transparency (article 4)

(Questions 19 --> 20)

BEREC should refrain from adding complexity, taking into account the very diverse scala of rights consumers can exercise towards different instances (Telecom regulator, mediation services, administration for economic affairs, ...). We should not add more sector specific complexity but try to favor a horizontal approach.

G. New technologies (horizontal)

(Questions 21 --> 23)

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H. Other comments

(Question 24)

