



## **Verizon input to BEREC consultation paper on the evaluation of the application of Regulation (EU) 2015/2120 and the BEREC Net Neutrality Guidelines**

### **Executive summary**

Verizon welcomes BEREC's public consultation and the opportunity to contribute to the evaluation of the application of the TSM Regulation (Regulation (EU) 2015/2120) and the BEREC Net Neutrality Guidelines.

Verizon is a global player. Outside of the US, Verizon provides a broad range of global communication products and enterprise solutions, predominantly to large business and government customers. We are established in most European Union ("EU") Member States ("MS"), and provide services in over 150 countries worldwide. As a pan-European business provider, we generally welcome any initiative which aims to bring further harmonisation and legal certainty, and to reduce administrative burden at EU and national levels. Our response reflects our position based on the specificities of our European (and international/non-US) presence.

Generally we believe it is important that the TSM Regulation and the BEREC Guidelines ensure a balanced approach that protects consumers' access to the open Internet while preserving the principles of flexibility, innovation, and consumer choice. Indeed we strongly support an open Internet goal.

We regret that so far the TSM Regulation and the BEREC Guidelines have not clarified that the aim of the Regulation and the Net Neutrality (NN) principle is to safeguard best effort Internet Access for consumers and other mass-market users (micro and small enterprises) that rely primarily on consumer-like services and contracts.

The lack of explicit exclusion of business services runs a substantial risk of placing a disproportionate burden on the business communications market and negatively impacting innovation and investment. This is even truer when considering the evolution of the market and technologies and more specifically Software Defined Networks (SDN)/Network Functions Virtualisation (NFV).

There are many reasons why business services should be excluded from NN obligations, mainly that businesses not only have bi-laterally negotiated tailor made contracts that are different from consumer contracts but businesses also require and demand different services than those used by consumers. Regardless of whether increased meaningful transparency or other rules and possible minimum QoS levels are appropriate in the consumer protection context, we believe Member States and regulators should not automatically apply the same provisions to large business users.<sup>1</sup>

The distinctions between “mass market” and “business” services were captured by the FCC when it explicitly excluded business services from the scope of its Open Internet Order.<sup>2</sup> A similar approach was taken in the UK with the voluntary code of practice as well as the Ofcom’s statement on Net Neutrality.<sup>3</sup>

We believe that the evaluation process of the TSM and the BEREC Guidelines provide a perfect opportunity to consider clarifying that enterprise services should not be in scope.

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

### ***1. In your view – have the Guidelines helped NRA’s apply the Regulation in a consistent, coherent and correct way? Please explain.***

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<sup>1</sup> It is worth noting that as multiple jurisdictions have long recognized, there are specialized services, including business and enterprise that should be excluded from the Regulation and BEREC Guidelines. These services are not mass-market broadband internet access services - for example, they may be specifically negotiated to allow particular quality of service guarantees or options for a particular business, or they may provide particular types of connectivity or data transfer that isn’t applicable to a general consumer internet access service. They could also be services designed not to reach all or substantially all of the Internet, such as a medical monitoring or Internet of Things application, or could be designed to provide a particular latency or speed, such as a virtual or augmented reality application.

<sup>2</sup> Federal Communications Commission, Report and Order on Preserving the Open Internet (December 23, 2010), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-201A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-201A1.pdf). Para 44 defines the scope of the Order’s rules as any broadband Internet access service provided to the mass market, while para 45 states: “The term (“mass market”) does not include enterprise service offerings which are typically offered to larger organisations through customized or individually negotiated arrangements”.

<sup>3</sup> Both refer to consumers only: BSG Open Internet Code of Practice (<http://www.broadbanduk.org/wp-content/uploads/2013/06/BSG-Open-Internet-Code-of-Practice-amended-May-2013.pdf>) which refers out to Ofcom’s November 2011 statement on NN(<http://stakeholders.ofcom.org.uk/binaries/consultations/net-neutrality/statement/statement.pdf>).

For a company like Verizon operating in most EU Member States (and globally), a consistent and harmonised approach across the EU is essential. Moreover, as underlined in the executive summary we believe that enterprise services should be excluded from the scope of the regulation.

There are good and compelling reasons to exclude all business services from NN provisions. More broadly we believe that private network services such as PIP and IPVPNs do not - and should not - fall in scope of the TSM Regulation or the BEREC Guidelines, as these are neither Internet Access Services nor Specialised Services as such. In addition we believe that any Internet Access when embedded in a broader service provided to enterprise users should not fall within the scope. For a more detailed overview please see our enclosed response to BEREC's 2016 public consultation on the draft Guidelines.

With that in mind, so far we have experienced diverging interpretations across the EU. While most NRAs have adopted a pragmatic and proportionate approach in their interpretation of the scope of the Regulation and the Guidelines, others have adopted a strict reading of both texts. In most cases NRAs have not considered us to be in scope of the NN obligations linked to both the "type" of our end-users (enterprises) and the services we provide.

In the limited instances this has not been the case, the obligation focuses on the transparency measures under Article 4. As stated in the introduction, we believe that there are valid reasons for us not to be in scope including in relation to transparency measures. Indeed such measures are in most cases irrelevant in the B2B context and disproportionate keeping in mind that they would apply to both existing and future contracts, the multi-site and global nature of our business, and considering that our contracts are transparent (extensive and bi-laterally negotiated), include far-reaching Service Level Agreements ("**SLA's**"), and the service we provide is at the request of our customers.

***2. Did the Guidelines provide additional clarity regarding how to apply the Regulation? Please explain.***

Generally we believe that in their current form the Guidelines are not explicit enough about the intention of the Regulation to really focus on consumers and micro and small enterprises. This is illustrated in relation to transparency measures in the Guidelines as a number of paragraphs under Article 4 highlight specifically the consumer angle (e.g. paragraph 131 "Consumer rights Directive", paragraph 133 "Unfair terms in consumer contract Directive", and paragraph 158 "remedies for

consumers”). Along those lines we would welcome further clarification that the transparency measures are not aimed at enterprise contracts.

**3. On which subjects would you expect the Guidelines to be more explicit or elaborated? How should the text of the Guidelines be adapted on these points, in your view. Please explain.**

As states above, we would welcome a review of the Guidelines to enable a more pragmatic and proportionate approach to the implementation of the scope of the Regulation, with an eye on the exclusion of enterprise services. See our answers to questions 1 and 2.

**4. For ISPs: Did you discontinue certain products or services following the adoption of the Regulation and/or the Guidelines?**

We believe that this question is relevant for ISPs providing consumer focused services.

**5. Did the application of the Regulation, or the implementation of the Regulation by the Guidelines, prevent you from launching certain products or services?**

See our answer to question 4.

**6. Do you have any additional comments on the application of the Regulation and Guidelines?**

Based on our input in section A, we believe that the evaluation process of the TSM and more specifically the BEREC Guidelines provide a perfect opportunity to clarify the intention and the scope of the regulation by excluding enterprise services from its scope.

## **B. Definitions (article 2 of the Regulation)**

**7. Do you think that the Guidelines should provide further clarification in relation to the definitions in the Regulation? If yes, please provide concrete suggestions.**

In line with the draft Code (EECC), it would be helpful for the Guidelines to clarify the scope of the Regulation by focusing on the definition of “end user” and include a distinction between residential (consumer) and enterprise users in line with the intent of the Regulation to primarily provide protection for consumers and micro and small enterprises.

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

As a B2B provider the questions around commercial practices such as zero-rating are not relevant for us.

**8. Does the current assessment of zero-rating as recommended in the Guidelines, offer sufficient protection of end-users' rights as referred to in article 3(1) of the Regulation? Please explain.**

**9. How could the assessment methodology for commercial practices in the Guidelines (ref. in particular to paras 46-48) be improved? Is there a need for more simplification, flexibility and/or more specification? Please provide concrete suggestions.**

**10. In your view, did the assessment methodology for commercial practices in the Guidelines influence the development of new content and applications offered on the internet? Please explain.**

**11. Do you think that the current application of the Regulation and the Guidelines concerning commercial practices, such as zero-rating, sufficiently takes account of possible long term effects of such practices? If not, how could BEREC further facilitate this?**

**D. Traffic management (article 3(3))**

**12. Is there a need for improvement of the Guidelines concerning reasonable traffic management (ref. in particular to paras 49-75)? If yes, how could this text be improved? Please provide concrete suggestions.**

In general we do not apply traffic management measures for our stand alone internet access.

**13. Is there a need for improvement of the Guidelines concerning traffic management measures going beyond reasonable traffic management measures (ref. in particular BoR (18) 33 paras 76-93)? If yes, how could this text be improved? Please provide concrete suggestions.**

See our answer to question 12.

**14. Does the text of the Guidelines concerning traffic management influence the development of network technologies offered on the market? Please provide concrete examples.**

**15. Do any terms used in article 3(3) concerning traffic management need further explanation in the Guidelines? If yes, please specify.**

**E. Specialised services (article 3(5))**

**16. Is there a need for improvement of the Guidelines concerning specialized services (ref. in particular paras 99-127)? If yes, how could this text be improved? Please provide concrete suggestions.**

It is not completely clear what is meant by these “services other than internet access services”. Recital 11 of the Regulation offers some clarification as to determining whether a service is a service “other than an Internet service”, by specifying that for these services “*specific quality of service levels, not assured by internet access service, are necessary*”.<sup>4</sup>

The BEREC Guidelines clarify somewhat that internal corporate networks are not services “being made publicly available” (paragraph 12). Our interpretation, in line with our input to the draft BEREC Guidelines, is that Private IP (PIP) product and IPVPN for as far as the corporate network element is concerned, do not fall in scope of the NN rules. We believe that these are neither Internet access services nor “other” services in the meaning of recital 11. We currently do not offer any other services that we believe would qualify as “other” services in the meaning of recital 11.

**17. Does the text of the Guidelines concerning specialized services influence the development of specialised services offered on the market? Please provide concrete examples.**

**18. Do any terms used in article 3(5) concerning specialised services need further explanation in the Guidelines? If yes, please specify.**

**F. Transparency (article 4)**

**19. What has been your experience regarding the application of the transparency measures in the Regulation and the Guidelines, particularly in relation to speed of mobile internet access services? Is there a need for improvement? If yes, how could this be improved by BEREC? Please provide concrete suggestions.**

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<sup>4</sup> See footnote 1.

As stated in question 1, so far we have experienced diverging interpretations across the EU. While most NRAs have adopted a pragmatic and proportionate approach in their interpretation of the scope of the Regulation and the Guidelines, others have adopted a strict reading of both texts. In most cases NRAs have not considered us to be in scope of the NN obligations linked to both the “type” of our end-users (enterprises) and the services we provide. We are concerned that in those limited cases we are covered by article 4’s transparency obligations that are disproportionate and don’t make sense in an enterprise context given our specificities.

Indeed our customers are (large) businesses, who require and demand different services than those used by consumers. In most instances our customers don’t use internet access on a stand-alone basis but as an integral element of their broader global network solutions. The internet is always embedded in a broader multisite private corporate network solution. More importantly we work with bi-laterally negotiate tailor made international long-term contracts. These contracts are different from consumer contracts and have far-reaching SLA’s.

In addition we do not limit the use of Internet access services in terms of transferred data volumes, speed utilization, or applications etc., unless our customers request it. They may always use the service at the contracted service speed, we simply pass on the full capacity of the services to our customer and do not throttle the capacity in whatever way.

More importantly, we do not use notions such as minimum, normally available or advertised speeds in the context of the services we provide. In most cases we provide our customer with a dedicated internet access connection with a defined maximum speed that is symmetrical both ways. We don’t advertise minimum or maximum speeds and the customer chooses interface speed and access speed when placing an order and we guarantee the chosen contracted bandwidth/speed to the customer. Upon their request we also provide customers with a best effort broadband internet service, but only if the primary usage of it is for the creation of a tunnel to access the broader private corporate network solution of the customer. We don’t sell best effort broadband internet access on a stand-alone basis, but only as part of a broader private corporate network solution.

***20. How could BEREC further assist consumers, ensuring that they get the internet access service that they pay for?***

As stated in the question the intension behind the transparency measures are clearly aimed at consumers and not enterprise users. This should be clarified going forward.

## **G. New technologies (horizontal)**

With regards to new technologies, we welcome BEREC's intention to consider the impact of the Guidelines on the adoption of new technologies and identifying possible barriers to their roll-out. Services relying on optimisation to meet specific characteristics are growing (IoT, NFVs, SDNs, 5G etc.) and will become increasingly prevalent as the digital economy expands. It is important not to lose sight of their benefits and ensure an innovation and investment friendly framework support their roll-out.

***21. Do you think the Regulation and the Guidelines provide sufficient flexibility to adopt new technologies which are likely to be used in 5G? Please explain, preferably with examples.***

We believe that the consumer/enterprise user distinction will continue to be essential going forward in view of the emergence of new technologies that are playing a key role in the enterprise space (e.g. NFVs, SDNs, 5G etc...).

***22. Considering the rules for traffic management and specialized services in the Regulation, are the Guidelines providing sufficient clarity to the adoption of new network technologies such as "network slicing" and "edge computing"? Please explain in detail.***

***23. If not, which specific points are unclear in the Guidelines and how could BEREC improve this? Please provide concrete suggestions.***

## **H. Other comments**

***24. Do you want to share any additional comments?***