

November 7, 2018

BoR PC04 (18) 13

COMMENTS FROM FACEBOOK

Draft BEREC Work Programme 2019

General summary

Facebook welcomes the BEREC consultation on its Draft Work Programme 2019 (“Draft WP”) and appreciates the opportunity to provide input on this important paper.

The digital economy in which Facebook operates is dynamic, characterised by constant innovation and change. Facebook's products are often categorized as “over-the top” services (OTTs), and Facebook believes - just as BEREC concluded in its OTT report - that there are many categories of OTT services, each with its own characteristics. OTT applications and services typically co-exist with many other OTTs on a customer's device in a highly competitive environment. The EECC takes into account the significant service and technical differences between NI-ICS (a sub-category of OTTs), and NB-ICS.

Facebook is dedicated to expanding connectivity and invests significantly to help bringing more people online around the world. In this sense, Facebook supports the goals set out by the EU institutions with respect to the Digital Single Market and recently under the EECC. Connectivity is the lifeblood of Facebook's services, and we see the relationship between our services and those of IAS providers and NB-ICS as symbiotic. In particular, digital applications drive demand for high-speed networks, via fibre and 5G, and are important in reaching the DSM goals.

Facebook encourages BEREC to set clear priorities given the challenging tasks that lie ahead. The draft work programme in our view reflects most of these priorities. In addition, we believe that one of BEREC's priorities should include BEREC taking the lead to ensure a harmonized implementation of the EECC by Governments and NRAs. For instance, when it comes to the definitions (e.g. IAS, NB-ICS and NI-ICS), NRAs should align their views on which services belong in each of the categories, thereby preventing a patchwork of regulatory regimes. We encourage BEREC to include specific guidance to NRAs on this issue in its Draft WP.

We also encourage BEREC to prioritize the review of its Net Neutrality Guidelines, particularly with respect to its guidance on zero-rating practices. We would be happy to discuss any of these issues with BEREC.

Finally, in terms of process, we believe that BEREC, including its working groups, should work closely with

stakeholders when fulfilling its tasks in the coming years as the markets will remain dynamic. Transparency and stakeholder engagement are crucial for NRAs and BEREC to keep pace with market evolution and to ensure well informed decision-making. For that reason, BEREC should also consider opening up its expert working groups to stakeholders.

Specific responses

We provide comments to the specific sections of the Draft WP below.

1. Strategic priority 1: Responding to connectivity challenges and to new conditions for access to high-capacity networks

Facebook is committed to helping expand connectivity and bring more people online globally. Improved connectivity helps people communicate with the people they care about, share knowledge, and participate in the digital economy. Too many people, however, still do not have sufficient access to the internet.

We recognize that there is no one-size-fits-all solution, and expanding connectivity is a challenge that no single stakeholder or technology can solve. It will require ongoing collaboration and cooperation among stakeholders. As part of our efforts, Facebook works closely with operators and other partners on a range of business solutions, partnerships, and long-term technology initiatives designed to accelerate the expansion and improvement of connectivity around the world.

Facebook looks forward to engaging and continuing our work with BEREC and other stakeholders on the shared goal of expanding and improving connectivity for people in the EU and around the world.

2. Strategic priority 2: Monitoring potential bottlenecks in the distribution of digital services

2.2 Harmonised data collection: Authorised Undertakings & OTTs

Response to Q2.2

Facebook welcomes harmonization efforts by BEREC in this area. These efforts will be critical to avoid duplication of information requests by different NRAs and BEREC, and consistent with the fundamental goal of a Digital Single Market.

We look forward to BEREC's work on this WP item, including both the report and the subsequent BEREC Guidelines, contributing to coordinate NRAs' national actions in the field of data collection from OTTs. Given the global nature of online applications, harmonizing actions are essential to facilitate cross-border provision. We therefore encourage BEREC to continue its efforts in the design of a harmonized approach to data collection from OTTs in the EU.

The report, however, should be open to public consultation in order to provide the opportunity to stakeholders to comment on any eventual operational/technical difficulties in providing the information requested, both relating to the indicators themselves and to the intended gathering periodicity. Although the aim of the report appears to be limited to setting the scope of eventual future BEREC guidelines - which would include a detailed definition of a set of common indicators, we believe it is essential for stakeholders to have the opportunity to contribute at an early stage of the process. This is also consistent with the declared commitment by BEREC to further strengthen its processes regarding transparency and stakeholders' engagement. Additionally, once a draft report has been developed, BEREC could consider organizing a technical workshop to take into account stakeholders' views in a flexible way at the initial phase of the BEREC decision-making process.

2.4 Carry-over work on the data economy

Response to Q2.4

Facebook will respond separately to BEREC's ongoing public consultation on the "Draft Report on the data economy".

3. Strategic priority 3: Enabling 5G and promoting innovation in network technologies

Response to Q3.1

Facebook fully supports BEREC's work to better understand the impact of 5G on regulation and the role of regulation in enabling the 5G ecosystem. Facebook has made substantial investment in next-generation technologies and developing innovative business models to help address the challenges that service providers and other participants in the 5G ecosystem face. We believe the role of regulation will have a significant impact on the success of 5G.

In particular, availability of spectrum, licensing regimes, and harmonization with global technology standards will be important parameters in the successful deployment and subsequent adoption of 5G services. Network densification, including but not limited to small cell technologies, will be required to meet the very high network capacity demands of 5G. A combination of mesh distribution networks, hybrid fiber / wireless deployments, licensed / license-exempt spectrum models, and shared infrastructure may also be required. Facebook encourages BEREC to seek broad input on these topics with the goal of promoting innovation, competition and investment.

As 5G and other technologies provide new opportunities for innovation, we also encourage BEREC to ensure these new innovations are adopted in a way that is consistent with the principles of net neutrality. While regulation should provide the flexibility needed to encourage innovation, it is important that BEREC maintain strong net neutrality protections that will ensure the internet remains open for everyone. We look forward to working with BEREC to consider these issues in more detail.

4. Strategic priority 4: Fostering a consistent approach of the net neutrality principles

4.1 Update to the Guidelines on Net Neutrality

Response to Q4.1

Facebook is a strong supporter of net neutrality and believes it is critical to keeping the internet open for everyone. We appreciated having the opportunity to submit comments earlier this year in the BEREC public consultation on the evaluation of the application of Regulation 2015/2120 and BEREC Net Neutrality Guidelines. Consistent with the views shared in that consultation, we summarize the high-level points of our position on the BEREC Guidelines below.

Facebook supports BEREC's implementation of strong net neutrality protections to ensure that providers of IAS do not interfere with end-users' ability to access the online content and services of their choice.

With respect to zero-rating practices, Facebook supports BEREC's approach that zero-rating is not an automatic or 'per se' violation of net neutrality but, instead, can be reviewed by NRAs on a case-by-case basis. We believe, however, that the text of the Guidelines, as well as the application of the Guidelines in practice, should provide greater flexibility for consumers to benefit from zero-rating offers where there is no evidence of actual consumer harm.

A number of zero-rating provisions in the Guidelines appear to take a more restrictive approach than is required under the Regulation. We encourage BEREC to take the opportunity of the Guidelines update to revise its guidance and provide greater flexibility to benefit consumers, including by:

- Encouraging NRAs, in their application of the Guidelines, not to take an overly strict approach that focuses only on the form of zero-rating offers, but instead to undertake a holistic, principles-based assessment under the various factors set out in the Guidelines. No single factor, by itself, should result in a zero-rating offer being prohibited. The focus should be on end-user rights, rather than a 'check-box' approach to the criteria in the Guidelines. NRAs should restrict practices only where there is evidence of actual harm.

- Clarifying that, as part of their holistic review, NRAs can provide flexibility for people to access zero-rating offers for some amount of time when they have reached their data cap or have not yet purchased data for the general internet (or not done so recently). At a minimum, we encourage clarifications to the Guidelines that allow for a reasonable "grace period" during which end-users can access zero-rated services while purchasing additional data. This would provide an important baseline of connectivity for those who can afford data only intermittently (e.g., those who are living paycheck to paycheck) and make it more likely that end-users will continue to consistently purchase data to access the internet when they are able to do so.

Flexibility is indeed especially needed to address new, emerging services and technologies. Facebook respectfully encourages BEREC to build in a general concept of flexibility as the guiding principle to NRAs

in their application of the Guidelines. Providing NRAs with clarity and flexibility is particularly important in fast-changing markets with new technologies, such as 5G, that allow for a range of new services, applications and business models, many of which cannot yet be anticipated. An overly prescriptive and narrow interpretation of the Guidelines at such an early stage of 5G technology development could potentially hamper innovation and undermine the inherent principle of technology neutrality in the Regulation and Guidelines. It also risks undermining regulatory and business certainty, and depriving consumers in their choice of new and innovative products and services.

Finally, on the working process followed by BEREC to adopt its revised Net Neutrality Guidelines, we welcome the best practice followed by BEREC of consulting stakeholders at an early stage through open questions in addition to conducting a formal consultation on the draft document. In particular, we encourage BEREC to strengthen this dialogue through more informal involvement in technical meetings with the expert working groups as an effective way to test potential changes with the different stakeholders prior to adoption of any updates to the Net Neutrality Guidelines.

4.2 Implementation of Net Neutrality regulation

Response to Q4.2

Facebook encourages BEREC to increase transparency in its working processes, particularly at the experts working group level. Facilitating more dialogue with stakeholders at this stage is crucial for BEREC to fulfill its tasks, particularly considering the new responsibilities provided by the EECC.

4.3 Implementation Carry-over work on BEREC Net Neutrality measurement tool

Response to Q4.3

Consistent with Facebook's support for net neutrality and the open internet, we welcome BEREC initiatives aimed at providing transparency in the market and proven data-based evidence of how net neutrality is preserved in the EU.

5. Strategic priority 5: Exploring new ways to boost consumer empowerment

5.1. Carry-over work on BEREC General authorisation notifications transmitted to competent authorities

Response to Q5.1

Facebook welcomes the acknowledgement in the EECC of the technical and market differences between IAS, NB-ICS and NI-ICS. Such fundamental differences pose different regulatory challenges, which, as set out in the EECC, lead to variances in the obligations applicable to the various categories of ECS.

This is reflected, for instance, in the scope of the general authorization regime, limited to the provision of ECN or the provision of ECS other than NI-ICS. As further clarified by recital 42, this is explained because NI-ICS do not benefit from the use of public numbering resources and do not participate in a public assured interoperable ecosystem.

BEREC's work on the General Authorisation notifications should reinforce this important distinction to ensure full harmonization.

5.3 Contract summary template

Response to Q5.3

Facebook will contribute separately to the ongoing BEREC consultation on the Draft Report on contractual simplification.

5.6 A vision for Europe's telecoms consumers

Response to Q5.6

Facebook has the consumer at the center of its mission and actions. With this spirit, we welcome BEREC's continued focus on end-user issues, reflected in its Medium-Term Strategy 2018-2020 and in the annual Draft WP.

We also appreciate the forward-looking exercise focused on building a vision of Europe's telecoms consumers, which is important in a society moving at a fast pace towards digitalization.

Such a vision requires a comprehensive and multifaceted approach. In this sense, a scope that involves only consumer organizations seems overly restrictive.

We encourage BEREC to extend the dialogue for a vision of Europe's telecoms consumers to a broader audience, including other public and industry stakeholders.

5.7 The effectiveness of public warning systems transmitted by alternative means to mobile NB-ICS

Response to Q5.7

Facebook recognizes the important role of public warning systems in order to protect citizens in case of a major emergency situation and is fully committed to contribute to BEREC work in this area. With respect to emergency services obligations in general, we believe that the approach adopted in the EECC strikes an appropriate balance given the different functionalities of NB-ICS and NI-ICS, and we agree with the overall approach adopted under the EECC to subject NI-ICS to lighter touch regulation.

At Facebook, we care deeply about the safety of our users, which is why we build products that help people across the world to connect and support each other in a crisis.

For example, using our Crisis Response tools, people in a crisis area where our Safety Check feature has activated can quickly reassure friends and family by marking themselves safe, connect directly with others nearby to give or find help with resources like food, supplies, or shelter, and get information about a crisis to stay updated. In one instance, the Facebook community activated Safety Check on 23 July 2018 when deadly wildfires began across the Greek towns of Kallittechnoupoli, Rafina, and Mati.

Facebook partners with the National Centre for Missing and Exploited Children to distribute AMBER Alerts (i.e. child abduction alerts) to the Facebook community in certain countries, including the Netherlands, Greece, the U.K., and Malta. If an individual is located in a designated search area where local law enforcement has activated an AMBER Alert, the alert will show up in the individual's News Feed, which can be shared with friends to spread awareness.

Our Disaster Maps program uses aggregated, de-identified Facebook data to help organizations address the critical gap in information they often face when responding to disasters. This initiative is the product of close work with UNICEF, the International Federation of the Red Cross and Red Crescent Societies, the World Food Programme, and other organizations. We provide multiple types of maps to trusted partners during disaster response efforts, such as location density maps that show where people are located during and after a disaster, and Safety Check maps that show where more or fewer people check in safe, which may help organizations to understand where people are most vulnerable and where help is needed.

WhatsApp and Facebook Messenger also offer people a variety of ways to deal with emergency situations, such as providing police and emergency service providers with an additional secure and reliable channel to conduct operations when traditional communications networks become overwhelmed. WhatsApp users also have the option to share their live location with emergency responders in times of crisis. Many emergency service providers have created WhatsApp groups to provide real-time, around-the-clock access to residents and community leaders.

These are just some of the ways that Facebook is working to keep its users safe. As BEREC and other policymakers consider whether extension of the public warning system is necessary, we encourage BEREC to ensure that any requirements are flexible enough to allow mobile apps to innovate and build new experiences that benefit their users and complement the emergency services of network-based service providers. Mobile apps including NI-ICS can offer services that are different than those of NB-ICS, but that are complementary and valuable to people in an emergency.

We should also be mindful of the functional and technical differences between NB-ICS and NI-ICS, particularly when considering the actual capability of NI-ICS to meet the requirements of a global, fully-fledged public warning system that reaches all users in the area where the alert is broadcast.

Importantly, the type of location data necessary to support any particular feature is not necessarily the same for all features of a mobile app, such as in the granularity or pervasiveness of the location data required. For example, having access to location data sufficient to offer people the ability to search for

landmarks in nearby locations does not automatically ensure that the app provider has access to location data sufficient for providing an effective mobile-based public warning system.

We further recommend that prior to extending public warning requirements to mobile apps, Member States should consult closely with emergency service providers and experts to ensure that such obligations are advisable.

Recent events have highlighted the growing importance of online apps for supporting citizens in situations of major emergencies and disasters, and we are devoting efforts to develop mechanisms able to support population in these events.

Facebook remains fully committed to working with BEREC on this item. We are available to explain the challenges that NI-ICS may face related to mimicking technical functions performed by NB-ICS, and to share our experience with our Safety Check and other Crisis Response tools.

We encourage BEREC to consider organizing a workshop to learn more about the role that NI-ICS play during emergencies.

6. BEREC obligatory work and stakeholder engagement

6.13 Stakeholder Forum

Response to Q6.13

Facebook places high value in the annual Stakeholder Forum organized by BEREC. It is a great opportunity for BEREC and stakeholders to gather and engage in strategic dialogue.

As BEREC recognized during the 6th Stakeholder Forum last October, however, there is room for improvement in terms of stakeholders' involvement in BEREC's work. We appreciate and support BEREC measures to strengthen such engagement by, for example, providing stakeholders more time to respond to public consultations.

More and more, BEREC is evolving from a platform for exchange of practices between NRAs to a body that is increasingly influential in decision-making. This becomes even more clear under the new EECC, which entrusts BEREC with a larger role in the development of sector-specific Guidelines.

In view of this increased responsibility, it is important that BEREC further increase transparency, accountability and stakeholders' involvement in its processes.

To achieve this, we encourage BEREC to make all working levels as transparent as possible and to engage with stakeholders as early as possible.

We also urge BEREC to devote a section of the Draft WP to Stakeholders Engagement that includes concrete and measurable commitments in the field of transparency and engagement. The initiative

stemming from the 6th Stakeholders consisting of “seeking input from stakeholders earlier in projects, e.g. via early calls for input or workshops” seems a very positive and efficient way of optimizing stakeholder engagement. Increased transparency of the work by the expert working groups would support BEREC’s goals by encouraging more stakeholder engagement and more effective outcomes for BEREC’s ongoing work.

Response to Q6.18

As mentioned in the general summary above, Facebook encourages BEREC to include a specific workstream devoted to providing guidance to NRAs on the harmonized implementation of the new ECS definition in order to ensure NRAs take an aligned view on what kind of services belong to each ECS category (IAS, NB-ICS and NI-ICS).