



Vodafone Group response on the draft BEREC Guidelines to assist NRAs on the consistent application of geographical surveys of network deployments

28 November 2019

We appreciate the opportunity to comment on this consultation and trust that our comments are helpful to BEREC and National Regulatory Authorities (NRAs) as well as to other stakeholders. We remain at your disposal to discuss our submission to the consultation, or any other aspect relevant in the context of the latter.

To inquire about our response please contact:

Vodafone is supportive of BEREC's work to improve harmonisation across Member States through effective guidelines that will support and assist the transposition and implementation of the European Electronic Communications Code (EECC).

Preventing duplication

We welcome BEREC's acknowledgment that the improved harmonisation should not be incurred at a significant cost that the introduction of new and modified data and mapping requirements may place on data providers and authorities that have already developed parallel methods.

A number of NRAs already have detailed geo-mapping and information gathering processes, as do other pan-EU instruments such as the Broadband Cost Reduction Directive (BCRD). These should be incorporated into the manner in which BEREC sets its guidelines to avoid any overlap, duplication, increased compliance costs and overall inefficiency.

We consider it imperative that the obligations under Article 22 of the EECC are complimentary to, and consistent with all other mapping and reporting requirements, including existing NRA/OCA requirements and other pan-European instruments such as the BCRD.

BEREC guidelines should ensure they assist the NRAs and OCAs in their consistent implementation and application of their obligations under Article 22 EECC, while minimising any additional compliance costs and explicitly preventing any replication of existing processes and information requirements.

We would also encourage BEREC to ensure the guidelines have adequate implementation times.

QoS-1

We also agree with GSMA's observation that only QoS-1 guidelines should be adopted for reasons stated in the GSMA submission, and importantly as these provide objective information on network capabilities.

Forecasts

We have a couple of key concerns surrounding forecast requirements.

Firstly, planned deployments should be treated as commercially sensitive, which they will be. These have to be excluded from any end-user transparency requirements and afforded adequate levels of confidentiality requirements in managing and handling such information.



Secondly, we note that there needs to be careful ring fencing and clarity around the purpose and use of forecasts. Specifically, these forecasts should not serve the purpose of enabling public authorities to steer private network deployment. There should be no commitments imposed from the forecast information. We do note, however, that there should be safeguards to ensure that, where an operator provides unreliable forecast information, this must be taken into account for any delivery of state aid to that operator.

Definition of “normally available speed”

Section 2.1 of the draft guidelines defines the term “normally available speed” as the speed that an end user in the address/grid could expect to receive 95% of the time over the whole day when accessing the service.

We would like to point out that BEREC has gone beyond its mandate by setting the threshold for normally available speed at a specific percentage. Section 148 of the BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules (BoR (16) 127) clearly states that the 95% threshold is merely an “example” of requirements on defining normally available speeds under Article 5(1) of the TSM Regulation.¹

Another example is a requirement that normally available speed should be “in a reasonable proportion to the maximum speed”. Various Members States, including Germany, have adopted the latter approach. Hence, we suggest rephrasing the definition as follows:

“Normally available speed: The normally available speed is the speed that (1) an end user in the address/grid could expect to receive most of the time over the whole day when accessing the service or (2) a reasonable proportion to the maximum speed. The parameters should describe the capability of network.”

Minimum assumptions on the theoretical calculation of speeds

According to point 74 of the Draft Guidelines one of the minimum assumptions, which are needed as input to the theoretical calculation of speeds, is a reception height of 1.5 metres above the ground at each pixel. This mandatory requirement deviates from current NRA requirements (for instance BNetzA) and as such could introduce difficulty in implementation and compliance. We encourage BEREC to ensure any mandatory requirements do not deviate from current NRA practice.

Answers to consultation questions

Question 1

In BEREC's current Public Consultation on the implementation of the Open Internet Regulation (paragraph 140), BEREC is requiring that the speed values required by Article 4(1) (d) of the Regulation EU 2015/202011 should be specified on the transport layer protocol payload, and not based on a lower layer protocol. Is there any reason why this layer should not be used in providing information about speeds in the context of a Geographical Survey of Broadband reach?

Provided that transport layer protocol payload has the same meaning as the prevalent term, namely “Transmission Control Protocol (TCP)”, we agree that speed values should be specified on this layer as it is supported by most measurement systems. We also agree with the GSMA in noting that with end-user experience upper layer such as application layer could be used.

¹ Accordingly, the BEREC definition should provide some leeway for NRAs to have minor variations in their local definitions, for example, the Hungarian NRA has proposed defining normally available speeds as “90% of the time over the whole day, but no worse than 80% of maximum available speed.” The BEREC guidelines should allow some flexibility for NRAs, so long as they are within the general guideline definition as proposed in the main text above.



Question 2

BEREC has considered several methods to calculate speed information according to the relevant fixed network. The development of these methods often requires information on the position of network infrastructure (for example, collecting the distance to the street cabinet or the switching centre). Do you consider information on location of infrastructures strictly required for the purpose of art 22? If so, what is the minimum information level related to network infrastructure that the Geographic Survey should collect and why?

Providing information on the location of HFC and fibre infrastructure would not be relevant for the purpose of Article 22, since speed on fibre does not vary with distance, and the coaxial portion of HFC is engineered to deliver the necessary speeds. Seeking such information, given the lack of speed/distance dependence in such cases, would merely create significant compliance costs without a tangible purpose or gain. The only scenario where such information may be relevant would be on copper networks, where it should be up to the owner of the infrastructure to provide such details as they would be the ones in possession of such information.

Question 3

As explained above, BEREC considers that the characterization of the mobile network is reliant mainly on technology (subsection 2.4.2.1), and that NRAs/OCAs may collect performance information, such as QoS-1 speed information (subsection 2.4.2.2.) as they see fit for their own needs. 30 That is, each MS may decide on the performance information suitable for its own national circumstances. However, BEREC would like to hear views on the following issues: A) Does such optionality compromise the purposes of Article 22, or should BEREC consider making some performance information non-optional? If so, why, and which information should be mandatory? B) Which kind of performance information may be better to inform end users? (Note that in all circumstances NRAs/OCAs should consider that BoR (18) 237 has already recommended that “In order to improve the information on mobile coverage given to the public, NRAs may want to consider specifying at least four levels of mobile coverage. Generally, the levels of mobile coverage could be chosen to reflect the different probabilities of successful service reception which equates to service availability”. As an example, a service could be characterized by the following graded approach: capability to the end user to: 1.) browse traditional web pages and consult emails, 2) to view enriched web content and to stream standard quality video, 3.) to stream high definition videos.

It is important to reach a good balance between prescriptive requirements and sufficient NRA/OCA discretion when applying Art 22 (once it has been transposed into national law). We consider that requiring general information on available broadband speeds is sufficient in this instance, without constricting the requirements too narrowly.

The example given in question 3 B) regarding different application layers is not expedient to determine the reach of a mobile network. The reason for this is that application requirements are not standardised but – to the contrary – dynamic and fast changing. Hence, the coverage should rather be defined by clearly specified speed values.

Question 4

Should BEREC seek to harmonize the assumptions made by operators and NRAs throughout Europe? Should BEREC encourage NRAs/OCAs to seek this harmonization at a national level? Which assumptions should be considered to be harmonized and how? (For example, should BEREC consider data service speed coverage calculations without cell load, considering that



the network is available for at least one user at a specific location at a specific time? Or should BEREC consider network load and, if so, based on which parameters?)

We support BEREC's work to aim at harmonisation at a national level, as this is in keeping with the Art 22 purpose for driving harmonisation, while also providing sufficient flexibility at Member State level for any specific deviations that are justified by local conditions.