



Liberty Global response to draft BEREC Guidelines detailing Quality of Service Parameters

Liberty Global welcomes the opportunity to comment on BEREC's draft Guidelines detailing Quality of Service Parameters, pursuant to article 104, paragraph 2, of Directive 2018/1972 of the European Parliament and of the Council, published on 7 October 2019 (draft Guidelines).¹ As addressed in our response to BEREC's Work Programme for 2020, Liberty Global strongly supports BEREC's commitment to engage with stakeholders on issues that are relevant to them, particularly with a view to ensuring the harmonized implementation of the European Electronic Communications Code² (Code).

In view of the technical and highly specific nature of the current draft Guidelines, we would like to invite BEREC to follow-up sessions with stakeholders. We would welcome the opportunity to one on one discuss key elements of our response to the current public consultation in-depth.

Introduction

Harmonization, technological neutrality, appropriateness and proportionality are key principles

Liberty Global is pleased to see that BEREC acknowledges in the introduction of the draft Guidelines that it is key that article 104 and annex X of the Code are implemented and applied consistently by the relevant national legislatures and regulators.³ As Liberty Global has set out in its various contributions to BEREC in the context of the implementation of the Code (including its recent response to the BEREC Guidelines for common approaches towards identification of the network termination point, submitted on 21 November 2019), the harmonized implementation of this instrument is key to ensure the stable, predictable regulatory environment which fosters innovation and investment.

Moreover, Liberty Global notes that, in line with the objectives of the Code, it is key that its implementing measures (these Guidelines included) respect the principles of technology neutrality, appropriateness and proportionality.

Objective of this response

In light of the objectives of the Code highlighted above, Liberty Global's response to these draft Guidelines focuses on whether the draft Guidelines are a suitable method to achieve the foreseen '*European harmonisation of QoS parameters and data collection and publication practices*'. Liberty Global fully subscribes to BEREC's analysis that such harmonisation, if achieved effectively, '*would*

¹ Draft BEREC Guidelines detailing Quality of Service Parameters, BoR (19) 189 (Draft Guidelines).

² Directive (EU) 2018/1972 establishing the European Electronic Communications Code (Recast), OJ L 321/36 [2018] (EECC).

³ Draft Guidelines, paragraphs 1 and 11.



*result in substantive benefits, such as enabling comparability among Member States and providing better information on the European electronic communications market, while at the same time promoting the consistent application of regulatory obligations and improving transparency for end-users and public authorities in relation to quality of service'*⁴.

Substantive review of the draft Guidelines

The publication of these draft Guidelines is timely

Liberty Global agrees with BEREC that presently, quality of service (QoS) *'as perceived by the end-user, is a crucial factor for both customers and service providers'*⁵. At the same time, *'with the profusion of ever evolving technologies, networks and services with different levels of QoS, it is becoming increasingly more complex to manage, measure and regulate QoS'*. Liberty Global expects the concept of QoS to become more important in the development and marketing of new products and services over the coming years, to enable end-users to make the most of the rapid technological developments in this domain.

The draft Guidelines rightly build on previous work done by BEREC in this domain

With a view to ensuring regulatory stability and consistency, Liberty Global is pleased to see that ample reference is made within these draft Guidelines to previous work done by BEREC on this subject. Moreover, BEREC rightly recognises that the Code stipulates that the QoS of internet access services (IAS) is already regulated by the Open Internet Regulation⁶ and that any measures taken to ensure quality of service shall comply with that Regulation. Liberty Global commends BEREC for deferring – as regards the QoS of IAS – unequivocally to work done in that context, and for reminding national regulators of their obligation to *'take account of and consider guidance on IAS QoS indicators and related definitions, methodologies developed by BEREC OI WG'*⁷. As Liberty Global held in its 28 November contribution to BEREC's draft Guidelines for the Open Internet Regulation, it is key to ensure regulatory stability and to not upset the balance achieved by that Regulation.

As regards the scope of these Guidelines

Liberty Global is of the opinion that, firstly, the Guidelines need to ensure that harmonization of QoS regulation contributes to the understanding of end-users of this complicated domain. BEREC also recognises this need for transparency⁸ in the section outlining the scope of these Guidelines. Secondly, Liberty Global notes that BEREC rightly concludes therein that QoS should be distinguished from

⁴ Draft Guidelines, paragraph 10.

⁵ Draft Guidelines, paragraph 8.

⁶ Regulation (EU) 2015/2120 laying down measures concerning open internet access, OJ L 310/01 [2015] (Open Internet Regulation).

⁷ Draft Guidelines, paragraph 4.

⁸ Draft Guidelines, paragraph 20.



quality of experience (QoE). Thirdly, BEREC rightly concludes that *'quality can be impacted by many factors at the network level and along the value chain, including the device, hardware, infrastructure, service and applications'*⁹.

However, Liberty Global notes that whilst this last point is highlighted by BEREC as a *'policy principle'*, BEREC appears not to emphasize this within the context of the scope of these Guidelines. Indeed, figure 1, located within that section, gives the false impression that network operators are in control of all variables which could impact QoS. Therefore, Liberty Global calls upon BEREC to emphasize in the section outlining the scope of these guidelines, that the QoS of a particular service is dependent on a multitude of variables, some of which are beyond the sphere of control of the network operator (since they lie within the end-users' private domain).

Harmonization of the publication requirements

Liberty Global strongly supports the harmonization of publication requirements¹⁰ by these Guidelines. In addition, Liberty Global is also pleased to see that BEREC recognizes that the publication requirements under article 104(1) of the Code are in addition to the transparency measures provided in articles 102 and 103 of the Code and the transparency obligations set in article 4(1) of the Open Internet Regulation. Liberty Global sees this as a recognition by BEREC of the principles of appropriateness and proportionality. Accordingly, Liberty Global calls upon BEREC and national regulators to act with restraint in setting further requirements and to ensure a fully harmonized approach if possible.

Imposing transparency requirements that are too extensive, or that differ between Member States, would actually undermine the objective of these Guidelines, as BEREC also recognizes in paragraph 55 of the draft Guidelines, wherein it stipulates that the information on QoS required by national regulators *'should be comprehensive, comparable, reliable, user-friendly and up-to-date'*. Liberty Global recommends BEREC to consider severely limiting the amount of information to be published and to also harmonize these requirements to the maximum degree possible.

Finally, Liberty Global wishes to emphasize that any QoS requirements imposed by national regulators (next to those listed explicitly in the Code, particularly in Annex X), must conform to the principles of appropriateness and proportionality as well. In Liberty Global's view, the fact that QoS parameters and measurement methods are principally technical in nature, entails that the aforementioned principles will not support regulatory divergence, as such technical parameters do not differ between Member States. Therefore, Liberty Global calls upon BEREC to stimulate harmonization of these parameters and methods to the maximum extent possible, preferably by way of standardization.

⁹ Draft Guidelines, paragraph 8.

¹⁰ Draft Guidelines, paragraphs 52-63.



Quality Certification mechanisms are at odds with European approach towards standardisation

Liberty Global strongly disagrees with section 7 of the draft Guidelines, on Quality Certification mechanisms, particularly the factors which national regulators or competent authorities have to take into account when choosing a quality certification mechanism¹¹. However, there are multiple inaccuracies which necessitate a full and critical review of this section before the draft Guidelines can be adopted.

BEREC states correctly in paragraph 64 that article 4(4) of the Open Internet Regulation *'refers to the quality monitoring mechanism certified by [a national regulator]'*. However, in paragraph 66, BEREC states that this provision *'stipulates that if the NRA provides a monitoring mechanism for IAS implemented for this purpose, it should be considered as a certified monitoring mechanism [for IAS]'*. That is incorrect. Neither this provision, nor relating considerations, stipulate that a monitoring mechanism provided for by the national regulator in the context of the Open Internet Regulation is a certified monitoring mechanism. The Open Internet Regulation may provide little detail on the process of certification, however that does not mean that any monitoring mechanism provided by the national regulator automatically qualifies as certified under the Regulation. Conversely, the Open Internet Regulation also allows the certification of monitoring mechanisms provided by third parties. Until now, very few national regulators have actually undertaken to certify a monitoring mechanism. Liberty Global encouraged BEREC in its recent position paper on the Open Internet Regulation to further the harmonized application of the Regulation, and to monitor and report on relevant developments in this respect.

In addition, Liberty Global is of the opinion that the approach taken by BEREC in section 7 conflicts with the general EU approach towards standardisation. As BEREC rightly concludes in paragraph 67, the Code does not prescribe who may be a provider of a quality certification mechanism. However, in the subsequent paragraph, BEREC unilaterally imposes a signification restriction in this regard, by prescribing a *'requirement of independence of the provider of the quality certification mechanism from IAS and publicly available ICS providers'*. Liberty Global is of the opinion that this requirement conflicts with the Code, which, as BEREC concluded correctly, does not impose restrictions in this regard. Moreover, Liberty Global notes that this requirement also violates the key principles of the Code as regards appropriateness and proportionality. As the success of the application of harmonized standards in the field of EU product conformity law shows, self-certification and certification by third-parties (on the basis of business relationships), are more than capable methods to ensure that products and services meet essential regulatory requirements. Liberty Global elaborates on the merits of the European approach towards standardization in the section below.

¹¹ Draft Guidelines, paragraph 71.



Another concern is that, according to paragraphs 69-70, the approach taken by national regulators to *'choose or award the certification of the quality monitoring mechanism may take many various forms. Provisions of the EECC do not impose requirements on the certification procedure. The level of formalization of the procedure as well as additional requirements, such as the requirement for a specific form of the certification act (e.g. an administrative decision, ordinance) may be determined in national law.* Moreover, as BEREC points out the Code¹² *'does not set out requirements about the certification period, the conditions for the certification withdrawal, or extending the certification'*. Liberty Global fears that – if this is not addressed by BEREC – this will lead to significant material and procedural regulatory divergence. Again, Liberty Global recommends BEREC to look into the merits of standardisation as a way of ensuring a harmonized approach.

The merits of the European approach towards standardization

As Liberty Global emphasized in its previous submissions to BEREC, for example on Net neutrality monitoring mechanisms (submitted on 31 August 2017), the use of standardisation in the EU is a resounding success and harmonized standards are of vital importance for the proper functioning of the internal market. One example is the use of harmonised standards in the (self-)declaration by manufacturers of the conformity of products with essential regulatory requirements, as laid down in applicable EU laws.

Standardisation boosts the competitiveness of undertakings in our sector by facilitating, in particular, the free movement of goods and services, stimulating (network) interoperability, and by supporting innovation. Moreover, through coordination with international standardisation bodies, such as the International Telecommunications Union (ITU), the EU is at a position to use standardisation processes to further the global competitiveness of European companies. To facilitate the development of standards in the EU, the Standardisation Regulation¹³ provides an adequate legislative framework.

The European Commission can issue standardisation requests to the official European Standards Development Organisations. Liberty Global recommends BEREC to work with the Commission to leverage the possibilities of standardisation in the domain of QoS. The standardisation request can be based on the requirements suggested by BEREC in paragraph 71. In addition, Liberty Global recommends BEREC and the Commission to issue a standardisation request based on BEREC's methodology for a monitoring mechanism under the Open Internet Regulation.

Liberty Global is of the opinion that the creation of these standards will enable the market to respond with compliant monitoring mechanisms which will improve consumer choice and transparency.

¹² NB: the EECC is referred to in paragraph 70 as a Regulation, whereas it is a Directive.

¹³ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation OJ L 316/12 [2012].



About Liberty Global

Liberty Global (NASDAQ: LBTYA, LBTYB and LBTYK) is one of the world's leading converged video, broadband and communications companies, with operations in six European countries under the consumer brands Virgin Media, Telenet and UPC. We invest in the infrastructure and digital platforms that empower our customers to make the most of the digital revolution.

Our substantial scale and commitment to innovation enable us to develop market-leading products delivered through next generation networks that connect 11 million customers subscribing to 25 million TV, broadband internet and telephony services. We also serve 6 million mobile subscribers and offer WiFi service through millions of access points across our footprint.

In addition, Liberty Global owns 50% of VodafoneZiggo, a joint venture in the Netherlands with 4 million customers subscribing to 10 million fixed-line and 5 million mobile services, as well as significant investments in ITV, All3Media, ITI Neovision, LionsGate, the Formula E racing series and several regional sports networks.