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# Response to BEREC public consultation on draft Guidelines detailing quality of service parameters



## Introduction

DIGITALEUROPE is pleased to provide BEREC with its input regarding the draft Guidelines detailing quality of service (QoS) parameters.

Art. 104(1) of the European Electronic Communications Code (EECC) provides that publicly available interpersonal communication services (ICS) may be required by a national regulatory authority (NRA) to publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end-users on the quality of their services, to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect.

In our response, we highlight comments relating to the feasibility for network-independent ICS to exercise control on the network elements.



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## SLAs and controlling the network

There is a general assumption both under the EECC and within BEREC that network-independent ICS may be able to control network elements via a service-level agreement (SLA).

It is indeed correct, for example, that providers of number-based ICS (NB-ICS) can conclude an SLA with underlying network operators. However, in this context, such an SLA is only potentially relevant when it has as effect to control network elements of the network operator.<sup>1</sup>

The specification that the SLA has as effect to 'control at least some elements of the network' is missing in para. 38 of the BEREC consultation, which states that ICS are only subject to Art. 104 insofar as they 'have an SLA with a network operator,' without adding that the objective or effect of such SLA should be to 'control at least some elements of the network.'

In addition, it is debatable to what extent even a network-independent ICS provider who has concluded an SLA with the network operator to control elements of the network is really able to exercise effective control over such network elements.

SLAs generally do not convey any technical form of control over network elements, but rather specify that a monetary compensation or a pecuniary sanction is due if the agreed service levels are not attained.

A network-independent ICS provider who has concluded an SLA with a network provider will thus not be able to exercise effective control on these elements – other than possibly claiming a compensation if the service performance does not meet the agreed standards. The network operator will remain entirely free to use the network components of choice as well as the settings of choice for those components.

Therefore, we do not believe that, in case of an SLA of this type, a network-independent ICS is able to exercise any technical or effective control on the network elements and, consequently, that such situation does not fall under the scope of Art. 104(1).

Were BEREC nonetheless to take the opposite view, it still is important to acknowledge that this type of agreement does not grant any real power to the ICS to influence the network settings. This should also be clarified to the ICS users in order to avoid confusion. Were NRAs to impose QoS parameters to such ICS providers, they should allow them to add a reference to the fact that they are dependent on another network provider for the respect of quality

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<sup>1</sup> Note, in particular, the reference 'to that effect' in the EECC's Art. 104(1).

parameters. Logically, NRAs should also oblige network operators to communicate this information in the required publishable format to the ICS with which they have concluded an SLA.

Even in the absence of an SLA, an ICS provider may have direct control of 'at least some elements of the network,' but only to such a small degree that there is no significant control over service quality. Similar to the instance of an SLA, if a network-independent ICS has control of at least some elements of the network but is not able to exercise any technical or effective control of the network elements overall with regard to its QoS, that provider's service should not fall under the scope of Art. 104(1).



## Network performance, QoE and QoS

The different concepts of QoS and quality of experience (QoE), which are introduced in para. 21 of the consultation, do not in our view bring clarity in the above debate. Rather, they create even more confusion around the already existing differences between network-independent ICS providers and network providers. We therefore suggest removing these additional reflections. The fact that QoS is being defined up to the user interface may also raise questions, as in many cases this will include terminal equipment that is not under the control of the network provider.

As noted above, Art. 104(1) of the EECC states that IAS and ICS providers may be required to publish QoS information 'to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect.' Thus, the Directive expressly focuses on the network and its performance. Even the discussion in para. 21 of the consultation acknowledges that '[n]etwork performance (NP) ... excludes terminal performance.' It could well be concluded that Art. 104(1) does not allow for an extension of the Guidelines to QoS information that is neither listed in Annex X nor a measure of network performance.

Consistent with this general point, the first three items of Table 2 (at pp. 13-14) also are not authorised by Art. 104(1). The frequency of customer complaints and the time needed to receive and resolve those complaints are not measures of the network's performance with respect to provisioning the underlying service.



## Location of information

Under para. 60, providers can be obliged to have information on their websites 'no more than one click from the homepage.' Para. 61 provides two options to mandate distribution of relevant information, one of which is for the NRA to oblige providers to publish through a third party.

The Guidelines should clarify that such obligation to publish through a third party should be announced by NRAs only if providers do not otherwise provide sufficient information. See Recital 271 ('national regulatory authorities ... should nonetheless be able to require publication of such information where it is demonstrated that such information is not effectively available to the public').

Otherwise, even when the service provider makes adequate disclosure on its own channels, one Member State could oblige an operator to use a certain third-party channel whereas another Member State could require use of a different third-party channel. Whereas the very idea of Guidelines is to secure a uniform application of the law, as drafted paras 60 and 61 make it likely that NRAs will mandate different concepts and therefore impose unnecessary burdens on service providers.

Further, the concept of the 'homepage' is not clear or readily applied. A service provider may have many lines of business that, together with investor information and other materials, are all available off the same corporate homepage. It typically would be unrealistic and unhelpful to access service-specific consumer information off that page. Rather, if there is any requirement at all governing website placement, it should be that the website containing the mandatory information should be 'no more than one click from a homepage for the particular service or group of service offerings at issue.'

Finally, for simplicity and efficiency and to ensure that up-to-date information is available, the final Guidelines should specifically recognise that mobile applications may provide QoS information through URL guidance to a webpage or other similar redirection and need not provide detailed QoS information within the app itself. This is consistent with the current language in para. 60 concerning the provision of QoS information 'via mobile applications.'

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