WE ARE SHAPING THE INTERNET.
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eco

**Contribution on BEREC (19) 179 - Draft Guidelines on
the Implementation of the Open Internet Regulation**

Berlin, 28.11.2019

**BEREC has opened a consultation. Its draft issues an actualisation of
the Net Neutrality Guidelines from August 2016. These guidelines are to
be taken in utmost account by National regulatory authorities by
executing the Telecom Single Market – Regulation (EU/2015/2120). The
latter states the principle of Open Internet und rights of end-users in
regard of internet access services.**

**eco is thankful for the opportunity to comment and for the availability
of the track change version.**

I. General issues
eco represents a large number of content and application providers as well
as internet access service providers (ISP). The current version of the NN
Guidelines achieved a well mattered comprise between the conflicting
interests leaving room for innovation.
For these reasons eco is optimistic BEREC will keep its focus on reaching a
just reconciliation of interest.

In the draft BEREC on various matters describes, what it sees not in
conformity with the TSM-Regulation. As a matter of fact, it would be very
useful to provide conform examples. That would help the Providers, the
NRAs and the End-users and lead to legal certainty. Additionally, this is a
chance to strengthen the innovation enabling nature of the Guidelines,
Recital (1) of TSM-Regulation.

II. Paragraph number 32a. and 32b - End-users choice
It is to question, if the TSM-regulation and the Guideline are applicable in
cases the end-users choose to block certain content or specific applications.
The addressees of the Regulation are the ISPs. The decision of end-users
being executed by an ISP is neither a behavior nor a decision of ISPs. Even
in cases ISPs offer such settings or services, for example safeguarding
parental control, it is still the decision of the end-user.

At least eco thinks regarding new number 32b, that it is necessary and more
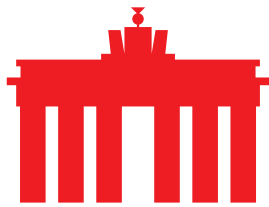
logical, to alternate the sequence of subpoint one and two. If it is end-users 'choice to block specific content or applications, I. e. executing parental control on the basis of informed consent, activate and deactivate end point-based blocking by changing the setting on the end-user computer, there is no need for the NRA to assess if an IAS is application agnostic. The same is if the ISP offers limitations by choice of end-user in that sense, if safeguarded that the end-user can lift the limitations again.

III. Zero Rating, paragraph numbers 42a. to 42e.

eco can`t identify an additional need for more requirements of zero rating or similar offers.

IV. Zero Rating, paragraph 69. to 70.

Following the rule of the TSM-Regulation that Zero Rating is allowed there have to be permitted methods of identifying data categories like music, video, social media, messaging. Otherwise, if no methods to determine the kind of data, that would constitute a technical-factual prohibition of zero rating. Thus, BEREC should positively describe admissible methods of data categorisation.

We recommend to add a new second sentence to para 69: *"The processing of URLs for the purpose of assigning the correct type of traffic does not constitute monitoring of specific traffic, as long as no URLs are stored or further processed for other purposes."*

V. Data compression, Paragraph number 77a.

We request specific examples, what BEREC understands as lossless compression.

VI. End-user choice, Paragraph number 78b.

For more clarity a reference in paragraph number 32a., if kept, to para 78b. would be advisable.

VII. Specialised services and 5G - Network slicing, Paragraph numbers 108a. to 110a

In respect of the importance of matter for the providers eco is not convinced that the elaborations in paras 108a. to 109. are sufficient to provide legal certainty. More of the latter could be achieved by giving more examples for

admissible virtual separation and use cases for business end-users.

We interpret the new numbers 110a. and 110b. as replacement and elaboration of the now-to-be-stroked footnote "5G network slicing". If so, that should be clearly stated by BEREC and vice versa for the case BEREC has changed its opinion about network slicing in 5G-networks. eco recommends also here positive, admissible examples.