

# UPDATED GUIDELINES ON NET NEUTRALITY

Comments by the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – (vzbv) on the draft BEREC Guidelines on the Implementation of the Open Internet Regulation - 2022

## SUMMARY

Net neutrality and its principles of non-discriminatory and equal access to data ensures the ecosystem of the Internet as a driver of innovation. Since 2016 the Regulation 2015/2120 secures net neutrality and its principles. The Body of European Regulators for Electronic Communications (BEREC) was given the task to provide clarification and guidance on the provisions of the Regulation. Verbraucherzentrale Bundesverband (vzbv) strongly welcomes BERECs past and future efforts to safeguard net neutrality in Europe.

In light of recent European Court of Justice rulings on questions regarding zero-rating, BEREC started the process to review and update the Guidelines. This could held to redesign them more precisely so National Regulation Agencies (NRA) could enforce the net neutrality rules in a way, their immanent principle intended. vzbv thanks BEREC for the possibility to comment from a consumer point of view. For a further in-depth statement we refer to the contents of The European Consumer Organisation's (BEUC) contribution regarding the public consultation, which vzbv supports.

## ZERO RATING

As seen over the past years in almost every European member state, the issue of price discrimination regarding zero-rating offers is the prime cause for difficulties when it comes to compliance and implementation of the Regulation. Price discrimination and zero-rating practices are one of the biggest risks to the enforcement of the net neutrality rules in Europe. Regarding zero-rating offers, vzbv was always very outspoken towards its advocacy of banning those products as they exceed both the scope of the Regulation and the BEREC Guidelines on net neutrality.<sup>12</sup> In recent rulings, the European Court of Justice (ECJ) found that zero-rating offers breach the net neutrality rules of Regulation 2015/2120. In response, BEREC is now incorporating those findings into the Guidelines.

It is strongly welcomed that BEREC removed all previous references to zero rating offers from the draft Guidelines and deleted all references to zero rating in paragraphs 36, 37, 37a, 40-43 and 48, as well as the deletion of the Annex stating an assessment for zero-rated offers under Article 3(2) of the Regulation. Furthermore,

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<sup>1</sup> Verbraucherzentrale Bundesverband: Telekom-Tarif verringert Wahlfreiheit bei Streaming-Diensten, 2017, <https://www.vzbv.de/pressemitteilungen/telekom-tarif-verringert-wahlfreiheit-bei-streaming-diensten>, 08.04.2022.

<sup>2</sup> Verbraucherzentrale Bundesverband: vzbv fordert: Vodafone GigaPass verbieten, 2018, <https://www.vzbv.de/pressemitteilungen/vzbv-fordert-vodafone-gigapass-verbieten>, 08.04.2022.

the draft Guidelines now include the core principles of the ECJ rulings regarding zero rating in paragraph 54a.

## **PRICE DIFFERENTIATION**

BEREC has also found a good way to incorporate the new and comprehensive assessment on differentiated pricing practices into the Guidelines.

In the aftermath of the EJC ruling, there was an unjustified concern that differentiated pricing would not be possible anymore.

As the draft Guidelines show, there are a variety of options for differentiated pricing practices in line with Article 3(2) of the Regulation: All these options do as well include commercial considerations, such as acquiring new customers, retain regular customers, maximising profit, all in line with the Regulation.

## **Kontakt**

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