



Sent by email to: OI-Guidelines-Consultation@berec.europa.eu

GO plc response to the public consultation on draft BEREC Guidelines on the Implementation of the Open Internet Regulation

14th April 2022

GO plc (hereinafter “GO”) welcomes the opportunity to submit its comments on BEREC’s public consultation on draft BEREC Guidelines on the Implementation of the Open Internet Regulation.

Introduction

GO acknowledges the requirement to review the Guidelines on the Implementation of the Open Internet Regulation following the European Court of Justice (ECJ) rulings concerning interpretation of the Articles of this Regulation. GO considers that the revised Guidelines should provide the necessary clarity and legal certainty to address the concerns of the EU electronic communications providers following the ECJ rulings. In this regard GO strongly believes that the revised BEREC Guidelines should not go beyond the interpretation of the ECJ and such Guidelines should not act as deterrent for providers to develop innovative services that are beneficial to European consumers.

Implementation of possible changes

The zero tariffs being offered by GO and by other electronic communications providers within the EU were approved by the respective national regulators based on good faith interpretation of the legislation. Providers have entered into agreements with their subscribers to deliver such tariffs and any change in the interpretation of the Regulation should not lead to a scenario where electronic communications providers are exposed to unwarranted burdens. GO deems that any changes should not create situations where subscribers could end up terminating their contractual relation with the providers. Such changes are being directly imposed by a EU court and in accordance with Article 105(4) of the European Electronic Communications Code (EU Directive 2018/1972) providers should not be mandated to give the right to terminate contracts without penalty.

Alternatively National Regulatory Authorities could mandate the changes of the new regulatory provisions to new contracts whilst allowing an adequate transitional period to change or terminate any existing zero-rated tariffs that might be impacted by the new interpretation of the Regulation.





National Regulatory Authorities should facilitate the implementation of the mandated changes without exposing the providers to unpredicted contract termination costs and subscriber churn.

Interpretation of the ECJ Judgements

The ECJ judgements state that zero rated options, offered in the context of limited packages, allow internet access providers to increase the attractiveness of their offer. The ECJ also ruled that “Article 3 of Regulation 2015/2120 must be interpreted as meaning that a limitation on bandwidth, on account of the activation of a ‘zero tariff’ option, applied to video streaming, irrespective of whether it is streamed by partner operators or other content providers, is incompatible with the obligations arising from Article 3(3)” of the Open Internet Regulation. GO respectfully notes that not all zero-rated offers are offered in the context of limited packages and similarly not all introduce a limitation in bandwidth on activation. Moreover, the ECJ Judgements do not impose a general prohibition on zero-rated tariffs as a commercial practice.

GO itself offers its subscribers the possibility to stream GO’s own linear TV service and on-demand content over its mobile network without metering the internet traffic consumed by GO’s TV service application. The viewing of zero-rated TV content via GO’s TV app would only be possible once the end-user has at its disposal an active data cap with its mobile subscription or when the end-user purchases a mobile data add-on. GO’s offer is made available for free to all of its TV subscribers that have an eligible mobile data plan.

GO’s offer has not been introduced for purely commercial reasons given that it is being made available to all existing TV service subscribers and no additional revenues are being earned. Past investigations of this offer by the National Regulatory Authority had also concluded that GO’s TV app is not likely to foreclose rival CAP offerings. Such conclusion was derived from the fact that GO’s TV app predominately provides linear TV and is completely different from what is typically offered over online video platforms. In addition, given also that the relevant addressable market for any CAP would typically be national, particularly in the case of small countries such as Malta, the availability of GO’s zero-rated offers and their current take-up is unlikely to pose national level foreclosure to these CAPs.

GO’s TV app was introduced following the shift from a multicast TV transmission to a more innovative Over-the-top (OTT) solution and it facilitated the migration of customers from GO’s own legacy DTTV platform to an IPTV service. GO considers that such offers could provide innovative solutions over both mobile and fixed internet and are in line with the EU targets aimed at providing better connectivity and to deliver better quality of service to EU citizens. GO is concerned that the prohibition of offers similar to its own will put providers, currently offering such offers, at a disadvantage when compared to other providers that are still delivering their TV service over legacy technologies such as DTTV. In this regard, GO recommends that paragraph 35 of the Guidelines is amended to include the examples mentioned above.

GO deems that the Guidelines should give National Regulatory Authorities more powers to decide the eligibility of offers on a case by case basis, and to assess the benefits of such offers within the respective national territories whilst ensuring that such tariffs still adhere to the principles of net neutrality and to the interpretation of the ECJ judgements.

GO is always available for clarifications on this reply and further discussions on the subject.

