



Draft BEREC guidelines not in line with the Regulation A risk for customer choice, 5G and broadband ambitions

Brussels, 19 July 2016 – The electronic communication industry welcomes the opportunity to provide feedback on the Open Internet Guidelines drafted by the Body of European Regulators for Electronic Communications (BEREC). Our Associations stand behind the principles outlined in the Open Internet Regulation, which was adopted in November 2015.

With 5G and Internet of Things, the very concept of electronic communication networks is being re-defined. Europe has the opportunity to build a new digital Union, based on the full and pervasive digital empowerment of citizens, businesses and governments. The pre-requisite to such empowerment is the development of smarter, ubiquitous and flexible superfast broadband networks.

For this reason, we need to express our deepest concern on the current draft Guidelines, as they appear to open a scenario of legal uncertainty as well as create a restraint on customer choice, network innovation and investment.

Legal uncertainty: the draft Guidelines are overly-prescriptive in their reliance on ex-ante prohibitions, as opposed to the ex-post approach set forth in the Regulation. This goes far beyond the mandate given to BEREC in the Regulation, paving the way to litigation and hence creating legal uncertainty.

Harm to 5G innovation and customer choice: the draft Guidelines appear to ignore the natural and on-going evolution of electronic communication networks, by taking a static view that does not match the technological reality. More in specific:

- 5G technologies centralise and virtualize network intelligence, which currently sits with terminal equipment. This clashes, for example, with the rigid distinction between VPN apps and VPN networks in the draft Guidelines.
- Certain commercial practices appear to be prohibited ex-ante, before any evaluation of merit. This might hamper, for example, the development both commercial services that end users want and of non-commercial zero-rated services such as e-Health or e-Government applications.
- While the legislators decided not to define specialised services (services other than Internet Access Services), the draft Guidelines now take an ex-ante regulatory position on the topic. This will slow down the development of such innovative services by attempting to include them within the regulated sphere.

Investing in fixed and mobile broadband: the draft Guidelines are highly questionable from a broadband investment viewpoint. First of all, they appear to limit the operators' ability to launch new business models making the most out of their network investment. This is far from desirable at a time in which the political priority is to boost network roll-out throughout Europe. Secondly, the Guidelines go beyond the actual legislation by suggesting that National Regulatory Authorities have a say on network dimensioning, which we believe cannot substitute for the traffic management that is necessary to ensure quality and performance of the network.

We therefore believe that the Guidelines – if approved in their current form – will interfere with Europe's plans on 5G development and broadband deployment. Moreover, they will reduce consumer choice and hinder opportunities for innovation with other sectors such as car manufacturing, e-Health or entertainment.

For this reason, we urgently ask that BEREC re-aligns the Guidelines with the Open Internet Regulation, by maintaining the original intent of providing solid consumer protection while fostering innovation.