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Statement of the Alliance of Telecommunications Terminal Equipment Manufacturers (VTKE) regarding the public consultation on the evaluation of the application of Regulation (EU) 2015/2120 and the BEREC Net Neutrality Guidelines (BoR (18) 33)

In its explanations, the VTKE refers in particular to the right of end-users to “use terminal equipment of their choice” as laid down in Article 3 (1) of Regulation (EU) 2015/2120.

A. General experience with the application of the Regulation and BEREC NN Guidelines

1. In your view – have the Guidelines helped NRA’s apply the Regulation in a consistent, coherent and correct way? Please explain.

If you look at how the Regulation has been applied in practice in most member states of the EU, the Guidelines have not necessarily contributed to a „consistent, coherent and correct“ application of the Regulation by the national regulatory authorities (NRAs).

According to Article 3 (1) of Regulation (EU) 2015/2120, end-users have the right to "use terminal equipment of their choice". Point 26 of the BEREC Guidelines states that "NRAs should assess whether an ISP provides equipment for its subscribers and restricts the end-users' ability to replace that equipment with their own equipment, i.e. whether it provides 'obligatory equipment'".

However, despite this clear legal obligation as well as the mandate for NRAs to keep track of and pursue abusive practices, in almost all European countries, many network operators compromise their customers’ freedom of choice regarding their telecommunications terminal equipment; customers are being prevented from using terminal devices they have bought themselves, in store or from a vendor. Customers who want to use a terminal device they have chosen or bought themselves are being discriminated against, either by not being provided with the access credentials necessary for installing and configuring the terminal device and services and/or by not being able to use all contractually agreed services and/or functionalities with the terminal device they have chosen. The experiences of the VTKE are numerous.

In this way, network operators “restrict[...] the end-users’ ability to replace that equipment with their own equipment“ and indirectly force their customers to use “obligatory equipment“. Such an approach is clearly contrary to the Regulation as well as point 26 of the BEREC Guidelines. Behaviour of this sort should in principle be subject to rigorous sanctions from the NRAs.



2. Did the Guidelines provide additional clarity regarding how to apply the Regulation? Please explain.

The stipulation in the Guidelines that NRAs should consider “whether there is an objective technological necessity for the obligatory equipment to be considered as part of the ISP network”, does unfortunately *not* provide additional clarity or lead to a rigorous pursuit of abusive practices by the NRAs.

Rather, the abridged wording of point 26 provides another opportunity to undermine the right of end-users to freely choose their terminal equipment. Many network operators use a one-size-fits-all argument that ‘obligatory equipment’ is necessary for technical reasons – particularly for reasons of network security, which is why the terminal devices (as part of the public network) would have to fall under the sovereignty of the network operator.

This ‘bogus argument’ has already been factually invalidated a number of times. There are practically no technical reasons that would require the use of a terminal device selected and provided by the network operator. The examples of Germany and the United States, where there is a free choice of terminal equipment for all access technologies, clearly prove this.

Beyond this, the fact that the Guidelines do not obligate network operators to provide their customers with the access and/or configuration data necessary for connecting and using terminal devices chosen by the customers themselves as well as all contractually agreed services (or making them publicly accessible) causes uncertainty and provides another opportunity for network operators to undermine the end-users’ right to freely choose their own terminal equipment. If an end-user is unable to connect and configure his or her self-chosen terminal device and cannot use all contractually agreed services with his or her own device due to a lack of configuration parameters, his or her right to “use terminal equipment of [his/her] choice” comes to nothing.

3. On which subjects would you expect the Guidelines to be more explicit or elaborated? How should the text of the Guidelines be adapted on these points, in your view. Please explain.

To ensure that the right of end-users to “use the devices of their choice” does not miss the point, the BEREC Net Neutrality Guidelines must once again clearly and explicitly confirm that the network termination point, separating the public from the private network, is located at the “socket on the wall”.

From our point of view, this clearly arises out of the current European legal framework. However, some network operators in the member states of the EU are arbitrarily redefining the network termination point, thereby trying to assign the terminal device to the jurisdiction of their network. Therefore a clarification that the network termination point is located at the “socket on the wall” is



inevitable to ensure a consistent implementation of the end-user's right to free choice of terminal equipment.

In this context, unlike in the current version of the Guidelines, BEREC should also clarify that there is no technical reason why end-users should not be able to choose their terminal devices freely.

Beyond that, to ensure that the end-users' right to free choice of terminal equipment does not miss the point, it is also essential to include an obligation for network operators to provide their customers with the access and/or configuration data necessary for connecting self-chosen terminal devices to the network and for using all contractually agreed services. Only then can it be ensured that end-users can connect and install their self-chosen terminals and use all contractually agreed services free from discrimination (compared to the use of terminal devices provided by the network operator).

5. Did the application of the Regulation, or the implementation of the Regulation by the Guidelines, prevent you from launching certain products or services?

The fact that in most member states of the EU it is not guaranteed that end-users can use the terminal devices of their choice and/or that the freedom of choice for telecommunications terminal equipment is not properly enforced by the respective NRA leads to considerable barriers to innovation as well as to market foreclosure in the countries concerned.

B. Definitions (article 2 of the Regulation)

7. Do you think that the Guidelines should provide further clarification in relation to the definitions in the Regulation? If yes, please provide concrete suggestions.

The Guidelines should clarify that the network termination point is located at the "socket on the wall" in order to ensure a consistent implementation of the end-user's right to freely choose their terminal equipment (see comments to point 3). In order to achieve universal applicability, a clear definition of the network termination point - for example as "passive" – should be inserted into Regulation (EU) 2015/2120.