BEREC-TRAI Joint Statement for an Open internet

Whereas BEREC and TRAI have signed a Memorandum of Understanding (MoU) on 14 June 2018, which provides a framework for their cooperation and highlighting in particular that Net Neutrality is an area of mutual interest for reinforced cooperation;

Whereas the TRAI, through its recommendations on Net Neutrality, and BEREC, through its Guidelines on the Implementation by National Regulators of European Net Neutrality Rules adopted on the basis of the EU Regulation on Open internet, aim to ensure an univocal protection of net neutrality principles for internet access services;

Whereas, the Body of European Regulators for Electronic Communications (BEREC) and the Telecom Regulatory Authority of India (TRAI),

- *appreciate that ensuring an open access to the internet, which is the essence of Net Neutrality, has been recognised as an important element in our societies to safeguard freedom of speech,*
- *realise the importance of open access to information and economic freedom by enabling everyone to innovate without permission.*
- *recognise the right of all end-users of the network to access content, services and applications on the internet and also to make content, services and applications available;*
- *accepts that at the core of Net Neutrality lies the end-to-end design principle of internet, which is one of the key features which has allowed internet to become the unprecedented space of freedom and innovation that we know today,*
- *acknowledge that evolving technologies, such as 5G networks, provide enhanced characteristics to internet access services, which could be implemented in line with net neutrality;*
- *share the conviction that internet is a common good and a resource for innovation which needs to be protected from interference in its core functioning;*

And therefore, under the overall framework of MoU between them, BEREC and TRAI have adopted the following declaration to develop collegial working relationships on common understanding of the building blocks of Net Neutrality rules and to show their willingness to develop exchanges regarding the implementation of these rules:

Common scope and grounds of Net neutrality frameworks

The legislative and regulatory frameworks for both regions provide that the openness of internet should be preserved through a set of core rules. The EU Regulation applies to publicly available internet access services, with no distinction and TRAI recommends that all licensed telecom service providers (TSPs) providing internet services in India should be bound to follow the "core principles" of net neutrality.

Both sets of rules also share a common conception of internet access services as giving access to virtually all end-points of the network, and that the principle of non-discrimination of traffic between these end-points and between applications is vital to the end-to-end principle at the foundation of the current internet architecture.

The following lists the building blocks of Net Neutrality rules, drawn from commonalities in the EU's and India's frameworks:

- **End-users' rights** to send or receive information, acting as consumers or producers of online content and applications, as well as the freedom of choice of terminal equipment, are to be enforced and protected.

- The principle of **equal treatment** of traffic, in the provision of internet access services, independently of end-point and independently of content and application, sits at the core of the protection of Net neutrality.

- **Reasonable traffic management** measures are not prohibited, provided that a transparent, non-discriminatory and proportionate treatment of traffic is ensured.

- The scope of **exceptional traffic management measures** is to be restrictive, so as not to undermine the general concept of non-discrimination of traffic. Legal obligations and security reasons are obvious motives to trigger exceptional measures to block or throttle specific traffic.

- **Commercial practices** (zero rating or others) are to be subject to specific provisions that complement competition and/or commercial law provisions. Although different legal frameworks may apply, commercial practices should be subject to a specific assessment in order to prevent practices that can limit end-user's rights to an open internet.

- **Specialised services** are possible for the internet access service providers as a mean to innovate on QoS-sensitive services typically provided in parallel with internet access services. However, overseeing the development of these services is prescribed in order to prevent the risk of endangering the access to internet services through fast lanes/slow lanes.

- In addition to fundamental information on the characteristics of the internet access service, such as data volume, speed and price, that are essential for **transparent** comparison of offers and rational consumer choice, end-users are entitled to detailed information on the traffic management measures that are implemented

On top of these building blocks of Net Neutrality rules, regulators may impose additional requirements where allowed by each party's legislative framework.

Whilst interconnection agreements are not covered directly by the scope of Net Neutrality rules, they can have a significant impact on the functioning of the internet and lead to similar concerns to the ones addressed by the Net Neutrality rules. Therefore, this may lead regulators to monitor the developments of this market.

Supervision and enforcement

BEREC and TRAI stress that openness and transparency towards stakeholders and end-users are key for both the conception and the implementation of Net Neutrality rules and guidelines. Regulators shall be committed, at various levels, to a dialogue with stakeholders in order to enhance their supervision.

Such dialogue may rely on third party initiatives to amplify the monitoring of the market (through crowd-sourced measurement tools, signalling platforms, etc…), sharing standards in the field of Net Neutrality monitoring or establishing discussion   fora with stakeholders. In the same manner, transparency regarding measurement and assessment methodologies should be emphasised.

For instance, BEREC is developing an opt-in Net Neutrality measurement tool that will provide a further possibility for national regulators, especially those which do not have their own measurement tool, to monitor the requirements of the Open Internet Regulation. Likewise, TRAI has a long history in producing measurement tools and has recently published a white paper on QoS measurement that represents a state-of-the-art in the field of QoS measurements.

Interregional exchanges on Net Neutrality

BEREC and TRAI insist on the fact that internet is by nature universal and applications provided over the internet are global. In general, the same core principles of open access to internet, non-discriminatory treatment of traffic and transparency obligations apply. These principles have no border and make therefore Net Neutrality also a global issue.

BEREC and TRAI recognise that legal frameworks are different and concrete implementation by regulators across the globe may vary. This may result from different legal traditions and market situations.

In addition, BEREC and TRAI both acknowledge that Net Neutrality issues are evolving with the advent of new technologies, uses and services. The evolution of these issues justifies exchanges between regulators across the world, for instance to share best practices.

Therefore, in the context of the MoU they have signed and subject to terms and conditions thereof, BEREC and TRAI consider it important to continue to develop interregional cooperation and exchanges, in particular on:

- how to measure and monitor "Net Neutrality" and identify breaches of the core principles;
- how to empower end-users and ensure they have the necessary transparency;
- how to assess the impact of commercial practices on the open internet;
- the impact and compatibility of new technological developments on the open internet.

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