

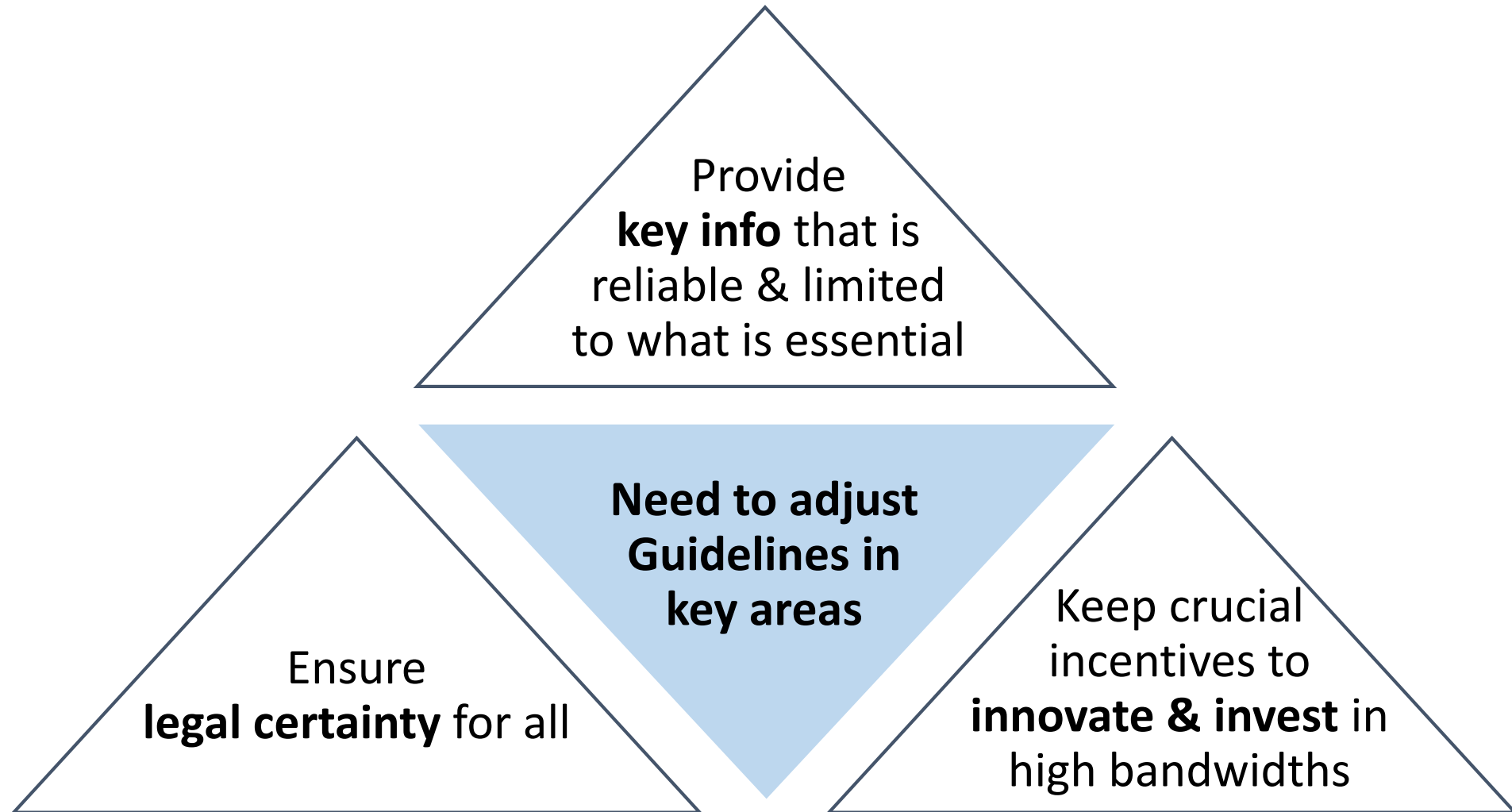


# BEREC Stakeholder Workshop 29 May 2019

GSMA/ ETNO views on Art. 4, Net Neutrality Guidelines  
Malte Firlus, May 2019



# Reasonable transparency on IAS for end-users as crucial contribution to a prosperous digital market





# 1. Information about traffic management & quality

## Regulation's text: Art. 4(1)a

information on how traffic management measures applied by that provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data;

## BEREC's Guidelines #136

The information should be clear and comprehensive. The information should not simply consist of a general condition stating possible impacts of traffic management measures that could be applied in accordance with the Regulation. Information should also include, at least, a description of the possible impacts of traffic management practices which are in place on the IAS.

## ETNO/ GSMA reading:

Improve **end-users' understanding** of applied measures, in line with Art. 3 and the ePrivacy Directive/ GDPR



Proposal to **add further details** to become **part of the contract**, e.g. impact of traffic management



# Assessment



We support objective to **improve customers understanding of traffic management**, which builds **trust**



**Risk** that MS impose further overly detailed contractual info, not adding value for most customers but **restricting ISPs' required flexibility** for reasonable updates, e.g. security purposes

## Proposed solution



**Clarify that objective** is not primarily about fixing technical parameters in contracts



**More detailed** info that are relevant only for specific customers or that need to be **frequently updated** should not be **part of the contract**, but could be provided e.g. on a **website**



## 2. Agreeing speed ranges in the contract

### Regulation's text: Art. 4(1)d

a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the internet access services [...] and how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users' rights laid down in Article 3(1);

### BEREC's Guidelines #141

144. NRAs could set requirements on defining minimum speed under Article 5(1), for example that the minimum speed could be in reasonable proportion to the maximum speed.

### ETNO/ GSMA reading:

**Legislator confirms** IAS-offering based on **speed ranges**, determined by **technical characteristics** of networks



Proposal to restrict speed ranges **without taking into account technical constraints** that require offering of specific ranges



# Assessment



We support that end-users get **reliable & accurate info** on their IAS' performance



ISPs would be forced to indicate max speeds lower than the one delivered, leading to **less accurate info** for end-users



And ISPs would have **less incentives to provide high bandwidths** if they are not allowed to advertise and contractually agree these max. speeds

## Proposed solution



Maintain **ISPs' contractual freedom** on speed ranges



Any potential obligation on speed ranges (i.e. proportionality between min and max) needs to be **based on a thorough technical assessment**, providing **flexibility** to reflect the **variety of** networks



### 3. Robust monitoring systems for IAS

Regulation's text: Art. 4(4)	BEREC's Guidelines #161
Any significant discrepancy, continuous or regularly recurring, between the actual performance of the internet access service [...] shall, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, be deemed to constitute non-conformity of performance [...].	The relevant facts proving a significant discrepancy may be established by any monitoring mechanism certified by the NRA, whether operated by the NRA or by a third party. [...] If the NRA provides a monitoring mechanism implemented for this purpose it should be considered as a certified monitoring mechanism according to Article 4(4).

#### ETNO/ GSMA reading:

**Only certified monitoring system** can establish **non-conformity**, without specifying certification criteria



**Generally exempting NRAs' own monitoring system** from certification requirement & **only generally referring** to a few criteria (#164-166) and reports



# Assessment



We fully agree that robust measurements **add value for customers & ISPs**, enabling proper assessment of contractual compliance



**Guideline not in line** with regulation's text & exempting NRAs risks **unjustified remedies** based on **non-robust** measurements



Misleading proposal to **measure beyond ISPs' leg & reference to outdated reports**

## Proposed solution



**All measurement system used to establish** non-conformity shall be certified



**Define (certification) criteria** that truly ensure robustness, e.g. excluding factors outside of ISPs' responsibility, only refer to most recent reports