⊙Press Release

17 June 2020

Covid-19 - Different measures can be considered to promote the take-up of tracing applications

Contact tracing and warning applications are mobile applications which have the purpose of warning people who have been in proximity to an infected person in order to interrupt infection chains and prevent resurgence of infections in the reopening phase (see Commission Recommendation (EU) 2020/518 of 8 April 2020). These applications need to be taken up by a large portion of citizens in order to be useful.

One area that may be of particular concern and which may effectively discourage the use of such tracing apps is the potential fears on their effect on data usage.

BEREC has identified several different measures that can be effective to encourage the use and take-up of tracing apps and to ensure that these apps are able to communicate even in situations when a data cap has been reached. Depending on the amount of data the app transmits, one or several of the following measures could be considered:

- zero-rating the data of tracing apps;
- temporarily increasing size of data packages;
- allowing data transmission at reduced bandwidth even after the cap has been reached; and/or
- as an exceptional measure, to allow the tracing app special treatment by allowing it to transmit and receive data even when the connection has been blocked.

If the amount of data transmitted by the application is small, a measure that simply ensures a continued connection at reduced bandwidth after a cap has been reached can be sufficient. With high data consumption, zero-rating the data or temporarily increasing data packages may be a more efficient encouragement.

Any measure that treats apps differently and applies traffic management measures going beyond those, which are reasonable, would need a valid legal reason in order to comply with the Open Internet Regulation. This would for example apply to measures that offer exclusive connectivity for tracing apps when the data cap has been reached and connection has been blocked.

MEDIA CONTACTS: press@berec.europa.eu

In general, the Open Internet Regulation and the BEREC Open internet Guidelines apply without exception to the treatment of data related to COVID-19 apps when these data are sent over an Internet Access Service. The main rule is that all traffic must be treated without discrimination when a data cap has been reached, so either all traffic is blocked or the speed of all traffic is reduced (article 3(3) Open Internet Regulation).

As an exception to this rule, measures going beyond reasonable traffic management can be allowed in order to comply with Union legislative acts, or national legislation, or orders by courts or public authorities vested with relevant powers (Article 3(3) third subparagraph (a) Open Internet Regulation). Those exceptions should be subject to strict interpretation and to proportionality requirements.

In the case of providing connectivity to tracing apps when a data cap has been reached and the connection has been blocked, national measures implementing tracing apps could be a legal reason for which an ISP may have to take discriminatory traffic management measures in accordance with Article 3(3). Such measures should apply only for as long as necessary to prevent or contain the spread of COVID-19 and must also comply with the requirements of the EU Charter of Fundamental Rights.

Stay in touch
https://berec.europa.eu
⊙ YouTube   ⊙ LinkedIn   ⊙ Twitter

MEDIA CONTACTS: press@berec.europa.eu