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# Response to draft BEREC Report on harmonised definitions for indicators regarding OTT services



## Introduction

DIGITALEUROPE welcomes the opportunity to provide comments to BEREC's draft Report on harmonised definitions for indicators regarding over-the-top (OTT) services relevant to electronic communications markets.<sup>1</sup>

We welcome BEREC's initiative in seeking to develop a harmonised EU-wide set of indicators to be applied to OTT providers. OTT providers are not easily comparable to traditional communications operators, and there are unique circumstances that need to be taken into account when considering the appropriateness of the indicators. We were pleased to see that the draft Report has, in part, recognised some of these issues and challenges.

We invite BEREC to consider our observations and proposals below, along with their underlying justifications, in its final Report.

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<sup>1</sup> [https://bereg.europa.eu/eng/document\\_register/subject\\_matter/bereg/reports/9877-draft-bereg-report-on-harmonised-definitions-for-indicators-regarding-ott-services-relevant-to-electronic-communications-markets](https://bereg.europa.eu/eng/document_register/subject_matter/bereg/reports/9877-draft-bereg-report-on-harmonised-definitions-for-indicators-regarding-ott-services-relevant-to-electronic-communications-markets)



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## OTTs are not a harmonised set of services

Unlike traditional telecommunications services, which are often similar from the delivery, technology, business model and usage perspectives, OTT number-independent interpersonal communications services (NI-ICS) are often structured very differently to one another.

There is no homogenous business model or value proposition to consumers. Depending on the features of the service, individual NI-ICS can be used very differently. In many cases, the sole element that all these services have in common is that the provider does not own or control the delivery infrastructure. There is a plethora of services that often follow different business models, different forms of encryption (e.g. end to end) and remuneration models (free, ad-based, etc.). Some are ancillary features to other products (operating system, hardware, social media, etc.) whilst others are standalone offerings.

All these different factors have an impact on the types of data/indicators a service may collect or have access to, and what information can be inferred from such data/indicators. It will therefore always be a challenge to develop a harmonised set of indicators that allows for meaningful comparison or market benchmarking.

Furthermore, such indicators should provide substantial flexibility for reporting providers to utilise the particular data/indicators they maintain in the ordinary course of business. Businesses should not be required to fundamentally restructure their ordinary course of business merely in order to capture data for regulatory purposes.



## Cross-border nature of NI-ICS

NI-ICS are often cross-border. Unlike traditional telecommunications providers, who primarily offer national services, they do not take numbering resources from national and/or international telephone numbering plans and do not connect to the public telephone network. They are accessible whenever and wherever a user has access to an internet connection. This can be achieved through a variety of different means, including the use of a public hotspot, mobile or fixed internet connection, etc.

Applying metrics that have historically been collected for traditional telecoms services would be misplaced, and would fail to recognise the balance adopted in the EECC that reflects the inherently different nature of NI-ICS from traditional telecoms services.

For example, confirming the presence or absence of use of a service in a specific geographic territory at any given time can be challenging and the reliability of indicators such as 'number of monthly active users' for a particular Member State is, at best, questionable. These numbers will fluctuate during different periods of

the year and, in many cases, these fluctuations are independent from the national residence of the user. Factors such as holidays, festivals or international sporting events, which see a large number of users travelling from abroad, will significantly distort the numbers. In particular, when a user moves from one country to the next, their 'service ID' or profile typically does not change as a result, and they are not required to complete a new contract or provide different billing or payment details. Indeed, in many cases these services are free and require no billing details.

All of these NI-ICS features benefit users, but also mean that using payment details, IP addresses or registration details as a proxy indicator will not always be possible to ascertain; even if possible, it is unlikely to be a reliable indicator, especially if it is proposed to inform policy decisions or to understand market presence.

While the EECC relies on the country-of-destination principle, we remain concerned, that such a principle has a disproportionate impact on cross-border OTT services. The mere accessibility or availability of a service would trigger local jurisdiction, which would expose many services to potentially 27 different regulatory regimes. We therefore welcome BEREC's goal of determining a harmonised set of indicators. However, there should be equal effort to ensure a more centralised and streamlined process for OTT services to engage and disclose information to regulators.



## **Ensuring the principles of data minimisation and confidentiality**

We were pleased that the draft Report does not require services to collect data they would normally not collect, solely for reporting/information disclosure purposes. Services should not be required to collect or engineer their products in ways that would undermine the privacy or other interests of their users. Additionally, NI-ICS are often only an ancillary feature to a broader product. Service providers should not be required to disclose or share other information that is not directly related to the communications feature. Many services are designed specifically with security and privacy in mind (e.g. end-to-end encryption) and provide very little, if any, insight or control to the provider. Integrity, security and privacy-preserving features should not be compromised.

In proposing any harmonised metrics, BEREC should also emphasise that such data collections will involve highly sensitive commercial information of service providers. The information should be afforded strong confidentiality protections in accordance with national law, and not be collected unless adequate confidentiality can be guaranteed.

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