



**ETNO response to consultation on BEREC Draft Report on harmonised definitions for indicators regarding OTT services, relevant to electronic communications markets**

### **Introduction**

ETNO strongly welcomes BEREC's initiative suggesting a set of harmonized metrics in relation to OTT services that shall help NRAs fulfilling their regulatory mandate. A harmonized set of relevant metrics would certainly serve as useful guidance to NRAs. It would help NRAs to create an improved and comparable evidence base within their regulatory mandate for assessing i) the competitive landscape and dynamics within the NI-ICS market on the one hand, and between NI-ICS providers and traditional ECS (NB-ICS) providers on the other hand; ii) the economic importance / relevance of individual (major) NI-ICS providers.

### **NI-ICS Metrics**

We support all of the proposed metrics by BEREC regarding NI-ICS, namely the number of monthly active (business) users, number of registered users, number and minutes of voice calls and video calls, and number of instant messages. Nevertheless, we note the following:

- Is there any reason for not using the **time spent on messaging platforms** as an additional metric complementing the number of instant messages? Such a metric might constitute an even better indication (or at least a necessary complement to the number of minutes) for an NI-ICS provider's standalone relevance as well as its competitive interaction with traditional NB-ICS providers.
- The suggested metrics could serve to shed light on the existence / relevance of effective multi-homing when taken together and compared across different OTT providers. For instance, comparing the number of registered users with the number of active users between different OTT providers could reveal if users truly multi-home or effectively use only one NI-ICS provider despite being registered with several NI-ICS providers. Similar insights could be drawn from comparing, e.g., the number of messages or minutes of video calls across several NI-ICS providers.
- Finally, to get a better idea on how NI-ICS offerings place a competitive constraint on traditional NB-ICS it is important to contrast the suggested metrics with the relevant metrics regarding NB-ICS (anonymized) at user level over time.

### **Video-Streaming Metrics**

We welcome the metrics suggested by BEREC. However, to appreciate and monitor the respective traffic flows generated by streaming services, NRAs and other competent authorities should not consider electronic communications providers as the competent parties to provide analytics on these services.

### **Revenue-based metrics**

We agree with BEREC that due to the complexities arising from zero-price services and monetization strategies utilizing indirect network effects revenue-based metrics at service level are difficult to quantify and harmonize. However, that should not discourage any future workstreams to come up with feasible and practical ways to do the job, since revenues constitute an important basis for assessing economic and competitive relevance.

## Data Traffic metrics – BEREC’s questions

- i) *Could an internet access provider or a provider of an internet exchange point identify data traffic from/to a certain Content Delivery Network (CDN) (in the same or another member state) at an aggregate level and provide this information to an NRA?***

Any player involved in the end-to-end connection from source (server of the CAP) to the destination (end user of an ISP) may provide the information of total traffic transported on a per source level. It is not evident, that one end is better positioned to provide that information to the NRA than the other end. This assessment changes, when a “per service” level of data is required. This data may only be provided from the source. ISPs are not able to analyze the traffic for one because it is often (and increasingly) encrypted and also because this kind of analysis would require the consent of all end users to be compliant with EU data protection legislation. It is highly unlikely that all users of any given ISP will be willing to explicitly give their consent for the usage of so called Deep Packet Inspection (DPI) Technology. DPI would be required to provide the data from the ISP side, at the same time the source knows exactly what amount of traffic is attributable to which service.

- ii) *Could a CDN identify data traffic from/to a certain internet access provider or a provider of an internet exchange point (in the same or another member state) at an aggregate level and provide this information to an NRA?***

Most likely yes, but must be answered by providers of CDN services.

- iii) *Do video-streaming providers use CDNs exclusively so that CDNs only serve one video-streaming service and all the traffic directed to those can be attributed to that video-streaming service?***

No, in general CDNs provide their services to a multitude of typically small to medium size content owners and service providers. Some Hyperscalers have acquired and integrated formerly independent CDN providers. These may now be seen as “exclusive” CDNs, but they are no longer independent actors. The general market trend is that the senders of large quantities of data traffic avoid using the services of independent CDNs. They keep this option open, of course, but only as a potential backup solution. Over the last couple years they have built their very own delivery infrastructure which they use to deliver their content.

- iv) *What are the legal matters for internet access provider, providers of an internet exchange point and CDNs and video-streaming providers in getting access to this information and providing it to an NRA?***

See response to question (i).

### **Relation with provisions (esp. Digital Markets Act)**

We note that some of the suggested metrics are related to the Digital Markets Act (DMA), which was proposed by the European Commission on 15 December 2020, aimed at ensuring fairness and contestability in the digital sector across the EU. Particularly according to Art. 3 (2) b of the DMA the number of active users constitutes a quantitative metric indicating a platform’s importance as a gateway for business users to reach end users (ref. Art. 3 (1) b DMA). The corresponding thresholds (specified at 45mn monthly active end users and 10k yearly active business users) serve as rebuttable presumptions. In the spirit of Art. 1 (7) of the DMA, requiring close cooperation and coordination (re

enforcement) between the EC and Member States, we suggest that NRAs should closely cooperate and exchange relevant information and experiences with the EC on the metrics. That would help improving overall regulatory practice realizing synergies in relation to data gathering and possible monitoring.