

ANNEX III: TWO-PAGER ON NATIONAL SUPPORT

Assistance from national authorities for an effective enforcement

Given the pan-European reach of the main digital gatekeepers, BEREC endorses that the regulatory authority implementing and enforcing the DMA should be at the EU-level. However, BEREC believes that for an effective regulatory enforcement the EU competent regulatory authority could rely on the expertise and support by National Independent Authorities (NIAs).

To this end, BEREC recommends that the advisory role of the Member States set out in the DMA, should be complemented with a specialised and independent assistance coming from NIAs. The experience with the institutional set-up and missions of national regulatory authorities (NRAs) within BEREC can provide a concrete example of how such harmonised coordination mechanisms could be put in place.

A continuous and more precise monitoring through constant dialogue

By continuously gathering relevant market information at the most appropriate scale (via general and standardised periodical data collection and through ad-hoc legal powers) and nourishing a dialogue with the stakeholders and civil society, NRAs reduce information asymmetries making them fit to serve the purpose of bringing benefits to businesses, consumers and society at large. Collected in a harmonised way, such relevant data are then consolidated and are key for monitoring markets at the EU level. A concrete example is the application of the international roaming EU regulation. In this context, NRAs collect information from relevant mobile operators by means of a predefined questionnaire designed by BEREC. Subsequently BEREC consolidates this information at EU-level view and shares this with the Commission via its international roaming benchmark data reports¹ twice a year.

A deep insight in the activities of stakeholders allows to adapt and tailor remedies

BEREC believes that NIAs could assist the Commission to improve the understanding and knowledge of the national contexts and specificities of different Member States.

NRAs design and monitor the enforcement of the roaming regulation (e.g., control if the roaming Fair Use Policy is correctly implemented) and fine-tune highly technical remedies in an effective and efficient way (e.g. retail & wholesale roaming guidelines).² They are also in charge of granting (or refusing) derogations, which allow operators to apply surcharges in very exceptional cases.

¹ See for example BoR (20) 157, "International Roaming BEREC Benchmark Data Report October 2019 - March 2020 & 2nd Western Balkan Roaming Report", https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/9443-international-roaming-berec-benchmark-data-report-october-2019-march-2020-2nd-western-balkan-roaming-report

² See for example BoR (17) 56, "BEREC Guidelines on Regulation (EU) No 531/2012, as amended by Regulation (EU) 2015/2120 and Commission Implementing Regulation (EU) 2016/2286 (Retail Roaming Guidelines)",

Proximity to the users leads to better complaints handling

While the reach of digital gatekeepers is pan-European, most business users dealing with them are national SMEs – being this even more true for consumers. It is therefore likely that a high number of disputes will occur at national level that would need to be filed as soon as the regulation comes into force. For those businesses and consumers, it is crucial to benefit from a quick intervention of a skilled regulator, familiar with the market in question, without having to wait for the adoption of additional general rules. To ensure a timely and quick action, proximity of national regulators is a major advantage (e.g. language barriers do not occur), which is particularly important not to discourage e.g. SMEs to get in touch with the authorities.

In case of grievances by market operators, dispute resolution mechanisms are available to easily approach the NRA who is bound to find a settlement within a few months.

A technical expertise at EU level

The day-to-day actions (close monitoring, adaptation of remedies, complaints handling) highlighted above are examples of activities that should be elaborated and embedded in the DMA to give concrete shape to the overall framework the Commission has in mind.

BEREC believes there is room for a more comprehensive *structural* cooperation between the EU level and the Member States than what is foreseen in the currently proposed DMA. This could also lower the regulatory burden for the EU authority given the high number of actors potentially affected by the regulatory measures including business users and competing platforms. BEREC believes that the advisory role of Member States should be complemented with an independent and specialised advising role resulting from the coordination of NIAs via a technical independent advisory board.

With reference to the *ex ante* regulatory framework in the field of ECS, NRAs operating under the BEREC umbrella take care of the tasks as described above (information gathering, monitoring of compliance, etc.). As part of the BEREC procedures, topics are treated by specific and dedicated BEREC working groups in which experts from all European NRAs discuss - sometimes highly-technical - issues, exchange best practices. BEREC formulates guidelines and opinions (e.g. review of the roaming regulation, planned for 2021).³

BEREC also points out that decisions deriving from this framework could also strongly benefit from taking into utmost account opinions by other leading European bodies dedicated to the enforcement of other relevant regulations (sector regulators, data protection, consumer protection, competition authorities and others - if applicable), in order not only to ensure full compliance with other EU law, but also to enlighten its own spectrum of actions.

https://bereg.europa.eu/eng/document_register/subject_matter/bereg/regulatory_best_practices/guidelines/7005-bereg-guidelines-on-regulation-eu-no-5312012-as-amended-by-regulation-eu-no-21202015-excluding-articles-3-4-and-5-on-wholesale-access-and-separate-sale-of-services

³ BoR (20) 96 , "BEREC Annual Reports for 2019", See

https://bereg.europa.eu/eng/document_register/subject_matter/bereg/annual_reports/9275-bereg-annual-reports-for-2019