



# **ecta RESPONSE**

**TO THE PUBLIC CONSULTATION BY BEREC  
ON THE**

**DRAFT UPDATE TO THE BEREC NET  
NEUTRALITY REGULATORY ASSESSMENT  
METHODOLOGY**

**BoR (21) 165**

**28 January 2022**

1. **ecta**, the **European Competitive Telecommunications Association**,<sup>1</sup> welcomes the opportunity to provide feedback on the draft BEREC Update to the Net Neutrality Assessment Methodology – BoR (21) 165.
2. **ecta** represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. **ecta** represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks and who demonstrate unique innovation capabilities.
3. **ecta** welcomes and appreciates the BEREC draft Report. Even though is technical in nature and unavoidably complex, is clearly structured, presents rich content and the way the contents are presented ensures clarity to stakeholders.
4. **ecta**, therefore, provides in the following, very brief comments on three core points included in BEREC’s draft Report, and respectfully calls on BEREC to consider them in drafting the final Report on the issue.
5. Firstly, in relation to the end-user environment, and in particular to the case of crowdsourced measurement approach, both in a fixed and mobile network-based connections (section 5), the whole testing process as it is described in the draft report might require that the end-users have high digital skills and competences. Some end-users could be highly skilled but looking at most of the Member States and considering the demographic data associated to the digital and technical skills encountered therein, it could be difficult to obtain statistically representative quality tests and complicate the data validation and test post processing.
6. **ecta**, therefore, respectfully invites BEREC to recommend that those tests are performed by identifying first an adequate (and not limited) set of end-users with technical skills and, secondly, to rely on performance measurements by automatic technical means in those end-users’ environment rather than relying on the end user declaration.
7. Secondly, with respect to the methodology described, targeted at the measurement of IAS quality in both the download and upload directions, the draft Report<sup>2</sup>, firstly recommends that where measurements are performed against a test server, this server should be located outside the internet access service provider’s network. The test server, in order to ensure an adequate connectivity between the server and the IAS provider to minimise any influence upon the measurements, can be located at, or close to the national internet exchange point (IXP). Secondly, the report states that depending on the specific national situation, measurement servers may be located at more than one IXP location.
8. **ecta** would like to highlight that foreseeing only one test server risks to be not sufficiently representative of the real performance that the test aims at measuring considering that connectivity to the national internet exchange point is not necessarily representative for

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<sup>1</sup> <https://www.ectaportal.com/about-ecta>

<sup>2</sup> See Section 3, pages 5 and 6.

each network, and for end-to-end internet connectivity. This is the case notably because some (major) operators do not exchange traffic at open national internet exchanges, and/or may only do so for a very limited proportion of traffic. [ecta](#), therefore, respectfully invites BEREC to recommend, where it is technically possible, an adequate degree of representativity the test should consider a sufficiently large set of servers.

9. Thirdly, with respect to the publication of the data regarding the measurement tests' results, [ecta](#) would like to highlight that the draft Report does not refer to the different performance and quality levels that can derive from the specific types of wholesale access acquired by the internet access providers (often from the incumbent operators declared as having SMP). For instance, in terms of access to the same infrastructure by the access seeker, it is well known that bitstream access would tend in general to ensure a different and not better network performance when measured at the end-user level, with respect to an access based on passive access to the same underlying infrastructure. For such reason, it is of utmost importance that:
  - the data analysis process explicitly includes the examination of any potential impact of the test performance from the underlying wholesale access. Any test result impacted by the poor performances of the wholesale access should be rejected.
  - before its publication, any data is subject to an explanation on the criteria and the upstream inputs that were used for the measurement and the operators subject to such measurement are informed by the NRAs before the measurement and the data is released. This is necessary to avoid those inadequate direct comparisons could be used for commercial level to damage one party with respect to the other.

In case of questions or requests for clarification regarding this contribution, BEREC and NRAs are welcome to contact Mr Luc Hindryckx, Director of General of [ecta](#).