



## **NOS position on the BEREC Consultation on Net Neutrality Regulatory Assessment Methodology**

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## 1. Introduction

This document presents the contribution of NOS, SGPS, S.A (NOS) to the BEREC Consultation on NET Neutrality Regulatory Assessment Methodology.

## 2. General Comment

NOS welcomes BEREC's initiative to provide guidance to National Regulatory Authorities (NRAs) in relation to the monitoring and supervision of the net neutrality provisions of the Open Internet Regulation (Regulation) and the harmonization of net neutrality measurement methodologies and is aligned with the underlying general objectives of this work.

Regarding test methodologies, there are specific aspects that raise concerns on the reliability of the results of quality-of-service assessment tests and should desirably be revised in the final draft:

The first regards the approach set in section 3 of the consultation document, and specifically the limitations of ensuring reliable measurement environments in methodologies embedded in browsers, due to interference of the end-user environment.

BEREC considers that testing should be carried using web browsers or on-device apps, being these located outside ISP's networks.

In fact, since operators only control their networks; performance measurement, it is our understanding that test should desirably be carried within the ISP's networks, in order to minimize biases resulting from factors that are outside the operator capacity to address.

The preference of usage of HTTPS advocated by BEREC is also problematic, as we don't see any advantage in approach, and it may have problematic consequences in terms of result bias, mainly when analyzing higher debit offers.

Regarding the publication of results NOS fully agrees with the need of disclosure of "[...] any identified bias related to measurement methodology likely to create comparability issues, especially when comparing ISPs [...]" and the transparency

requirements detailed in document, to avoid misinterpretation of results and comparability bias.

Finally, NOS fully agrees with BEREC assessment regarding certified monitoring mechanisms when it states that: “[...] To be able to issue a declaration either that there is no significant discrepancy between actual and indicated performance or that there is such a discrepancy empowering the user with the right to trigger “the remedies available to the consumer in accordance with national law”, a number of conditions should be satisfied from a regulatory point of view for giving legal value to this “evidence”. The final ruling over which “evidence” is sufficient for triggering legal consequences however is still subject to court rulings. Therefore, decisions of NRAs should be made transparently; all measurement data should be available for further legal considerations of the respective court. [...]”.

Notwithstanding, any evidence analysis should take in the utmost consideration the complexity of consistent evaluation of specific KPI, namely in what regards “normally available speeds”.