

# **BEREC Report on the outcome of the public consultation on the BEREC Report on comparison tools and accreditation**

9 March 2023



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## Executive Summary

This report summarises the responses received to the public consultation on the draft BEREC Report on comparison tools and accreditation.

During its 52<sup>nd</sup> plenary meeting (5-7 October 2022) the Board of Regulators approved the [draft BEREC Report on comparison tools and accreditation](#) for public consultation.

The aim of the Report is to offer insights into the independent comparison tools that enable consumers (and other end-users, if so required by the Member States) to compare and evaluate Internet Access Services (IAS) and publicly available number-based interpersonal communications services (NB-ICS), as set out in Article 103[2] of the European Electronic Communications Code (EECC) and, where applicable, publicly available number-independent interpersonal communications services (NI-ICS). The Report also captures details of the certification process within each Member State that is, upon request, available to the providers of an independent comparison tool that meets the requirements set out in Article 103[3] of the EECC.

The Report explores:

- the context and policy principle regarding independent comparison tools;
- the independent comparison tools that are already in place and the ones that will be implemented in each country (implementation, services and products covered, mechanisms of comparison, challenges of implementing comparison tools and compliance with the EECC);
- the certification processes, providing details about the few existing ones (requirements, costs, lessons learned and compliance with the EECC).

The public consultation took place from the 12<sup>th</sup> of October until the 30<sup>th</sup> of November 2022 with the objective to gather stakeholders' views in relation to any of the material presented in the draft Report, as well as to gather any feedback on any other relevant considerations and/or emerging issues.

In response to the consultation on the draft Report, BEREC received three contributions from the following stakeholders:

1. Pirlys
2. ECTA (European Competitive Telecommunications Association)
3. ETNO (European Telecommunications Network Operators) and GSMA (Global System for Mobile Communications Association) (joint contribution)

In general, stakeholders welcomed the opportunity to comment on the draft BEREC Report on comparison tools and accreditation. The following sections provide further comments, observations and recommendations expressed within the contributions during the public consultations.



## 1. Pirlys comments/observations

**Pirlys** tried to describe the complexities of the theoretical and real network capacities, the speeds achievable to the users using the services and the speeds actually experienced by the end-user. They also discuss the parameters which influenced the quality of the networks. **Pirlys** provided a presentation to express their views on the abovementioned topics, which will be published in full on the BEREC website along with contributions from other stakeholders.

## 2. ECTA comments/observations

**ECTA** welcomes BEREC's initiative to elaborate a report on comparison tools and accreditation. **ECTA** addresses the most relevant points of the Draft Report in form of key considerations by distinguishing between the structural and methodological considerations.

### 2.1. Structural considerations

**ECTA** is fully aware of the fact that comparability of offers poses a very big challenge. The market of electronic communications services, as was also stated by BEREC, is characterized by a large number of operators which provide different services, with different prices, speeds etc. and bundle those services with other elements that do not always qualify as ECS (electronic communication services). In light of the complexity of the comparison and of the indications provided by the EECC on the requirements, the task of introducing well-structured and efficiently implemented independent comparison tools is not an easy one.

**ECTA** is in broad agreement with the facts presented. However, **ECTA** notes that, in its current form, the Draft Report does not have a section dedicated to a detailed description of the independent comparison tools used in the Member States where those tools are already in place.

**ECTA** wishes to underline that the topic of comparison tools and accreditation is very important not only from a mere consumer protection standpoint, but it is a crucial one also from a competition point of view. Therefore, the way in which this tool is structured and implemented, and made available to end-users, could have significant impacts on market competition. If the tools were badly structured and/or poorly implemented, significant competitive harm could potentially derive from the following main issues:

- a) Non-inclusion of smaller operators' offers in the tool and completeness of the offers in the tool.
- b) Risk of bias (potentially to the advantage of the biggest operators/incumbents) deriving from how the tool is structured/algorithms are implemented.
- c) Inclusion of incorrect/not up-to-date information in the tool.
- d) Affiliate links to providers' website.



### **2.1.1. Non-inclusion of smaller operators' offers in the tool and completeness of the offers in the tool**

According to **ECTA** the potential non-inclusion of smaller operators' offers in the comparison tool can have significant negative impact on those operators' ability to effectively compete with the big operators and make their offers known to the end users. In fact, the smaller operators due to their dimension and limited financial capabilities do not have the same staff and financial resources to publicize their offers. In this sense, any decision, intentional or not, to exclude their offers from the tool would exacerbate a structural competitive disadvantage that they already suffer from.

In relation to the completeness of the offers included in the comparison tool, **ECTA** recognizes that comparison tools are not only the means of residential market consumers' protection, but that the EECC also envisages the possibility of including in the independent comparison tool the standard ECS offers provided to SMEs amongst other end users. In this context, it is important that the comparison criteria of SME standard offer, where available, include all relevant quality factors (not just price) to enable SMEs to fully understand what service quality and performance features they are receiving in return for the proposed fee.

In order to guide the NRAs in this complex implementation process, **ECTA** considers that it is important that the final BEREC Report identifies explicitly the exact percentages of inclusion of the offers for each Member State, and introduces a best practices section including this information. In addition, it is crucial that every operator wishing to be included in the comparison tools, is effectively invited, and enabled to do so, and this should be regularly verified and safeguarded.

### **2.1.2. Risk of bias deriving from how the tool is structured/algorithms are implemented**

**ECTA** points out the risk of potential bias in comparison tools that can derive from how the tool and the algorithms used in ranking are structured. According to **ECTA**, comparison tools operated by third parties inherently bear the risk of self-serving monetisation and financial incentives. **ECTA** generally supports the possibility of NRAs developing an independent comparison tool in-house as envisaged in recital 268 of the EECC.

**ECTA** underlines that the third-party comparison tools that would favour those ECS providers that are making payments (of any kind, e.g., also payment for advertising, affiliate links, etc.) to the comparison tool provider for being positioned in the first ranks cannot be considered independent tools.

**ECTA** considers important a specific assessment and strict requirements for certification process aimed at ensuring an unequivocally unbiased and non-discriminatory tool structure and algorithms.

### **2.1.3. Inclusion of incorrect/not up to date information in the tool**

**ECTA** considers that NRAs and third-party providers should include in the tool's structure the requirement to perform checks within small intervals (at least on a daily basis). This should be done either by dedicated staff or by automatic tools, in order to minimize the risk that



incorrect/not up to date information distorts end users' choice. The actions that are undertaken by each Member State to minimize such risk should be clearly made available in the final BEREC Report, also in the dedicated section of best practices, with the aim of ensuring common knowledge on this delicate issue by all stakeholders. This is also highly relevant to provide the NRAs that have yet to implement tools or to certify providers with the best way of avoiding such problems.

#### 2.1.4. Affiliate links to providers' website

With respect to the potential insertion of affiliate links on the third-party comparison tool providers' website, **ECTA** would like to underline that full transparency about such a potential feature should be provided by the NRAs in each Member State. To such aim, ECTA invites BEREC to include in the final BEREC Report a description of how the insertion of affiliate links is being effectively performed in each Member State comparison tool, and which implications this could have for end-users and for competition.

## 2.2. Methodological considerations

**ECTA** notes that BEREC's Draft Report combines experience and NRA decisions from EU Member States that are fully subject to the EU regulatory framework, as well as from EEA countries and non-EU Member States. **ECTA** invites BEREC to systematically (in all documents) report separately on EU, EEA and non-EU countries.

**ECTA** underlines the need for BEREC's final Report to contain an entirely new section on best practices in order to ensure that virtuous practices are clearly visible to all stakeholders, with the aim of creating a spillover effect for the rest of the NRAs.

**ECTA** invites BEREC to publish annual updates of the Report, to be submitted to public consultation, and to organize at least one workshop with stakeholders per year, to ensure a close monitoring process, in order to enable the detection and correction of potentially problematic issues that are likely to arise. In addition, **ECTA** considers that there remain clear opportunities for BEREC to provide important guidance to NRAs and to the sector, e.g. in the form of Guidelines or Common Positions.

## 3. ETNO and GSMA comments/observations

According to **ETNO** and **GSMA**, the Report lacks a qualitative analysis and a general critique of the tools currently available. Also, according to the EECC, the comparison tools should provide an overview equally on Number-based ICS and Number-independent ICS. **ETNO** and **GSMA** consider that from the Report it emerges that available comparison tools mainly focus on NB-ICS with only a few providing or contemplating to provide comparison of NI-ICS.

**ETNO** and **GSMA** invite BEREC to consider in the Report others additional aspects, e.g., the identification of costs and investments made on a country-by-country basis in order to provide the comparison tool; to which degree available tools impact end-user's buying/switching decision, customer satisfaction, knowledge of available offers on the market; the efficiency of the tool.



**ETNO** and **GSMA** considers that providing inputs to the comparison tools could require a considerable effort from stakeholders, and therefore, it should be investigated whether it is proportional to require the availability of the comparison tool in the future.

## 4. BEREC response

BEREC notes that some of the observations made by the stakeholders extend beyond the scope of the Report. Indeed, the focus of the Report is on describing the characteristics of the comparison tools in accordance with the minimum set of requirements set out by the EECC.

The Report does not provide an opinion on how Article 103 of the EECC has been implemented at European level or on how Member States have complied with the minimum set of requirements established by the EECC for realizing or certifying a comparison tool. The purpose of the Report is to provide peculiarities and the main characteristics of the comparison tools currently in place or to be realized at the European level. NRAs that have not implemented yet the provisions included in the EECC, as well as to NRAs that have already done so can benefit from this overview, provided in the Report, in case of decisions to make or amend existing solutions.

Likewise, comments regarding the design and implementation of the comparison tools, requirements for certification and the supervision activities of the NRAs could not be taken into account. However, BEREC hopes that the Report will be useful to all actors involved in the realization, accreditation and supervision of comparison tools.

Concerning **ECTA's** comments about the inclusion of the exact percentages of the market covered for each comparison tool and a best practice section on this topic, BEREC believes that at this stage, the proposal exceeds the purpose of the Report. The Report does include information about the share of the market covered by the comparison tools, nevertheless, it can serve as a guidance for the countries implementing comparison tools and during the accreditation process.

As for **ECTA's** comments about structural and algorithmic bias in comparison tools, BEREC notes that the aim of the Report is not to give a detailed description of each of the comparison tools but rather to provide useful information to the NRAs implementing such tools and those involved in the certification process. The detailed study of the structure and algorithms used in the tools is also outside the scope of the present Report.

Concerning **ECTA's** comments about the inclusion of information about the actions taken by Member States to minimize the risk of incorrect or not up-to-date information being included in comparison tools, these aspects about the possibility to report about the incorrect information in the tool are reflected in the section 2.4. of the Report. However, BEREC again notes that the aim of the Report is not to oblige Member States to implement specific feature of the tool, but rather guide the Member States to take the peculiarities into account while implementing of supervising the tools in the country.

With regard to **ECTA's** comments about the need to include a description of the insertion of affiliate links and about the implications of such practice, BEREC notes that the EECC emphasises that transparency and independence are the key criteria for the comparison tools. Although the EECC does not directly deal with the issue of affiliate links, BEREC considers

that affiliate links to the service providers' websites are not prohibited as long as the requirements of transparency on the financing and operations of the tools are met. This aspect is reflected in section 3.1. of the Report. As for **ECTA's** comment concerning the opportunity of reporting separately on EU, EEA and non-EU countries, BEREC will take this consideration into account in the future iterations of the Report.

Concerning the opportunity of identifying some best practices, BEREC acknowledges that the inclusion of best practices would have enriched the Report. Nevertheless, BEREC points out that the aim of the present Report is to collate information on comparison tools and/or certification processes, in order to offer useful insights to NRAs that have to fulfill EECC requirements. Moreover, considering that the EECC has been nationally transposed only recently in some Member States, and its provisions have been implemented only partially by NRAs, BEREC considers that it is not advisable at this stage to recommend a single approach, methodology or set of measures for NRAs to employ in order to develop an independent comparison tool.

With regard to **ECTA's** proposal to publish annual updates of the Report, to hold yearly workshops with stakeholders and to provide guidance to NRAs and the industry, BEREC acknowledges that the development and implementation of comparison tools is a very important topic and intends to discuss the best way to address it in the next work programmes.

Concerning **ETNO's** and **GSMA's** comment about the lack of a qualitative analysis and a general critique of the currently available tools, BEREC considers that this is the first BEREC's report on comparison tools and certification processes and that no information has been collected on this topic in the past. Furthermore, the Report shows that not all countries have developed an independent comparison tool yet and that only eight countries have tools that are fully compliant with the EECC. BEREC believes that a qualitative analysis will be more appropriate when almost all countries have an independent comparison tool and a certification process in place.

As for the identification of costs and investments made on a country-by-country basis, BEREC notes that there was not enough information in the responses to the questionnaire sent to Member States to address this issue in the Report.

With regard to **ETNO's** and **GSMA's** concerns on the proportionality of the obligations about comparison tools and the burden of providing inputs to said tools, BEREC considers that the inputs from providers are necessary for the operation of comparison tools. In addition, BEREC would like to note that each Member State has the obligation to transpose the provisions of the EECC and through its implementation, that will consider current circumstances and the existing context, the administrative and financial burden on stakeholders will be taken into account. Additionally, as set out in Recital 265 of the EECC, NRAs can require stakeholders to provide the necessary data in order to develop an independent comparison tool: “[...] *End-users should be able to compare the prices of various services offered on the market easily on the basis of information published in an easily accessible form. In order to allow them to make price and service comparisons easily, competent authorities in coordination, where relevant, with national regulatory authorities **should be able to require from providers of internet access services or publicly available interpersonal communication services greater transparency as regards information, including tariffs, quality of service, conditions on terminal equipment supplied, and other relevant statistics.** [...]*” (emphasis added).