



ecta RESPONSE

TO THE PUBLIC CONSULTATION BY BEREC

ON THE

DRAFT BEREC REPORT ON COMPARISON TOOLS AND

ACCREDITATION

BOR (22) 139

23 NOVEMBER 2022

1. Introductory remarks

1. **ecta**, the **European Competitive Telecommunications Association**,¹ welcomes the opportunity to comment on the draft BEREC Report on comparison tools and accreditation, BOR (22) 139 put to public consultation on 12 October 2022 (hereinafter “the Draft Report”).
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 BEREC’s initiative to elaborate a report on comparison tools and accreditation, which appears relevant for consumer protection purposes. This initiative is equally relevant for **ecta** members who are operators that position themselves as alternative to the incumbent fixed and mobile operators. If the comparison tools and accreditation procedures were to be poorly structured and/or badly implemented, smaller operators could potentially suffer from a competition point of view, and in turn citizens’ interests could potentially be negatively affected.
4. **ecta** therefore considers this BEREC initiative appropriate and is happy to submit its considerations and constructive proposals on the Draft Report. The response is focused on: i) the need of covering in the final report also the above mentioned key risk, by including the country best practices, and, ii) providing methodological suggestions aimed at contributing to the improvement of the final report.
5. In Section 2, **ecta** addresses the most relevant points of the Draft Report in form of key considerations by distinguishing between the structural and methodological considerations. Section 3 constitutes **ecta**’s own concluding remarks.

2. Key ecta considerations

2.1. Structural considerations

6. **ecta** is fully aware of the fact that comparability of offers poses a very big challenge. The market of electronic communications services (hereinafter “ECS”), as also stated by BEREC², is characterized by a large number of operators which provide different services, with different prices, speeds etc. and bundle those services with others that do not always qualify as ECS.

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

² See page 4 of the Draft Report.

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7. This complexity, which reflects the fact that alternative operators bring innovation and differentiation, impacts the end users' choice of services and of providers. That is why the EECC provides in Art. 103[2] that regulatory authorities shall ensure that end-users have access free of charge to at least one independent comparison tool, and, Art 103 [3] indicates a set of requirements for this tool to comply with:
- a) be operationally independent from the providers of the services, thereby ensuring that those providers are given equal treatment in search results;
 - b) clearly disclose the owners and operators of the comparison tool;
 - c) set out clear and objective criteria on which the comparison is to be based;
 - d) use plain and unambiguous language;
 - e) provide accurate and up-to-date information and state the time of the last update;
 - f) be open to any provider of IASs or publicly available ICSs making available the relevant information, and include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results;
 - g) provide an effective procedure to report incorrect information;
 - h) include the possibility to compare prices, tariffs and quality of service performance between offers available to consumers and, if required by Member States, between those offers and the standard offers publicly available to other end-users.
8. 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 because: i) the ECS market has a myriad of companies providing differentiated services in terms of prices, quality and other characteristics, and ii) the companies usually bundle their services with other services (network configuration and optimization services, specialized assistance, IT security, etc.) or products (such as smartphones or Wi-Fi routers).
9. Given this overall context, [ecta](#) notes that the draft BEREC Report provides a factual overview of plans for, regulatory approaches to, and progress toward:
- a) The implementation of independent comparison tools which enable consumers (and other end users, if so, required by Member States) to compare and evaluate IAS and publicly available NB-ICS as set out in Article 103[2] of the EECC and, where applicable, publicly available NI-ICS.

- b) The use of certification processes within Member States that have chosen this approach, by providing details on such process, where it is available.
10. 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 the detailed description of the independent comparison tools used in the Member States where those tools are already in place.
11. 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**.
12. The comparison tools, by their own nature, raise several issues that, while certainly well-intended, can potentially curtail and distort competition. Therefore, **the way in which this tool is structured and is implemented and made available to end users, could have significant impacts on market competition**.
13. **If the tool were to be badly structured and/or poorly implemented, significant competitive harm, can 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.**
14. 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. All in all, this would contribute to underrepresent and potentially weaken competition, which is surely not the motivation to introduce the independent comparison tools. National certification requirements should entail clear specifications regarding the market coverage requirement also foreseen by the EECC³. In particular, third-party comparison tools applying for certification

³ See Art. 103 (3) point f) *"be open to any provider of internet access services or publicly available interpersonal communications services making available the relevant information, and include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results"*;

should not be able to exclude or demote operators in search results due to self-serving interests or as a result of bilateral commercial disputes.

15. In this context, it is very worrying that while, according to the Draft Report in 11 of the Member States⁴ more than 75% of the offers are included in the comparison tool⁵ it is not known what the exact percentage of the offers is covered in each Member State. Is it truly the case that around 25% of the offers available on the market might not be included in the tool, or are the numbers just a reflection of prudence on the part of the drafting team of the Draft BEREC Report? It is probable that those offers belong to the smaller operators. Moreover, it appears to ecta equally worrying that in 3 Member States⁶ the information on the percentage of offers covered by tool is not even available and in 1 Member State⁷ the percentage of the offers included at the tool is around 50%-75%.
16. In relation to the completeness of the offers included in the comparison tool, ecta recognizes that comparison tools are not only a means of residential market consumers' protection, but that the EECC⁸ 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. Especially in the SME standard product segment, it is important to ensure that the comparison tools should not only focus on the prices, as this could leave SMEs with nominally cheaper ECS services that might, however, not fully satisfy their actual corporate needs. A competitive outcome that is completely shifted to merely a price comparison without emphasis on service and quality parameters would ultimately not be in the interest of SMEs.
17. It is therefore important that **the final BEREC Report, in order to guide the NRAs in this complex implementation process, identifies explicitly the exact percentages of inclusion of the offers for each Member State, and introduces a best practices section including this information. This is necessary to fully address this specific sensitive issue and to make sure that those best practices are clearly visible for all stakeholders and create a spill over effect for the rest of the NRAs. 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.**

⁴ BE, BG, CY, CZ, EL, HR, MT, NO, RO, RS, SI.

⁵ Page 16 of Draft BECREC Report.

⁶ DK, MK, PT

⁷ Ireland.

⁸ See Art. 103 (3), point h) "include the possibility to compare prices, tariffs, and quality of service performance between offers available to consumers and, if required by Member States, between those offers and the standard offers publicly available to other end-users".

18. The risk of potential bias in comparison tools can derive from how the tool and the algorithms used in ranking are structured. This can be easily understood in light of the recent antitrust cases⁹ in which the dominant undertaking relied on the underlying algorithm used for the ranking in order to undertake the anti-competitive abuse. Since 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. A visible and widely used in-house NRA tool – which is not driven by the main aim of monetisation – is to be welcomed because it would provide end users with the best qualitative search results and countervail the bargaining power of existing third-party comparison tools that could require payments from the ECS providers for better ranking. In-house comparison tools by NRAs should also provide ECS providers with efficient interface connections, while associated bureaucratic and administrative efforts should be kept to a minimum.
19. 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. Clearly, such tools should not only not be certified, but they should also be heavily scrutinized by the NRAs, through accurate assessment of the tool structure, display of search results, algorithms and, where necessary, through investigations in consideration of the significant competitive harm they can have on the market. Moreover, the default display of average prices placed in the tool should be free from any promotional discounts offered – or provisions received – by the third-party comparison tool provider (e.g., conditional cashbacks, number portability bonuses etc.). A default search display of average prices would provide the end user with easy to understand, transparent and trustworthy search results.
20. As a matter of fact, the structure of the tool itself, the choice and design of the algorithms that select the best or the most relevant features of the offers and make them available to the end users, and the resulting ranking, are crucial elements in tool's proper functioning. Those, in turn, have a direct impact on the results the tool delivers in terms of the rankings and the visibility of the different offers. At the same time, the algorithms can have an extremely technical nature and not easily understandable.
21. For instance, the methodology proposed by Italian NRA, AGCOM on the website¹⁰ for processing and presenting the offers, as reported by some Italian *ecta* members, does not allow for a correct and timely comparison between them. The reason is that the methodology used by AGCOM to fill in the price sheets as well as

⁹ See for instance the Commission fine imposed on Google for the abuse of dominance of the search engine performed by giving illegal advantage to own comparison shopping service, available [here](#).

¹⁰ <https://confrontaofferte.agcom.it>

the mechanism adopted to list them does not ensure the right emphasis on all the components of each offer and, in particular, on the related retail price components costs. In fact, most of those retail price items envisaged by the offer are not shown in the "summary form" - which is provided by the calculation engine, which can be consulted immediately by the user and with which the latter can compare the offers of individual operators. However, it is only in the "detailed form" that the user can download at a later stage, by clicking on a special link, that the real components of the offer become known to the user of the tool.

22. Similar issues arise also with respect to the part of the website enabling the search for offers. The methodology proposed appears not suitable for: i) ensuring end-users with maximum transparency regarding the content and costs of the fixed and mobile networks' offers of the single operators, and ii) facilitating them in making an informed choice of the tariff plan most suited to their consumption profile. The offers search section does not allow effective comparability between the offers. This is mostly due to the omitted, incomplete, or erroneous indication of some parameters such as: a) penalties charged in the event of early withdrawal, b) residual instalments charged in the event of withdrawal before the payment of all due instalments, c) contractual duration constraints, d) technology with which the offer can be activated and any activation fee promotion.
23. Therefore, extreme care should be taken by the NRAs to make sure that the independent providers (where the NRA is not building the tool in-house) and the NRA (where the NRA is building the tool in-house) do foresee effectively unbiased and non-discriminatory structure for the tool, with the use of effectively unbiased and non-discriminatory algorithms.
24. The same care should be taken for the related accreditation process. It should include a specific assessment and strict requirements for certification process aimed at ensuring an unequivocally unbiased and non-discriminatory tool structure and algorithms. In the same vein, certification should not be available if opaque non-transparent search filters are the default setting. With regards to opaque algorithms, the certification criteria should include transparency requirements to better comprehend how such opaque algorithms work and by which factors they are influenced by. In any case, certification should not have constitutive effect, it should have a limited duration and the certification requirements should be updated prior to each renewal. Certification should not be a one-off process and should not be exploited by comparison tool providers as a marketing tool.
25. In light of these considerations, **it is important that the final BEREC Report, provides, in a detailed manner for each Member State:**
 - a) **A detailed description of the comparison tool and the accreditation process attached and,**
 - b) **Reports on the considerations of the operators and of the end users regarding the comparison tool and accreditation process in place**

- c) **A specific section dedicated to the best practices on the most virtuous tool structures and algorithm design in a way that those are clearly visible to all stakeholders with the ultimate aim of creating a spill over effect for the rest of the NRAs.**

In addition, frequent reviews of continued compliance of the tools (be they managed by the NRA or by third parties) are essential.

26. In relation to the third main issue, concerning the potential inclusion of incorrect/not up to date information in the tool, the NRAs and the third-party providers should include in the tool 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 the end users' choice.
27. **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.**
28. With respect to the last key issue, consisting in 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.
29. To such aim, [ecta](#) respectfully 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.**
30. Finally, in relation to the certification process, [ecta](#) would like to highlight that the final BEREC Report should include more detailed information on how the process regarding the certification in each Member State deals specifically with the above described three key issues, which could have significant competitive impacts and consequences.
31. For the Member States that have yet to introduce such certification process, the final BEREC Report should provide a best practice section, in order to ensure the avoidance of the worst practices and to enable NRAs to pick the most efficient and effective ways to perform the certification process.

2.2. Methodological considerations

32. **ecta** would like to put forward some constructive suggestions for methodological and presentational improvements of the factual information that BEREC has gathered. To this purpose, **ecta** adds punctual brief comments.
33. First of all, **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, the EEA countries, and non-EU Member States such as Liechtenstein, Montenegro, North Macedonia, and Serbia. It is difficult for the reader to draw the most relevant evidence from the statistical graphs and accept important draft BEREC conclusions where this is the case, where those countries and EEA countries are mixed with the EU Member States that are fully subject to the EU regulatory framework. **ecta** asks BEREC to systematically (in all documents) report separately on EU, EEA and non-EU countries.
34. Secondly, **ecta** notes that BEREC's draft report does not contain a section with a brief description of the comparison tools introduced by the Member States which have them. As underlined in the structural considerations section, **ecta** deems very important the inclusion of such a section in order to transparently provide the reader with the details on the comparison tools structure and algorithms used, the percentage of the offers included in the tool, and the instruments and systems used to make sure that incorrect/not up to date information is never presented to end-users making use of the tool. This new section, in **ecta's** opinion, should include also, where available, the operators' and end users' thoughts and consideration on the tool and those listed elements.
35. Thirdly, **ecta** underlines the need for BEREC's final Report to contain an entirely new section on the best practices to ensure that virtuous practices are clearly visible by all stakeholders, with the aim of creating a spill over effect for the rest of the NRAs.
36. **ecta** also would respectfully request BEREC to publish annual updates of the Report, to open these systematically to public consultation, and to organize at least one workshop with stakeholders per year, to ensure a close monitoring process, to enable the detection the above mentioned potentially problematic issues that are likely to arise and to consider how to correct such issues.

3. Final ecta remarks

37. **ecta** kindly asks BEREC to take into account the elements formulated in response, in terms of:
 - a) Overall approach, i.e., to **focus much more on providing best practices (notably best practices in the various areas that cover the correct and**

efficient actions to tackle the three key issues listed in the structural considerations section in this [ecta](#) response), and

- b) Methodology and detail, in particular by **separating out the results and graphs of EEA countries, and non-EU Member States from EU Member States that are fully subject to the EU regulatory framework. This is essential to enable the reader to effectively and correctly evaluate the results of the report in terms of the compliance with the EECC.**

38. In addition, [ecta](#) believes that BEREC would make very useful contributions to the sector and to improving regulatory practice by:

- a) Publishing a consultation report, summarizing the responses and comments received to this draft BEREC Report. It is also important to make sure for the stakeholders that so wish such as the operators, to render anonymous the comments in order to protect the ECS providers from potential retaliation from third-party comparison tool providers.
- b) Publishing annual updates of the Report on the comparison tools and accreditation and to open these systematically to public consultation.
- c) Organizing at least one workshop with stakeholders per year, to ensure a close monitoring progress, aimed at detecting potentially problematic issues that are likely to arise, and to consider how to correct such issues. It is particularly important to demonstrate best practices to all involved, to enable to learn from the best. An open dialogue between stakeholders, enabling them to hear each-others' views and positions, and enabling responses to positions expressed, is essential to NRAs gaining a full understanding of what is at stake, including in other countries than their own.
- d) BEREC should recommend and ensure, as a best practice, that all NRAs monitor the functioning of the comparison tools once they are in place and flag related issues. BEREC's future Reports should emphasize the results of such NRA monitoring.

39. Finally, in addition to BEREC annual reporting and workshops on comparison tools and accreditation, [ecta](#) considers that there remain clear opportunities for BEREC to provide important guidance to NRAs and to the sector. This could be in the form of Guidelines or Common Positions, and in particular including in the form of updates and expansions of existing materials to address the specific key topics highlighted by [ecta](#).

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