



# **ecta RESPONSE**

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

**DRAFT BEREC REPORT ON INTEROPERABILITY OF  
NUMBER-INDEPENDENT INTERPERSONAL  
COMMUNICATION SERVICES (NI-ICS)**

**BOR (22) 187**

**3 FEBRUARY 2023**

## 1. Introductory remarks

1. **ecta**, the **European Competitive Telecommunications Association**,<sup>1</sup> welcomes the opportunity to comment on the draft BEREC Report on interoperability of Number-Independent Interpersonal Communication Services (hereinafter “NI-ICS”) put to public consultation on 13 December 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 interoperability of Number-Independent Interpersonal Communication Services. The obligation for gatekeepers introduced by the DMA is helpful for competition in NI-ICS services provision, and therefore is expected to contribute to end-users’ choice and welfare. A concern is that the success of this measure might be limited as a result of the long timeframes within which the full set of basic functionalities of NI-ICS services should be made interoperable by the gatekeepers<sup>2</sup>.
4. **ecta** recognizes that the DMA’s provision is important to improve the competition in the market of messaging services and more generally for improving the contestability of the market by the current and/or potential new providers of Number Based Interpersonal Communication Services (hereinafter “NB-ICS”) (including **ecta** members) that could potentially benefit from interoperability obligations to enter and/or grow in NI-ICS markets. In fact, on the basis of **ecta** members’ experiences, the interoperability obligations introduced by the DMA

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

<sup>2</sup> Art. 7, point 2 of the DMA (available [here](#)) states:

*2. The gatekeeper shall make at least the following basic functionalities referred to in paragraph 1 interoperable where the gatekeeper itself provides those functionalities to its own end users:*

*(a) following the listing in the designation decision pursuant to Article 3(9):*

*(i) end-to-end text messaging between two individual end users;*  
*(ii) sharing of images, voice messages, videos and other attached files in end-to-end communication between two individual end users;*

*(b) within 2 years from the designation:*

*(i) end-to-end text messaging within groups of individual end users;*  
*(ii) sharing of images, voice messages, videos and other attached files in end-to-end communication between a group chat and an individual end user;*

*(c) within 4 years from the designation:*

*(i) end-to-end voice calls between two individual end users;*  
*(ii) end-to-end video calls between two individual end users;*  
*(iii) end-to-end voice calls between a group chat and an individual end user;*  
*(iv) end-to-end video calls between a group chat and an individual end user.*

*3. The level of security, including the end-to-end encryption, where applicable, that the gatekeeper provides to its own end users shall be preserved across the interoperable services. (ecta emphasis added)*

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will create business opportunities for some and be a useful tool to increase the market contestability from those alternative apps even the more when the alternative NI-ICS apps have superior or better or additional functionalities.

5. **ecta** welcomes that BEREC will support the European Commission paving the way on technical details and general terms and conditions of the reference offers to be presented by gatekeepers. The DMA merely defines the possibility of monitoring. Since it can be assumed that gatekeepers will minimize their own exposure and protect their market positions when designing a reference offer, close attention and monitoring of the process is necessary. This will ensure non-discriminatory (equal) access to interfaces, as well as full transparency about the access conditions and specifications of the interfaces.
6. **ecta** therefore is happy to submit its considerations and constructive proposals on the Draft Report.
7. In Section 2, **ecta** addresses the overall regulatory context in which the Draft Report is being proposed, by putting forward selected suggestions and providing brief comments to the Draft Report in the form of key considerations, distinguishing between the contextual and structural considerations.

## 2. Key ecta considerations

### 2.1. Contextual considerations

8. **ecta** takes note of the fact that BEREC's Draft Report, which focuses interoperability of number-independent interpersonal communications services (NI-ICS) that will soon be regulated for gatekeepers by the recently enacted DMA, is clearly written with a strategic dimension.
9. It is clear that the Draft Report is prepared with a view of illustrating the willingness and high motivation of BEREC to play an active part in the implementation process of DMA provisions, in general, and in the regulation of this topic by the DMA, in particular.
10. This willingness to contribute is expressed in multiple paragraphs of the Draft Report. **ecta** believes that BEREC, with its long-standing and extensive expertise in regulation of electronic communications networks and services, can contribute to the implementation of the interoperability obligations applicable to undertakings designated as "gatekeeper" according to the DMA<sup>3</sup>. **ecta** therefore, supports BEREC's pro-active approach in advising the European Commission in implementing the novel DMA legislation, insofar as it is contained **within the specific regulatory remits clearly defined by the DMA**<sup>4</sup>.

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<sup>3</sup> See Article 3 of the DMA (available [here](#)).

<sup>4</sup> See Recital 64 of the DMA (available [here](#)) that states:

11. At the same time, **ecta** kindly invites BEREC in performing this new remit to not diminish its commitment and attention to its original and core regulatory remit regarding the Electronic Communications Services and Electronic Communications Networks markets, as set out in Regulation No 1211/2009 (the BEREC Regulation), and in particular in Article 3 (Objectives of BEREC), points (1) and (2) and in Article 4 (Regulatory Tasks of BEREC), points (1) (e) and (k) thereof.

## 2.2. Structural considerations

12. In relation to the draft Report's substance, **ecta** appreciates the clear overview provided with respect to the interoperability approaches, challenges and categorisations, as well as the description of the legislative interplay between the provisions of the DMA and the EECC on the interoperability issue. **ecta asks BEREC to confirm, in the final Report, the rich and effective overview regarding the interoperability approaches, the trade-off between the different options, the legislative excursus, the analysis of the interplay between the provisions of the DMA and of the EECC and the list of minimum requirements for an interoperability reference offer that BEREC proposes in the Draft Report.**
13. As far as the core point touched by BEREC in its Draft Report is concerned, **ecta** deems appropriate and agrees with the proposed list of minimum requirements for an interoperability reference offer.
14. **ecta** believes that based on the experience gained in the ECN and ECS markets, the requirements proposed by BEREC in its Draft Report for the interoperability reference offers will be useful to the Commission in its task of implementing and enforcing the DMA.
15. However, **ecta** underlines that the digital platform market, while being an adjacent one and while enjoying some similar characteristics with the ECN and ECS markets, presents its own technical complexity and peculiarities which cannot be assimilated to the ECS and ECN markets.
16. Therefore, **ecta** respectfully calls on BEREC to exercise caution with respect to the detailed elaboration and implementation that each of those minimum requirements identified by BEREC will require.

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*Gatekeepers should ensure interoperability for third-party providers of number-independent interpersonal communications services that offer or intend to offer their number-independent interpersonal communications services to end users and business users in the Union. To facilitate the practical implementation of such interoperability, the gatekeeper concerned should be required to publish a reference offer laying down the technical details and general terms and conditions of interoperability with its number-independent interpersonal communications services. **It should be possible for the Commission, if applicable, to consult the Body of European Regulators for Electronic Communications, in order to determine whether the technical details and the general terms and conditions published in the reference offer that the gatekeeper intends to implement or has implemented ensures compliance with this obligation.** (ecta emphasis added)*

### 3. Closing ecta remark: timeframe of BEREC consultations

17. Please allow **ecta** to briefly express, as done during the debriefing of the 53rd BEREC plenary, that granting a timeframe of 6 weeks including the period of the end-of-year holidays for responding to 4 parallel BEREC consultations is not realistic for stakeholders such as trade associations that must engage in a dialogue with their members in the course of the preparation of their responses. **ecta** hopes and trusts that BEREC will take better account of its stakeholders' constraints in the future.

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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 Serdengeçti, **ecta** Regulation and Competition Affairs Director.