



ETNO response to draft BEREC report on interoperability of Number-Independent Interpersonal Communications Services (NI-ICS)

ETNO welcomes the initiative of BEREC to address the issue of interoperability of Number-Independent Interpersonal Communications Services (NI-ICS), specifically in the context of the recently adopted [Digital Markets Act](#) (DMA)¹, and to consider the interplay between the DMA and the existing provisions under the [European Electronic Communications Code](#) (EECC)².

ETNO further welcomes the initiative of BEREC to apply its expertise in defining minimum criteria for a reference offer in fulfilment of transparency obligations (art. 69, EECC) to the NI-ICS context.

Regulatory treatment of NI-ICS

In response to the legislative proposal on the European Electronic Communications Code (EECC, proposed 2016), ETNO called for a more future-proof approach with regard to the regulatory treatment of number-based (NB) versus number-independent (NI) interpersonal communications services. The European Commission opted to focus on the type of service delivered, however users' perspective and usage habits have evolved: consumers increasingly substitute services irrespective of whether they are number-based or not.

Minimum criteria for a reference offer

In 2019 BEREC published [guidelines](#)³ for the minimum criteria for a reference offer, where an undertaking has an obligation of non-discrimination, as part of obligations imposed on undertakings with significant market power (art. 69, EECC). We welcome the thorough proposal of minimum requirements for a reference offer, which closely follow the aforementioned guidelines in application of art. 69, EECC. The instances where proposed criteria diverge represent specificities of the question at hand, namely access to physical network infrastructure, in contrast to interoperability of NI-ICS. On the whole, **the proposed minimum requirements are robust and complete**, and ensure that all parties involved are aligned on the functionalities, standards, and the quality and security of the service, as well as procedures on billing, dispute resolution etc.

Consideration of Business users and minimum set of messaging functionalities.

BEREC argues in its report that in its analysis of interoperability it uses the definition of end user as any natural or legal person other than a business user and the definition of business user as any natural

¹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)

² Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)

³ BEREC Guidelines on the minimum criteria for a reference offer, (BoR (19) 238), 2019: [BEREC Guidelines on the minimum criteria for a reference offer relating to obligations of transparency \(europa.eu\)](#)

or legal person acting in a commercial or professional capacity (page 5, last par, BoR (22) 187), it would be convenient to be recognized by BEREC that: (a) concerning the functionalities of NI-ICS offer, they can be offered through business users besides individual end users; and (b) when addressing and implementing the interoperability of messaging services, the consideration of one type of user or another may require different technical solutions.

From an application point of view, the interface between business users and individual users could present differences in terms of the greater facilities and features that could be offered to the former. Therefore, in order to ensure consistency between one type of user and another, it would be advisable for BEREC to expressly mention in its report the consideration of business users, given that both in terms of market share and functionalities, the messaging services for business users and individual users could present differences.

Likewise, it would be advisable for BEREC in its report to delve deeper into those basic functionalities that are currently incorporated in rich messaging services and that clearly differentiate them from traditional ECS (SMS/MMS) messaging services. The objective is to be able to clearly delimit the leap that the use of this type of Apps represents compared to ECS services and that it would therefore be advisable to consider in their implementation. Otherwise, one could fall into the error of defining those minimum functionalities as those SMS provides and therefore interoperability at the service level would be seriously impaired.

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