BoR PC03 (23) 08

BEREC
Body of European Regulators
for Electronic Communications

Public Consultation BoR (22) 187 Draft BEREC Report on Interoperability of Number- Independent Interpersonal Communication Services (NI-ICS)

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General information

During the 53rd BEREC plenary meeting (8 December 2022), the Board of Regulators approved the Draft BEREC Report on interoperability of NI-ICS for public consultation.

The objectives of this report are to present the main economic features and the state of the market for some NI-ICS and to analyse i) the objectives, the scope and the "triggers" of interoperability obligations under both the DMA and the EECC, ii) the potential technical approaches and the implementation challenges to be taken into account when applying these measures, as well as iii) the interplay between the two regulatory frameworks. The current work focuses on messaging services, but other NI-ICS may be further analysed by BEREC in the future.

Your details

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Organisation name (in case you are replying on behalf of your organisation)

Meta

*Country of origin

1

United Kingdom

Language of your contribution

English

☑ I agree with the [personal data protection provisions.](#)

Practical details of the public consultation

Stakeholders are invited to comment and provide their views on the different chapters of the draft report following its structure:

Executive summary
Chapter 1 - Introduction
Chapter 2 - NI-ICS and scope of the report
Chapter 3 - Economic and behavioral features of messaging services
Chapter 4 - The state of the market for messaging services
Chapter 5 - Interoperability measures
Chapter 6 - Interoperability of NI-ICS under the DMA
Chapter 7 - Interoperability of NI-ICS under the EECC
Chapter 8 - Interplay between the DMA and the EECC
Chapter 9 - Conclusions
Chapter 10 - Future work

Stakeholders may also upload a document as a part of their contribution, see below.

In order to facilitate the processing of the responses, the comments provided should clearly refer to certain sections/subsections/paragraphs of the draft report.

Contributions should preferably be sent in English.

Stakeholders may submit their contributions **by 03 February 2023 close of business.**

In accordance with the BEREC policy on public consultations, BEREC will publish all contributions and a summary of the contributions, respecting confidentiality requests. Any such requests should clearly indicate which information is considered confidential and be accompanied by a non-confidential version.

Public consultation

Please indicate comments on Executive summary and Chapter 1- Introduction
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Introduction

Meta welcomes the opportunity to provide feedback on BEREC's draft report on the Interoperability of Number-Independent Interpersonal Communication Service ("NI-ICS") (BoR 22 (187), December 2022) looking at how interoperability measures for these services could be implemented. Meta recognises the important role played by BEREC in relation to the interoperability provisions set out in the Digital Markets Act (DMA), including providing advice and expertise to the Commission as part of the high-level group under Article 40 DMA. Meta agrees with the approach taken by BEREC in its draft report which looks at different technical approaches and potential solutions to interoperability; and which notes the various technical and practical challenges that companies providing interoperability may face, and the possible trade-offs that might have to be made, including:

Undermining end-to-end encryption (e2ee) across messaging services. It will not be possible to fully maintain e2ee both in transit and across all endpoints in the messaging chain as long as first-party services cannot control third-party interoperators. Further, entrusting a shared encryption protocol among interoperable services to a single third-party provider would present novel and disproportionate risks of cyber compromise to the whole messaging ecosystem.
Putting users at greater risk of harm. Tools and technologies to fight spam, scams and other harmful and fraudulent activity could be compromised if interoperable apps are not obliged to meet the same standards.
Stifling innovation and competition between messaging services. Standardization would undermine the current high levels of competition and innovation that are benefiting consumers and businesses. By driving standardization in messaging services, it would limit the ability of services to provide a differentiated and innovative service to consumers.

We set out below our high-level thoughts on relevant sections of the BEREC draft report.

Executive summary and Chapter 1- Introduction

Meta understands that this draft report covers only messaging services, although the interoperability obligations in the DMA apply to all NI-ICS. Meta agrees with BEREC's position of focussing on messaging services for the purpose of this early draft report. Meta believes that it remains unclear to what extent there will be material user demand for interoperability between NI-ICS, let alone between email services and messaging, or between video-conferencing and messaging; indeed how that could work in practice. Should this change in the near future, we understand BEREC may revisit this draft report and consider extending its analysis to further services. Also, while interoperability between different NI-ICS categories for the purpose of this study should not be the focus, in future, if BEREC and national regulatory authorities (NRAs) were to assess end-to-end connectivity, or assess competition and market dynamics on NI-ICS markets, they should consider including the full category of NI-ICS in such a study or investigation.

In its draft report BEREC refers to the definition of business users and end users as set out in the DMA. Meta would note that the distinction between the two may not always be entirely clear and some users might fall within both the definition of end user and business user, depending on context. For example, a creator might potentially be characterised as a business user when marketing goods but as an end user when interacting generally with other end users.

Please indicate comments on Chapter 2 - NI-ICS and scope of the report

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Please indicate comments on Chapter 3 - Economic and behavioral features of messaging services

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Chapter 3 - Economic and behavioural features of messaging services

Meta has read with interest BEREC's analysis of the economic and behavioural features of messaging services. Meta believes that the messaging services ecosystem is highly competitive, with low barriers to entry and regular multi-homing by users. The growth in the use of messaging apps has been one of the key trends of the digital ecosystem in recent years, as family, friends and communities are using small group conversations and direct messaging to stay in touch through multiple different apps. Many different competitive solutions have been developed to respond to this consumer demand.

Switching between messaging services is easy and inexpensive and users will switch among services depending on which offering is most attractive and convenient to them at the time, a concept known as multi-homing, which is an essential difference with traditional telecom services (services which are offered only by your own provider). In addition, most people use multiple competing services, often using different services to reach distinct audiences, e.g. friends, family and professional colleagues. Research by the German Federal Network Agency, the Bundesnetzagentur (BNetzA) (2021) in Germany showed nearly 75% of users multi-homed and 37% of young people used five or more messaging services (Federal Network Agency [Bundesnetzagentur] (2021). Interoperabilität zwischen Messengerdiensten: Überblick der Potenziale und Herausforderungen - Interoperability between messaging services an overview of potential and challenges https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Digitales/OnlineKom /diskussionspapier_IOP_EN.pdf?__blob=publicationFile&v=4). A report by WIK-Consult GmbH (WIK) (2018) showed in a survey on messenger services that consumers prefer multi-homing because it allows them to communicate with distinct social groups using distinct services – possibly also using different features that these services offer, catering to the needs of the respective social groups (WIK (2018). Die Bedeutung von Interoperabilität in der digitalen Welt - Neue Herausforderungen in der interpersonellen Kommunikation. WIK Diskussionsbeitrag Nr. 437 - https://www.wik.org/veroeffentlichungen/diskussionsbeitraege/listenansicht-diskussionsbeitraege/detailansicht-diskussionsbeitraege?tx_ttnews%5BbackPid%5D=93&tx_ttnews% 5Btt_news%5D=2173&tx_ttnews%5Byear%5D=2018&cHash=69635ce11c14ace650d95dc58dad280c). The BEREC draft report could highlight further how EU consumers through multihoming use different platforms to communicate with different social circles.

Finally, although the draft report looks at the role played by additional features offered by messaging services when users choose a service, the report could better take into account the efforts and investment that service providers put into building these additional features and the importance of these features for users. A (2021) survey from BNetzA shows that 50% of respondents consider special functions or features when choosing a messaging service (Federal Network Agency [Bundesnetzagentur] (2021). Interoperabilität zwischen Messengerdiensten: Überblick der Potenziale und Herausforderungen - Interoperability between messaging services an overview of potential and challenges https://www.bundesnetzagentur.de/SharedDocs /Downloads/DE/Sachgebiete/Digitales/OnlineKom/diskussionspapier_IOP_EN.pdf? __blob=publicationFile&v=4 [p.18]
). This also underlines the importance that the definition of 'basic functionalities' under the DMA should be interpreted narrowly, to avoid stifling innovation and reducing investments and product differentiation.

Please indicate comments on Chapter 4 - The state of the market for messaging services

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Chapter 4 - The state of the market for messaging services

When it comes to market concentration, BEREC's draft report should also consider that the market for messaging services enjoys low barriers to entry, proven by the successful entry and rapid growth of platforms like TikTok and Snapchat. A (2021) study on EU consumer perceptions and behaviour on digital platforms for communication shows that these are the services of choice for the generation Z audience (PPMI, Analysing EU consumer perceptions and behaviour on digital platforms for communication. https://www.berec.europa.eu/sites/default/files/files/document_register_store/2021/6/BoR_(21)_89_Consumer_Behaviour_and_Digital_Platforms_Report.pdf (Study commissioned by BEREC)).

Please indicate comments on Chapter 5 - Interoperability measures

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Chapter 5 - Interoperability measures

Meta welcomes BEREC's thinking on the different approaches and technical solutions for horizontal interoperability. This area is particularly important given the obligation in the DMA for gatekeepers to facilitate interoperability while preserving the level of security, including E2EE, across the interoperable services (DMA Article 7 Obligation for gatekeepers on interoperability of number-independent interpersonal communications services paragraph 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' and paragraph 4 'The gatekeeper shall publish a reference offer laying down the technical details and general terms and conditions of interoperability with its number-independent interpersonal communications services, including the necessary details on the level of security and end-to-end encryption. The gatekeeper shall publish that reference offer within the period laid down in Article 3(10) and update it where necessary.').

Yet while the analysis of pros and cons for each of the possible solutions (APIs, bridges and standardisation) is useful with regard to gatekeepers' preserving innovation, it misses a key point that a fundamental inability to control all endpoints in a messaging chain necessarily breaks users' expectations of security in a fully end-to-end encrypted (E2EE) messaging service. Every personal chat on WhatsApp, for example, begins with the same banner message: "Messages and calls are end-to-end encrypted. No one outside of this chat, not even WhatsApp, can read or listen to them. Tap to learn more."

For example, bridging solutions must necessarily decrypt and re-encrypt messages in transit, and do not allow gatekeepers to control and account for the security of all endpoints. Bridging solutions also present unique security risks, entrusting message security to a protocol managed by a third party, over which gatekeepers would not have control, nor would EU organisations have regulatory/legal oversight under the current text of the DMA. Experts too have already identified significant security vulnerabilities in such bridging providers, which criminal enterprises and hostile nation states could stand to exploit – potentially compromising the entire messaging ecosystem in the EU (https://arstechnica.com/information-technology/2022/09/matrix-patches-vulnerabilities-that-completely-subvert-e2ee-guarantees/ and https://nebuchadnezzar-megolm.github.io/). And no one messaging service would be able to force-upgrade patches against these vulnerabilities across all users/devices at once, making it more difficult to combat cyber threats in real time.

We acknowledge that BEREC has identified pros and cons of the different approaches and technical solutions for horizontal interoperability. However, Meta believes that the draft report should further highlight that standardisation risks potential sclerosis and a reduction in innovation by cementing the state of technical innovation at a given point in time. As a result, external longer-term developments in technology cannot easily be added/integrated when complying with a pre-existing standard that may not be future-proof.

As BEREC recognises, standardisation also dampens innovation, as we have seen in the case of SMS and email, which have largely stayed the same for many years, while messaging has evolved from mostly text-based to include photos, calls, GIFs, videos, reactions, ephemerality, among many features users benefit from and rely on. Messaging continues to be a fundamentally dynamic space where new features are being constantly tested and rolled out; therefore, it would be impossible to reliably predict at one point in time what the optimal standards for consumers over the next five or ten years might be.

Please indicate comments on Chapter 6 - Interoperability of NI-ICS under the DMA
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Chapter 6 - Interoperability of NI-ICS under the DMA

Meta welcomes BEREC's efforts to provide a degree of clarity on the relevant reference offer that gatekeepers required to provide interoperability under the DMA would need to publish. Meta notes the draft list of minimum criteria provided that BEREC considers should be included in the relevant reference offer. While this provides a useful starting point, we would note that not all items that might typically appear in a reference offer for telecoms services will be relevant to interoperability of NI-ICS as it is framed under DMA, e.g. Service Level Agreements (SLAs), payment et al. Moreover, it will be important to include provisions to maximise integrity and user safety given the unique properties of NI-ICS, including potential enforcement against persistent bad actors, as well as blocking both at the account level and at the app/integrator level for continual violations.

Please indicate comments on Chapter 7 - Interoperability of NI-ICS under the EECC

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Chapter 7 - Interoperability of NI-ICS under the EECC

Meta welcomes BEREC's clarification of the key differences between the interoperability obligation in the DMA and the EECC. However, Meta would also like to stress that the interoperability provision in the DMA does not apply automatically, as a designated gatekeeper only needs to facilitate interoperability upon receiving a reasonable third party request. The language in the BEREC draft report could be amended to reflect this.

Please indicate comments on Chapter 8 - Interplay between the DMA and the EECC

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Chapter 8 - Interplay between the DMA and the EECC

Meta agrees with BEREC's view that any further action on the basis of Article 61(2) EECC should properly be held off until the impact and evolution of the interoperability obligation in the DMA becomes clearer, and until there is a clearer understanding of how this obligation will play out in practice.

Therefore, Meta welcomes BEREC's earlier statements emphasising the need to closely work together with the European Commission on the subject of interoperability of NI-ICS and compliance with the DMA and EECC, also given BEREC's role under the DMA. This to make sure that both articles of the DMA and the EECC are enforced in a complementary and proportionate way. Meanwhile Meta is happy to engage with BEREC to discuss or clarify developments at any moment.

Please indicate comments on Chapter 9 - Conclusions

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Please indicate comments on Chapter 10 - Future work

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Chapter 10 - Future work

Meta welcomes BEREC's future work in areas such as the DMA and content application providers' (CAPs') interaction with the markets for electronic communications networks (ECNs) and electronic communications services (ECS), and would be happy to continue working with BEREC closely on this, providing support when needed.

Meta particularly appreciates BEREC's technical input on the DMA given the immense challenges that designated gatekeepers will face in order to meet the DMA obligations, including having to provide interoperability to third parties on reasonable request while preserving the same level of security provided to users of the gatekeeper's service.

In terms of BEREC's work on understanding the role of CAPs more broadly, Meta refers to its response to BEREC's consultation on the internet ecosystem. In particular, Meta agrees with BEREC's recent report concluding there is no evidence that a direct compensation from CAPs to ISPs is justified given the current state of the market as this mechanism could present various risks for the internet ecosystem. Furthermore, Meta agrees with BEREC that ISPs and CAPs have a symbiotic relationship. Traffic is requested and therefore "caused" by ISPs' customers who go online to access the content created by CAPs. This allows ISPs to monetise internet access, driving their revenue and business model and incentivising network investment to improve their customers' experience.

We encourage BEREC in any future study to take into account the significant investments made by many CAPs. Meta and others have invested, and continue to invest, billions of dollars around the world to sustainably build and improve network infrastructure. A report by Analysys Mason found that CAPs invest more than USD 120 billion annually in digital infrastructure, contributing to savings for telecommunications companies of more than $5 billion each year in network and transit fees (Analysys Mason, The Impact of Tech Companies' Network Investment On the Economics of Broadband ISPs, Oct. 2022, available at https://www.analysysmason.com/consulting-redirect/reports/internet-content-application-providers-infrastructure-investment-2022/).
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Meta also has invested billions in our content delivery network, which includes caching equipment offered for free to ISPs, and our global Edge network. Such investment helps ensure traffic is delivered locally, and stored closer to the people accessing it, in thousands of locations in collaboration with ISPs around the world. This reduces costs for ISPs, makes the internet more efficient for everyone, and helps content be accessed more quickly and efficiently by ISP customers. In addition, Meta implements measures to deliver our services in a bandwidth-efficient manner while still ensuring a quality user experience for ISPs' customers, and has collaborated with a number of other CAPs to develop methods to reduce impacts on the network (Engineering at Meta, AV1 Beats x264 and libvpx-vp9 in Practical Use Case, Apr. 10, 2018, available at https://engineering.fb.com/2018/04/10/video-engineering/av1-beats-x264-and-libvpx-vp9-in-practical-use-case/).

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Please specify which part of your response should be treated as confidential, if any.

THANK YOU FOR YOUR CONTRIBUTION

Contact

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