



Belgian Institute for Postal Services
and Telecommunications

**Report
regarding
net neutrality monitoring
in Belgium
(period from 1 May 2019 - 30 April 2020)**

TABLE OF CONTENTS

Chapter 1. General	3
1. Preliminary provision	3
2. Context of this report	3
3. The provisions of the Regulation	4
4. The BEREC Guidelines.....	6
5. Update of the BEREC Guidelines on net neutrality.....	7
6. Development of the BEREC Guidelines on the parameters to be used regarding the quality of service.	7
Chapter 2. Net neutrality in Belgium during COVID-19 measures	9
1. BIPT communications	9
2. Talks between the BIPT and the sector	10
3. General situation of the Internet traffic in Belgium during the crisis	10
4. The BIPT's contribution to the European monitoring and reporting.....	11
Chapter 3. Monitoring of the Regulation by the BIPT	12
1. Traffic identification study	12
2. Zero-rating monitoring	12
2.1. <i>General</i>	12
2.2. <i>Structural general questionnaire for the ISPs applying zero-rating</i>	12
2.3. <i>Special monitoring by the BIPT in a number of specific zero-rating cases</i>	14
3. Complaints about the observance of Regulation 2015/2120	17
3.1. <i>Complaints received by the BIPT</i>	17
3.2. <i>Input in complaints submitted to other bodies</i>	18
4. Revision and extension of the information on net neutrality on the BIPT's new website	18
Chapter 4. Promotion of the availability of Internet access services at levels of quality that reflect advances in technology	19
1. Territorial Internet access coverage (Atlas).....	19
2. Quality of Experience	19
Chapter 5. Conclusion	20

Chapter 1. General

1. Preliminary provision

1. This report is adopted by the BIPT.
2. On 4 June 2020, the BIPT sent its draft annual report regarding net neutrality monitoring in Belgium (period from 1 May 2019 - 30 April 2020) to the CSA, the VRM and the Medienrat. Because net neutrality also concerns matters of content, the BIPT performs its monitoring function in cooperation with the regulators of audio visual media.
3. The CSA, the VRM and the Medienrat were more specifically invited to amend and/or complete the draft, in view of its publication and submission to the European Commission and BEREC. This report takes account of that input.

2. Context of this report

4. Article 5.1, second paragraph of Regulation (EU) 2015/2120 of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012¹ (hereinafter also referred to as "Regulation 2015/2120" or simply "the Regulation") requires for the national regulatory authorities (hereinafter also referred to as "NRAs") to publish an annual report on their monitoring compliance with this Regulation and about their findings. The NRAs send those reports to the Commission and to BEREC.
5. This report is the report referred to in Article 5.1, second paragraph of Regulation 2015/2120.
6. In accordance with the [BEREC Guidelines on the implementation by National Regulators of European Net Neutrality Rules](#)² (hereinafter also referred to as "the BEREC Guidelines" or simply "the Guidelines") this report will cover the period from 1 May 2019 up to and including 30 April 2020 and be delivered by 30 June 2020.
7. In conformity with Article 5.1, first paragraph, of the Regulation the NRAs shall:
 - closely monitor and ensure compliance with Articles 3 and 4 of Regulation 2015/2120 and

¹ *Official Journal*, No L 310/1, 26 November 2015, as amended by Regulation 2018/1971 of the European Parliament and of the Council of 11 December 2018, *Official Journal*, No. L 321/1, 17 December 2018.

² See no 182 of those Guidelines, published at http://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/6160-berec-guidelines-on-the-implementation-by-national-regulators-of-european-net-neutrality-rules

- promote the continued availability of non-discriminatory Internet access services at levels of quality that reflect advances in technology.

3. The provisions of the Regulation

8. The core provisions of Regulation 2015/2120 reported on are Articles 3 and 4.

9. These Articles read:

"Article 3
Safeguarding of open internet access

1. End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the information, content, application or service, via their internet access service.

This paragraph is without prejudice to Union law, or national law that complies with Union law, related to the lawfulness of the content, applications or services.

2. Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the rights of end-users laid down in paragraph 1.

3. Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.

The first subparagraph shall not prevent providers of internet access services from implementing reasonable traffic management measures. In order to be deemed to be reasonable, such measures shall be transparent, non-discriminatory and proportionate, and shall not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic. Such measures shall not monitor the specific content and shall not be maintained for longer than necessary.

Providers of internet access services shall not engage in traffic management measures going beyond those set out in the second subparagraph, and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, in order to:

(a) comply with Union legislative acts, or national legislation that complies with Union law, to which the provider of internet access services is subject, or with measures that comply

with Union law giving effect to such Union legislative acts or national legislation, including with orders by courts or public authorities vested with relevant powers;

(b) preserve the integrity and security of the network, of services provided via that network, and of the terminal equipment of end-users;

(c) prevent impending network congestion and mitigate the effects of exceptional or temporary network congestion, provided that equivalent categories of traffic are treated equally.

4. Any traffic management measure may entail processing of personal data only if such processing is necessary and proportionate to achieve the objectives set out in paragraph 3. Such processing shall be carried out in accordance with Directive 95/46/EC of the European Parliament and of the Council. Traffic management measures shall also comply with Directive 2002/58/EC of the European Parliament and of the Council.

5. Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services shall be free to offer services other than internet access services which are optimised for specific content, applications or services, or a combination thereof, where the optimisation is necessary in order to meet requirements of the content, applications or services for a specific level of quality.

Providers of electronic communications to the public, including providers of internet access services, may offer or facilitate such services only if the network capacity is sufficient to provide them in addition to any internet access services provided. Such services shall not be usable or offered as a replacement for internet access services, and shall not be to the detriment of the availability or general quality of internet access services for end-users.

Article 4

Transparency measures for ensuring open internet access

1. Providers of internet access services shall ensure that any contract which includes internet access services specifies at least the following:

(a) information on how traffic management measures applied by that provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data;

(b) a clear and comprehensible explanation as to how any volume limitation, speed and other quality of service parameters may in practice have an impact on internet access services, and in particular on the use of content, applications and services;

(c) a clear and comprehensible explanation of how any services referred to in Article 3(5) to which the end-user subscribes might in practice have an impact on the internet access services provided to that end-user;

(d) a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks, or of the estimated maximum and advertised download and upload speed

of the internet access services in the case of mobile networks, and how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users' rights laid down in Article 3(1);

(e) a clear and comprehensible explanation of the remedies available to the consumer in accordance with national law in the event of any continuous or regularly recurring discrepancy between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated in accordance with points (a) to (d).

Providers of internet access services shall publish the information referred to in the first subparagraph.

2. Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article. The requirements laid down in paragraphs 1 and 2 are in addition to those provided for in Directive 2002/22/EC and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including those concerning the content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of Directives 2002/21/EC and 2002/22/EC.

4. Any significant discrepancy, continuous or regularly recurring, between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated by the provider of internet access services in accordance with points (a) to (d) of paragraph 1 shall, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, be deemed to constitute non-conformity of performance for the purposes of triggering the remedies available to the consumer in accordance with national law.

This paragraph shall apply only to contracts concluded or renewed from 29 November 2015."

10. For the purposes of the reporting also Article 5.1, first paragraph, second sentence of the Regulation is relevant. Under this provision, with a view to carrying out the tasks referred to in the first sentence of Article 5.1, first paragraph, the NRAs may "*impose requirements concerning technical characteristics, minimum quality of service requirements and other appropriate and necessary measures on one or more providers of electronic communications to the public, including providers of internet access services*".

4. The BEREC Guidelines

11. Based on Article 5.3 of Regulation 2015/2120 BEREC, the European umbrella organisation of NRAs, has adopted guidelines to implement the NRAs' obligations with a view to the consistent application of the Regulation. Those guidelines are the ones cited above, called "BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules".

12. As regards the annual reporting by the NRAs, the Guidelines recommend the following:

"Annual reporting of NRAs

182. The reports must be published on an annual basis, and NRAs should publish their annual reports by 30th June for the periods starting from 1st May to 30th April. The first report is to be provided by 30th June 2017, covering the period from 30th April 2016 to 30th April 2017 (the first 12 months following application of the provisions).

183. As well as being published, the reports should be provided to the Commission and to BEREC. To enable the Commission and BEREC to more easily compare the reports, BEREC recommends that NRAs include at least the following sections in their annual reports:

- overall description of the national situation regarding compliance with the Regulation;*
- description of the monitoring activities carried out by the NRA;*
- the number and types of complaints and infringements related to the Regulation;*
- main results of surveys conducted in relation to supervising and enforcing the Regulation;*
- main results and values retrieved from technical measurements and evaluations conducted in relation to supervising and enforcing the Regulation;*
- an assessment of the continued availability of non-discriminatory IAS at levels of quality that reflect advances in technology;*
- measures adopted/applied by NRAs pursuant to Article 5(1)."*

5. Update of the BEREC Guidelines on net neutrality

13. As announced in its [2019 work programme](#), BEREC organised a [public consultation](#) of its propositions for updates of the BEREC Guidelines, from 10 October until 28 November 2019.

14. The BIPT actively took part in the drafting of the propositions, the analyses of the replies to the public consultation as well as in the preparation of the final update of the Guidelines and the consultation report, which were published by BEREC in June 2020³.

6. Development of the BEREC Guidelines on the parameters to be used regarding the quality of service.

15. The BIPT experts also followed the development of the [BEREC Guidelines detailing Quality of Service Parameters](#)⁴, adopted based on Article 104.2 of Directive (EU) 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code.

16. Lastly, the latter Guidelines also include recommendations relating to the method of measurement of the quality of an Internet access service and the publication of its results.

³ See https://berec.europa.eu/eng/open_internet/

⁴https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/9043-berec-guidelines-detailing-quality-of-service-parameters

17. Following a public consultation from 10 October 2019 until 5 December 2019, BEREC published these Guidelines on 6 March 2020.

Chapter 2. Net neutrality in Belgium during COVID-19 measures

18. It is clear that measures to stop the spread of the COVID-19 virus impact the telecom networks and especially the Internet traffic taking place on these networks. In this separate chapter of its report, the BIPT expounds the initiatives it took to monitor the impact of the Belgian COVID-19 crisis measures on the telecom networks from up close.

1. BIPT communications

19. On 13 March 2020, a day after the promulgation of the Belgian government's measures to limit the spread of the COVID-19 virus, the BIPT published a [communication regarding the COVID-19 virus](#)⁵ supporting these measures at telecom level. In this communication the BIPT asked the telecom operators:

- to review the existing "Business Continuity Plans" and if necessary to update these and adapt them in accordance with the impact of the COVID-19 virus on the organisation;
- to ensure that the measures they can take in order to fight saturation or overload of their networks, can be activated simply and swiftly;
- to carry out a thorough risk analysis for major planned upgrades or modifications and to postpone these whenever possible;
- to ensure that the necessary measures have been taken in their organisation in order to guarantee the continuity of the service, especially as regards the personnel with critical tasks and the prioritising of the different repairs that have to be carried out.

20. Following the tightening of the measures by the Government on 17 March 2020, the BIPT published a new [communication](#)⁶ on 19 March 2020, emphasising that the operators had to continue their visits to the customers for urgent and essential repairs provided that they take the necessary precautions.

21. In its communication with the operators, the BIPT always stressed the importance of electronic communications networks and services in order to support the increased use of, among other things, teleworking and online education during the crisis.

22. Finally, on 6 April 2020, an additional [communication](#)⁷ was published clarifying the possibility to make telecom shops accessible to customers under certain terms and conditions.

⁵https://www.bipt.be/file/cc73d96153bbd5448a56f19d925d05b1379c7f21/63f300ea87423865492b915de626862b0402730c/Mededeling_Covid-19_Virus.pdf

⁶ <https://www.bipt.be/operators/publication/communication-on-the-covid-19-virus-following-the-communication-of-the-belgian-government-of-17-march-2020>

⁷ <https://www.bipt.be/operators/publication/bipt-council-communication-on-the-possibility-of-making-telecommunications-points-of-sale-available-to-customers-under-certain-conditions>

2. Talks between the BIPT and the sector

23. Even before the measures of the Belgian Government took effect, the BIPT organised periodic discussions with and reporting by the main operators within the sector.
24. The frequency of these reports and discussions was adjusted where necessary.
25. Initially, this reporting and deliberation took place daily.
26. After a couple of weeks the frequency was slowly dialled back to three times, then two times and finally once per week.
27. When the telework obligation was first imposed for all employees whose function lends itself to do so, the situation was even monitored by the hour during office hours.
28. During periodical meetings or additional ad hoc or bilateral deliberations, it was also discussed which measures the operators could take to prevent network congestion. It was assessed whether these measures comply with the Regulation.
29. Among other things, it was examined whether the measures aimed at would be proportionate and efficient and whether equivalent categories of traffic are always treated equally.
30. In addition to the telecom operators, the main content providers (among which Netflix) and other service providers within the sector were consulted as well.

3. General situation of the Internet traffic in Belgium during the crisis

31. Following the entry into force of the measures of the Belgian government, the use of fixed Internet increased considerably.
32. On 21 March 2020 the use of fixed Internet in Belgium was the highest.
33. Afterwards the use dropped again (among other things because of the reduced image quality by content providers such as Netflix and YouTube, the latter committed to) and stabilised at a level 40 percent higher than the average use during the reference period from 2 to 6 March. This issue, and particularly the one regarding the traffic generated by content providers, was also discussed by BIPT, the Conseil Supérieur de l'Audiovisuel (CSA), the Medienrat and the Vlaams Regulator voor de Media (VRM) during the Conference of regulators of the electronic communications sector (CRC) of 3 April 2020.
34. The use of mobile data traffic during the crisis remained approximately the same.
35. As regards telephony finally, what stands out overall is that the average duration of phone calls increased considerably.

4. The BIPT's contribution to the European monitoring and reporting

36. At an international level the BIPT firstly contributed to the creation of the [Joint Statement from the Commission and BEREC](#)⁸ on coping with the increased demand for network connectivity due to the COVID-19 pandemic.
37. In the context of the Joint Statement, BEREC then developed a reporting mechanism enabling decision makers to monitor the Internet traffic situation following the COVID-19 measures in each Member State and to quickly respond to possible capacity issues.
38. To that effect, BEREC collects information on the measures adopted by national regulatory authorities (NRAs), and on other initiatives by public authorities and private parties (ISPs, but for instance content and applications providers as well).
39. The BIPT contributed to this by replying to the different surveys within the time limits set and by reading and reviewing, where necessary, the ad hoc draft decisions BEREC published (during the current reporting period) twice a week.
40. The BIPT also replied to a similar reporting mechanism within ENISA Art. 13A Expert Group.

⁸ https://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/9236-joint-statement-from-the-commission-and-_0.pdf

Chapter 3. Monitoring of the Regulation by the BIPT

1. Traffic identification study

41. The BIPT, having examined in its 2018-2019 report for which practices DPI⁹ was used and whether that usage complied with the criteria laid down in Article 3, third paragraph, of the Regulation, looked deeper into the technical operation of different types of traffic identification in both the fixed and the mobile network during this period.
42. In that reporting period the results of the research were mainly used to be able to participate in an informed way in the European discussion on whether that technique for analysing data traffic can also be used not to charge the traffic of certain packets to the end-user, as is the case with zero-rating or sponsored data. For the moment, there is no consensus about whether the use of DPI for such purposes counts as a traffic management measure and should therefore be analysed based on the criteria of Article 3, third paragraph, of the Regulation.
43. It was shown that the use of DPI did not constitute a cause for complaints by the end-users during this period.

2. Zero-rating monitoring

2.1. General

44. In the case of zero-rating the Internet Service Provider does not take into account the data traffic of a specific application or category of applications for the data limit. This generally results in free data for this specific application or category of applications.
45. Regarding this practice, considered to be linked to open Internet access (although it is not explicitly regulated in Regulation 2015/2120), the BIPT in the first place ensured a general supervision. That did not prevent it from looking deeper into a number of selected offers on the Belgian market during this reporting period.

2.2. Structural general questionnaire for the ISPs applying zero-rating

46. In order to verify whether the Regulation was correctly complied with in the market, the BIPT sent a questionnaire to the mobile network operators (MNOs) during Q1/2020, requesting them at the same time to provide the BIPT with certain information every three months from then on.
47. Below, the questionnaire's results are discussed by category for the year 2019.
 - *Information regarding the identification of the network's zero-rating traffic, its impact on the network capacity available and the application in the case of network saturation:*

⁹ See section 3.1.1. of the annual report regarding net neutrality monitoring in Belgium (period from 1 May 2017 - 30 April 2018).

48. The mobile network operators declared that their networks were dimensioned in such a manner that they can handle a general increase of mobile data (by offloading to fixed networks through Wi-Fi as well). To this effect, no difference is made between the zero-rating traffic and the normal data traffic and the same goes for when congestion takes place in the network.
- *Information on the platform used to provide the zero-rating: Is this open to other CAPs ("Content and Application Providers"), the access procedure, the general conditions, price for participation, actual access requests from content providers:*
49. Telenet declares that its zero-rating platform is an open platform: upon request and following an assessment it can be opened up to competing content providers. Up until today, Telenet has not yet received a request by a competing content provider to have his applications zero-rated. Inclusion in the zero-rating offer is free of charge.
50. Proximus replies that only its Epic offer is linked to an open platform. That platform is accessible to CAPs pertaining to the categories selected (social media, music, video) and meeting the general terms (which can be found on the Epic website). Proximus answered that four content providers introduced an access request since the launch of the Epic offer. At the time of its reaction to the questionnaire, Proximus had provided access to two content providers, one request was still being processed and one applicant was denied access as he did not belong to the selected category (see infra in this report for more details). Inclusion in the zero-rating offer is free of charge.
51. Finally, Orange Belgium states in its replies that it has not yet received a request from a competing content provider to have its application zero-rated.
- *Information regarding the criteria based on which the participating apps are selected:*
52. All respondents declare that these are selected based on the interests of the customers and that they consequently look for the most popular applications in a given category.
- *Information regarding the offers including zero-rating, the number of customers, the data use of the general allowance and of the zero-rating apps (average use across the entire population and the average use within different statistical intervals), numbers of customers having exceeded the data cap and the proportion of the zero-rating traffic compared to the total traffic volume:*
53. During the period examined in this report, the BIPT drafted a survey of the different offers available on the market and including zero-rating elements. That survey is intended to be published on the BIPT website.
54. Based on the figures received, the BIPT analysed these offers and concludes that either there remains a sufficient commercial volume to use the competitors of the zero-rated apps or that the issue of the limitation of the end-user rights is overcome by opening up the zero-rating platform to all competing apps within that same category. That way, the BIPT can ensure that the impact of zero-rating is not as big as to lead to a factual limitation of the end-users' choice.

- *Information regarding the application of the zero-rating traffic after having reached the data cap of the general allowance: which traffic is still transmitted, at what speed, at what rate, is there a difference between the normal traffic and the zero-rating traffic:*

55. The BIPT verified whether there is discrimination at the Internet traffic level, especially once the end-customer has exceeded his commercial data allowance. An example of such discrimination is continuing to allow zero-rating at normal speed, while other data traffic is blocked or throttled, in case the volume of data included in the allowance is used up. No breaches have been established in this regard during the period covered by this report.

- *Information regarding the zero-rating traffic for roaming:*

56. The zero-rating offer also applies for roaming within the EU in the context of Roam Like At Home (RLAH), in conformity with the Roaming Regulation.

- *Information regarding complaints received (both from customers and from application providers) regarding the zero-rating offers:*

57. The ISPs received few or no complaints regarding zero-rating. The operators state that, in most cases it merely regards informative questions as to which applications are zero-rated.

2.3. Special monitoring by the BIPT in a number of specific zero-rating cases

2.3.1. The third offer from Orange Belgium for a social media pass and a video pass for customers of certain prepaid tariff plans

58. In 2019 as well, Orange Belgium offered the option 'Fun Pass Social Media' to a number of its prepaid customers. This offer was valid from 2 September 2019 until 30 November 2019.

59. The option was more specifically offered to the customers of the tariff plans Tempo Giga, Tempo Touch and Tempo Easy.

60. After having chosen the option the offer remained valid for three months. The option cost € 5.

61. In exchange the customer got 10 GB, with which he could surf for 31 days on the following social media websites: Facebook, Instagram, Twitter, Pinterest, Snapchat, TikTok/Musically, LinkedIn and WhatsApp.

62. At the same time of the 'Fun Pass Social Media' a 'Fun Pass video' worth € 10 was also offered.

63. In exchange the customer got 16 GB, with which during 31 days he could use the following video services: Netflix, YouTube, Vimeo, Google Play Films & Series, Dailymotion, Amazon Prime Video and Twitch.

64. The customer could use the option only if enough allowance was put on the prepaid card during the entire duration of the option. When that was not the case, access to the option was blocked¹⁰.
65. The Fun Passes can be used within the European Union (according to the Roam Like At Home principle).
66. During this period the BIPT further examined the offer of the Fun Pass Social Media, valid from 10 December 2018 until 31 March 2019. The BIPT asked Orange Belgium for the user data such as the number of customers having purchased a 'Fun Pass' the data consumption of these customers within the commercial allowance and the zero-rated data volume and asked it questions regarding the number of complaints, the technical implementation of the offer and the procedure for access for different content & application providers (CAP).
67. Orange Belgium answered all these questions, following which the BIPT analysed the data and came to the conclusion that there was not enough commercial room available for competing CAPs and that the procedure for access to the ZR platform was insufficiently developed.
68. Consequently, upon a fourth launch of a 'Fun Pass', Orange Belgium will have to formulate a proposal meeting our concerns.

2.3.2. Developments in the "open zero-rating programme" Epic by Proximus

69. In the middle of May, Proximus sent its amended general terms and conditions for the participation of Content Partners in the Epic zero-rating programme to the BIPT.
70. That same month the BIPT informed Proximus that it considered that Proximus had taken into account all of the BIPT's comments on the draft version of the general terms and conditions.
71. Following the letter from the BIPT, Proximus launched its general terms and conditions for Content Partners on its website¹¹.
72. This was done particularly by means of the online application form for access of Content Partners, which can be found here: https://www.proximus.be/en/id_f_cr_epic_app/personal/orphans/forms/epic.html.
73. During the 2019 summer, Proximus, at the request of the organisation of the Tomorrowland dance festival, added the app One World Radio-Tomorrowland to the zero-rated apps in the tariff plans Epic beats and Epic combo.
74. Mid-October 2019, the same happened for the music streaming app Audiomack.

¹⁰ The customers were informed about this by text message. There was also a text message when customers had consumed 80% and 100% of the GB volume. The option and the volumes could be used in the European Union.

¹¹ https://www.proximus.be/dam/jcr:cd0f36b7-0e5a-41c3-8580-16311bcdec8d/cdn/sites/portal/documents/pdfs/common/GTC-Epic-open-platform_v-16-03-2020~2020-03-16-14-31-17~cache.pdf

75. The BIPT's supervision of this extension showed that the app was allowed to the Epic zero-rating platform by means of the mediation of an intermediary and that this intermediary also formulated a request for access for a second app, which was refused by Proximus.
76. The BIPT asked and received Proximus's motivation for this refusal and the related mail exchange with the intermediary.
77. Following analysis, the BIPT decided not to take further steps regarding the refusal.
78. Finally, during the first half of March 2020, Proximus informed the BIPT that it had extended the definition of the category 'Music content' in its general terms and conditions for Content Partners with viewing and making short video fragments containing music or sound, chosen by the maker of the short video.
79. Following this announcement, mid-March Proximus added the TikTok app to the zero-rating within Epic beats and Epic combo.

3. Complaints about the observance of Regulation 2015/2120

3.1. Complaints received by the BIPT

80. The BIPT is not a body that treats individual complaints.
81. However, the BIPT does handle complaints as a signal, on the basis of which (among other things) it decides to intervene in order to structurally solve shortcomings on the market with regard to the law and the interests the BIPT must defend.
82. During the previous period, the BIPT itself received 4 complaints, or rather utterances of dissatisfaction or concern, relating to the observance of Regulation 2015/2120.
83. Two themes emerged: the zero-rating of certain apps within Proximus's offers and the claims of mobile operators on unlimited data within certain tariff plans, while the contractual terms do include reasonable user limits.

3.1.1. Complaints regarding zero-rating

84. Two complaints regarded the zero-rating of certain apps within Proximus's offers, especially within the Epic tariff plans.
85. The BIPT clarified the applicable framework for these complaints (among which the fact that zero-rating is not necessarily prohibited by the Regulation), the absolute limits the ISPs have to take into account (such as the ban on technical discrimination aimed at in § 55 of the BEREC Guidelines) and the limits depending on a recurrent analysis of facts and figures (explained in this report and the previous one, including among other things a reference to the opening up of the zero-rating platform of Epic for CAPs competing with the apps enjoying the benefits of zero-rating within Epic).

3.1.2. Complaints on "unlimited" data in mobile tariff plans

86. Two complaints regarded the launch in the Belgian mobile sector of various offers deemed to be "unlimited", which the complaining parties felt to be misleading and unfair because the contractual terms and conditions did state fair use limits (in the "Fair Use Policy", FUP).
87. As regards these complaints, the BIPT explained that it is not the authority who can rule on the misleading or otherwise unfair nature of claims regarding the unlimited character of the data volume in the advertising and marketing context while the contractual terms include an FUP. The authorities qualified to do so in Belgium are the Federal Public Service Economy and the courts and tribunals.
88. However, the BIPT does consider itself authorised to verify whether the consumption limits have been clearly explained in the contract (which seemed to be the case) and whether these limits, considering the figures available on the customers' consumption, are not so low that, in practice, they curtail the essence of the end-user rights laid down in Article 3.1 of the Regulation 2015/2120 (which could not be established).

3.2. Input in complaints submitted to other bodies

89. Contrary to the previous reporting period, during this period the BIPT did not have to give input or advice in cases regarding open Internet of the Office of the Ombudsman for Telecommunications, which is the mean competent body for the handling of individual complaints of end-users.
90. Neither did it have to do so for the office of the Minister for Telecommunications and the Digital Agenda, which in the past also at times submitted complaints or utterings of dissatisfaction for advice to the BIPT.

4. Revision and extension of the information on net neutrality on the BIPT's new website

91. In the context of the modernisation of its website, the BIPT revised the information presented on its website relating to net neutrality.
92. From now on, the information regarding net neutrality can be found both in the part intended for the consumers and in the part intended for the operators.
93. The "consumer" section includes two informative pages:
- A page with general information on net neutrality: <https://www.bipt.be/consumers/net-neutrality>
 - A page with information on the "zero-rating" of offers: <https://www.bipt.be/consumers/fag/the-traffic-of-certain-applications-is-not-deducted-from-the-data-volume-is-that-legal>
94. These two web pages have been drafted in such a manner that consumers can swiftly find easily accessible information relating to the elements of net neutrality that may be of importance to them.
95. The new website's "operators" section also includes a page dedicated to net neutrality: <https://www.bipt.be/operators/net-neutrality-principle>.
96. This page informs the operators on the regulatory framework applicable to net neutrality, the implementation orders the BIPT adopts, the annual reports and will (in the future) provide them with an overview of the offers on the market that contain zero-rating elements.

Chapter 4. Promotion of the availability of Internet access services at levels of quality that reflect advances in technology

97. In the period covered by this report, the BIPT developed the following activities to promote the continued availability of Internet access services at levels of quality that reflect advances in technology.

1. Territorial Internet access coverage (Atlas)

98. As the coordinator of initiatives regarding network quality, the BIPT has furthermore managed and updated the atlas of the fixed and mobile coverage. The purpose is to monitor how the roll-out of networks in Belgium is evolving and to offer transparency to users about the availability of networks. Both atlases are published on the BIPT data portal: www.bipt-data.be/en.

99. By means of the [fixed maps](#)¹² the BIPT can identify the so-called white or grey spots, where some households have no access to a 30 Mbps Internet connection yet.

100. The [mobile coverage](#)¹³ maps show the coverage predicted by the operators on the Belgian territory. The BIPT checked the maps' dependability by way of ad hoc measurements in the field.

2. Quality of Experience

101. By way of a drive test campaign the BIPT has collected data about the quality of experience on the mobile networks. The measurements were carried out in the September-October 2019 period. The objective was to benchmark the operators based on approximately 20 indicators of the mobile quality of experience (voice and data) and to simulate an indoor customer experience.

102. The BIPT has published the results of those drive tests here: <https://www.bipt-data.be/en/projects/user-experience>.

103. The BIPT also made further use of the crowdsourcing application¹⁴ in order to collect data about the signal strength on the various mobile networks in Belgium. These data were used to bring nuance in the coverage maps of the atlas.

¹² <https://www.bipt-data.be/en/projects/atlas/landline>

¹³ <https://www.bipt-data.be/en/projects/atlas/mobile>

¹⁴ <https://www.bipt-data.be/en/projects/crowdsourcing>

Chapter 5. Conclusion

104. This fourth annual report regarding the monitoring of net neutrality is unlike the previous ones.

105. Especially by the end of the period covered by this report, COVID-19 had a particular impact on the BIPT's net neutrality work.

106. Even before the measures of the Belgian government came into effect, the BIPT organised periodical meetings with and reporting by the main operators in the sector in order to prepare the operators to keep on providing their Internet access service, despite the changing circumstances. Fortunately this turned out to be fruitful later in the field.

107. From the moment the Belgian government adopted measures to contain the spread of the COVID-19 virus, the BIPT deployed the necessary initiatives to monitor the impact of these measures on the telecom networks. The impact of the measures on the telecom traffic can be summarised as follows:

Following the entry into force of the measures of the Belgian government, the use of fixed Internet in Belgium increased considerably.

On 21 March 2020, the use of fixed Internet was the highest.

Afterwards the use dropped again (among other things because of the reduced image quality by content providers such as Netflix and YouTube, the latter committed to) and stabilised at a level 40 percent higher than the average use during the reference period from 2 to 6 March.

The use of mobile data traffic during the crisis remained approximately the same.

108. Certain data collected were also shared within the BEREC context enabling decision makers to monitor the Internet traffic situation following the COVID-19 measures in each Member State and to quickly respond to possible capacity issues.

109. During contacts with the Belgian ISPs, in addition to more general BIPT communications (regarding the crisis planning and repairs among other things), it was also discussed which measures operators could take to prevent network congestion. It was verified whether these measures comply with the Regulation.

110. Outside of the COVID-19 context, the BIPT first looked deeper into the matter of traffic identification in order to be able to take part in the ad hoc discussion at BEREC level.

111. Furthermore, the BIPT organised its zero-rating monitoring in a more structural manner by addressing a uniform questionnaire to the Belgian mobile network operators. In the context of that questionnaire, these ISPs, as long as they apply zero-rating, have to provide the BIPT with quarterly (figures) updates at their own initiative, as well as factual modifications when these occur.

112. The BIPT registered only a few complaints about net neutrality and answered them in accordance with the legal framework and the BEREC Guidelines. The BIPT also updated its explanation on open Internet on its renewed website.

113. By and large the BIPT is of the opinion that there are no major reasons for concern in Belgium as far as open Internet access is concerned:

- No cases of blocking services or applications in the network have been found.
- As for the options for end-users the mobile data volumes included in the ISP offers have again increased, in order to set off the increasing mobile data traffic. Different “unlimited” tariff plans have been introduced on the mobile market as well.
- In the case of the zero-rating within Epic the opening up of the platform, decided during the previous reporting round, produced tangible results during this reporting round: the music streaming app of Tomorrowland, Audiomack (also music streaming) and TikTok were added to the tariff plans Epic beats and Epic combo of Proximus.
- As regards the (albeit temporary) offer of Fun Passes by Orange Belgium, the BIPT concluded, following analysis of the data obtained, that there was insufficient commercial room available for the competing CAPs and that the procedure for access to the zero-rating platform was insufficiently developed. Orange Belgium will therefore have to formulate a proposal meeting our concerns upon the new launch of a ‘Fun Pass’.

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