

**Report
regarding
the monitoring of net neutrality
in Belgium
(period from 1 May 2020 - 30 April 2021)**

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Chapter 1. General

1. Preliminary provision

1. This report is adopted by the BIPT.
2. On 7 June 2021, the BIPT sent its draft annual report regarding the monitoring of net neutrality in Belgium (period from 1 May 2020 - 30 April 2021) to the CSA, the VRM and the Medienrat. As net neutrality also concerns content-related issues, BIPT fulfils its monitoring task in cooperation with the audiovisual media regulators.
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 subparagraph 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 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 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 of the Open Internet Regulation](#)² (hereinafter also referred to as "the BEREC Guidelines" or simply "the Guidelines") this report will cover the period from 1 May 2020 up to and including 30 April 2021 and be delivered by 30 June 2021.
7. Under Article 5.1, first subparagraph, of the Regulation the NRAs shall:
 - closely monitor and ensure compliance with Articles 3 and 4 of Regulation 2015/2120 and
 - promote the continued availability of non-discriminatory Internet access services at levels of quality that reflect advances in technology.

¹ *Official Journal*, No L 310/1, 26 November 2015, 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 https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/9277-berec-guidelines-on-the-implementation-of-the-open-internet-regulation

3. The provisions of the Regulation

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

9. These Articles provide:

"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 Article 5.1, first subparagraph, second sentence of the Regulation is also relevant. Under this provision, with a view to carrying out the tasks referred to in the first sentence of Article 5.1, first subparagraph, 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 a consistent application of the Regulation. Those guidelines are those cited above, called "BEREC Guidelines on the Implementation of the Open Internet Regulation".
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 [Work Programme 2020](#), BEREC adopted at the end of the second quarter of 2020 an updated version of its Guidelines. On its website³, BEREC also published, among other things, a comparison between the 2016 version and the 2020 version of the BEREC Guidelines.
14. As an NRA represented in BEREC, the BIPT followed the final stages of the Guidelines adoption.

³ See in particular https://berec.europa.eu/files/document_register_store/2020/9/Comparison_2020-BEREC-OI-GL_vs_2016_BEREC-NN-GL.pdf on the webpage https://berec.europa.eu/eng/open_internet/

Chapter 2. Net neutrality in Belgium in the context of Covid-19-related measures

15. It is obvious that the measures to prevent the spread of the Covid-19 virus had an impact on the use of telecommunications networks and, more particularly on the Internet traffic using these networks. In this distinct chapter of its report, the BIPT outlines the initiatives taken in order to closely monitor the impact of the Belgian Covid-19-related crisis measures in the period from 1 May 2020 to 30 April 2021.

1. Communications of the BIPT

16. On 12 May 2020, the BIPT published a [communication on call numbers used for the tracing of Covid-19 contacts in Belgium](#)⁴ in order to help contact tracing and fight against fraud. In that communication, the BIPT specified the numbers used by the authorities to contact the citizens and warned against persons with ill intentions.
17. Following the National Security Council decision to allow a restricted return to classes from 18 May 2020, the BIPT published on 20 May 2020 a new [communication on the availability of electronic communications networks for remote evaluations by Belgian educational establishments](#)⁵. In this communication, the BIPT reminded that schools and universities would evaluate their pupils and students from 11 May to 11 July 2020 (with a peak during the first two weeks of June) and that, given the measures still in place to fight the spread of the Covid-19, these evaluations could mostly happen remotely. This is why the BIPT asked all operators to undertake the following actions with regard to their own electronic communications networks:
1. to assess the possible impact on the current bandwidth and the bandwidth that could be required; to take, if need be, the measures to face the expected traffic.
 2. about interventions:
 - a. to prevent or at least mitigate those on the core network that might have an impact, even temporary, on the capacity and availability of the network for the period concerned;
 - b. to prevent or at least mitigate those on the core network that simultaneously have an impact on the capacity and availability of the fixed and mobile access network of households during that period.
 3. to verify the measures provided for in the business continuity plan and to adapt them if need be;
 4. to test all connections with education establishments that are linked with it.

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https://www.bipt.be/file/cc73d96153bbd5448a56f19d925d05b1379c7f21/ebd7b7295b50d926b44004a4e96cefa2dc355d02/Communication_call_numbers_used_tracing_Covid-19_contacts.pdf

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https://www.bipt.be/file/cc73d96153bbd5448a56f19d925d05b1379c7f21/6d1affa14037c221f247f11107f469779f81e54d/Communication_availability_networks_educational.pdf

18. In all its communications with the operators, the BIPT has always highlighted the importance of electronic communications networks and services to support the increased use, particularly due to teleworking and distance education during the crisis.

2. Discussions between the BIPT and the sector

19. The BIPT also organised periodic discussions with the main operators in the sector as well as a reporting by the latter.
20. The frequency of these reports and discussions was adapted when needed.
21. From May 2020, these reports and discussions occurred on a weekly basis.
22. During summer holidays, the frequency of the discussions was progressively reduced to twice a month, and then to once a month. From September, the frequency increased again to twice a month and from October, to once a week. From 2021, the frequency has been reduced to twice a month, and then to once a month from February.
23. In addition to reporting on network traffic, the operators have been asked to periodically report on absenteeism to the National Crisis Centre. That reporting was maintained for the whole period of this report.
24. During periodic discussions or ad hoc complementary bilateral discussions, measures that the operators could take to prevent a network congestion were also discussed. These measures were subject to an evaluation to know whether they were compliant with the Regulation.
25. It was also verified whether the measures envisaged were proportionate and effective and whether types of similar traffic were always treated the same way.
26. In addition to the consultation with telecom operators, a consultation also took place with major content providers (including Netflix) and other service providers within the sector.

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

27. After the entry into force of the measures adopted by the Belgian government (during the previous reporting period), the fixed Internet consumption has considerably increased.
28. From May 2020, the Internet traffic increase stabilised following the measures and no significant new peak of Internet traffic has been observed.

4. Participation of the BIPT in the European monitoring and reporting

4.1. The European reporting mechanism on Internet traffic

29. In the context of the [Joint Statement from the European Commission and BEREC](#)⁶, BEREC has set up a reporting mechanism to allow policy-makers to monitor the Internet traffic situation following Covid-19-related measures in each Member State and to respond swiftly to potential capacity issues.
30. To this end, BEREC collects in particular information on measures taken by national regulatory authorities (NRAs) and other initiatives of public authorities and private parties (ISPs, but also, for example, content and application providers).
31. From May 2020 to mid-June 2020, BEREC published a weekly report on the traffic situation and Internet capacity. In addition to the Internet capacity situation, other regulatory measures were also included in the report.
32. From May 2020 to December 2020, this reporting was carried out on a monthly basis.
33. On 1 December 2020, BEREC published an overview of the lessons learned from regulatory and other measures taken in the European electronic communications market since the outbreak of the Covid-19 crisis along with the monthly report⁷.
34. Since 2021, BEREC has continued to collect information on a monthly basis. If new information provided by the NRAs is enough, BEREC will publish the report each month. Otherwise, the report is published on a quarterly basis by default.
35. The [first 2021 report](#) was made available early April 2021⁸.
36. The BIPT contributed to BEREC's work by answering various surveys within the time limits and by checking and revising, when needed, the draft reports published by BEREC on this subject. In 2021, the BIPT is also managing this work in the context of its presidency of BEREC for that year.
37. The BIPT also answered a similar reporting mechanism in the group of experts Art. 13A of ENISA and participated in an ITU survey.

⁶ https://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/9236-joint-statement-from-the-commission-and-0.pdf

⁷ https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/9699-overview-of-the-member-states-experiences-related-to-the-regulatory-and-other-measures-in-light-of-the-covid-19-crisis

⁸ https://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/9912-berec-summary-report-on-the-status-of-in-0.pdf

4.2. Contribution to a BEREC report on the Covid-19 crisis

38. In accordance with [BEREC Work Programme 2021](#)⁹, BEREC will prepare a report on the Covid-19 crisis. This report aims to collect good practices and lessons learned in the field of electronic communications networks for a resilient society.
39. During this reporting period, the BIPT actively participated in working groups in charge of preparatory work.

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https://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/9728-berec-work-programme-2021

Chapter 3. Monitoring of the Regulation by the BIPT

1. Investigation into the provision of “unlimited Internet” and the application of a “Fair Use Policy” to these products

40. The mobile network operators now sell more and more offers the main message of which is that end-users can benefit from an “unlimited” data consumption. Such products are also offered by mobile virtual network operators such as Mobile Vikings.
41. The ISPs on the Belgian market had previously introduced a number of Internet offers at a fixed location, which offered end-users “unlimited” Internet (in terms of volume) or at least implied that they could use the Internet without volume limitations.
42. Given that in the 2019 annual report of the Office of the Ombudsman for Telecommunications a thematic discussion was dedicated to complaints from end-users who were surprised to find that the “unlimited” Internet they thought they could buy was in fact limited by a “Fair Use Policy” (FUP), the BIPT decided, during this reporting period, to launch a survey among the Internet service providers (both mobile and fixed) that serve the vast majority of end-users on the Belgian market.
43. On the basis of this survey, the BIPT first established that the “unlimited” Internet offers on the Belgian market are in fact often subject to a fair use clause or a form of volume limitation.
44. At the technical/operational level, a FUP is based on the fact that each network contains a bottleneck where the traffic of all customers converges. The available capacity at that point determines the capacity that the clients have to share with each other. From this point of view, it is the responsibility of network operators, on the one hand, to increase the capacity of their networks so that their customers can benefit from modern, high-quality services such as VoIP, online TV, IPTV, VoD, etc. and, on the other hand, to ensure that all customers can benefit equally from this capacity. A fair use policy allows operators to carry out the latter task.
45. A FUP can be implemented proactively or following an intervention after complaints. In the first case, the network operator will determine in advance measures to be taken in case the given threshold is exceeded. In the second case, the operator reserves the right to intervene in the customers’ traffic if their consumption interferes with the normal consumption of other customers. That way, the operators ensure that all customers can use their proportionate share of the capacity.
46. Among the Internet service providers asked, we found an Internet service provider (ISP) (with a network at a fixed location), VOO, of which the authorised data volume was indeed unlimited. This also applied to customers of another ISP that used the network of the first ISP, Orange Belgium Sud.
47. For the fixed products of other ISPs, the thresholds above which the FUP came into effect - at the time of the survey, which took place in the third quarter of 2020 - ranged from 500 GB to 3 TB. For clients of Telenet and Orange using Telenet’s network, an FUP of 750 GB

applied¹⁰. Scarlet's volume was limited to 500 GB¹¹. Each of these operators applies specific measures if the FUP is exceeded. Under no circumstances will additional fees be charged. Proximus' FUP is 3 TB, which could de facto be considered as truly unlimited, especially since the customer can add extra data packages for free if the FUP is exceeded.

48. As far as mobile products are concerned, the offer is more diverse:
- Orange offers unlimited products for which the FUP at the time of the survey varied between 20 GB and 30 GB.
 - Mobile Vikings applies a FUP of 20 GB.
 - For Telenet/Base, the FUP of standalone mobile subscriptions ranges between 20 GB and 25 GB. The FUP of the mobile component of the WIGO Unlimited convergent product amounts to 100 GB (to be spread over several SIM cards).
 - Proximus has a standalone offer with a FUP of 35 GB and convergent products with a FUP of 20 GB and 40 GB. The zero rating products Epic are characterised by a basic FUP of 3 GB or 4 GB and an additional zero rating FUP of 25 GB or 40 GB.
 - VOO has not commercialised any unlimited mobile offer.
49. For all mobile products, the speed is limited to 512 Kbps when the FUP is exceeded, without any other cost. Only Orange offers the possibility to buy a recharge.
50. For usage within the EU (roaming), all operators have rules that differ from those applicable for national usage. After the specific FUP applicable for roaming is exceeded, costs are billed to customers.
51. In some mobile tariff plans with an "unlimited data" offer, a high percentage of users faced the FUP (the data used to reach this conclusion were from Q3 2019 and Q3 2020). For the majority of mobile products (whether as part of a convergent bundle offer or not), the FUP was exceeded by over 10% of the customers. For about a third of the mobile products, the FUP was exceeded by over 20% of the customers.
52. Leaving aside the extreme values for fixed Internet, it can be said that, in general, less than 2% of fixed products customers exceed the FUP.
53. In the next reporting period, the BIPT will determine whether measures must be linked to the findings and if so, which ones.

¹⁰ If the FUP is exceeded, the customer is considered as a heavy user and - only during peak hours - the speed is reduced (10 Mbps download and 1 Mbps upload) until the counter is reset to zero.

¹¹ The download speed is limited to 3 Mbps when the FUP is exceeded. Customers have the possibility to order an additional surfing volume for €5 per month, after which one extra TB can be used without any speed limit.

2. Zero rating monitoring

2.1. General

54. Zero rating is a practice through which an Internet access provider does not count the data traffic of a specific application or category of applications in the overall data usage limit set for the Internet access service. This generally translates into free data for that application or category of specific applications or data at a differentiated price.
55. As regards this practice, which is considered to be linked to the access to an open Internet (although not explicitly regulated in Regulation 2015/2120), the BIPT first exercised a general monitoring. That did not exclude looking further into a number of specific offers on the Belgian market during this reporting period.

2.2. General monitoring of ISPs applying zero rating

56. On a quarterly basis, the BIPT receives data on the data consumption of all mobile offers of Proximus, Telenet and Orange Belgium that contain a zero rating component in order to have an evolving view on the consumption of applications subject to zero rating and thus to be able to intervene in time to promote competition between applications.
57. On the basis of the figures received, the BIPT analysed these offers and it can be concluded that either there is enough commercial volume left to use the competitors of the applications under zero rating or the limitation problem of the end-user rights is finally solved (after an intervention of the BIPT) thanks to an opening of the zero rating platform to all competing applications within the same category. Thus, the BIPT can guarantee that the impact of zero rating is not such that it leads to a de facto limitation of the end-user choice.

2.3. Intervention of the BIPT on some specific zero rating cases

2.3.1. Proximus

58. After having analysed the figures relating to Proximus' zero rating in the second quarter of 2020, the BIPT considered that in the Mobilus M and Mobilus L tariff plans the remaining commercial volume was insufficient to use an equivalent volume of data for services that are in competition with the service to which a zero rating is applied in these plans. In that case, it concerned the competitors of one of the following applications: Whatsapp, Facebook+Messenger, Twitter, Snapchat, Instagram or Pinterest (depending on the "favourite application" activated in the corresponding tariff plans).
59. As it did in the past with regard to the Epic tariff plans (see the annual report regarding the monitoring net neutrality in Belgium (period 1 May 2018 - 30 April 2019)), the BIPT asked Proximus to submit, in this case as well, a proposal to eliminate the (current and prospective) negative impact on competition and innovation that it found.
60. The BIPT mentioned as possible options (besides the options that Proximus was free to develop and propose to the BIPT):
1. Raise the data volume included in the subscription fee to a level where there can no longer be a negative impact on competition between content and application providers ("CAPs").

or

2. Develop an access offer for (competing) CAPs to the zero rating within the Mobilus context, in which Proximus gives access to the zero rating within Mobilus based on objective, published criteria to every CAP who meets the criteria approved by the BIPT and who demands access.
-
61. Proximus answered at the end of November 2020 that it did not share the view and analysis of the BIPT. However, Proximus also announced (without acknowledging that it would have infringed the rules of Regulation 2015/2120/EU) that it would extend its “open platform” for zero rating in Epic tariff plans to the Mobilus tariff plan, deploying for interested CAPs *mutatis mutandis*¹² the same general terms and conditions and the same entry steps¹³ as those applied in the Epic tariff plans.
 62. The BIPT announced at the beginning of December 2020 that it was not opposed to that approach.
 63. Proximus then finalised the opening on 1 March 2021 by publishing its [Terms and conditions](#)¹⁴ and the corresponding [Application form](#)¹⁵ on the webpage of the [Mobilus tariff plans](#)¹⁶.
 64. During the above-mentioned discussions, Proximus also informed the BIPT that it would add the application TikTok to the list of zero rated applications available in the Epic Stories tariff plan on 1 February 2021, while slightly modifying the definition of “social network content” in the relevant general conditions.
 65. The BIPT did not object to this.

¹² It should be particularly taken into account that the “favourite applications” of Mobilus only fall into the “social network content” category, whereas the applications included in Epic beats also include applications from the “music content” category and in Epic combo applications from the “video content” category.

¹³ Starting with sending a request to participate via an online form available on the Proximus website about Mobilus.

¹⁴ https://www.proximus.be/dam/jcr:d0595590-ebae-4a13-ba3f-16f5990ed035/cdn/sites/iportal/documents/pdfs/res/GTC-Mobilus-open-platform_v-30-11-2020~2021-02-01-09-11-18~cache.pdf

¹⁵ https://www.proximus.be/en/id_f_cr_mobilus_favapp/personal/orphans/forms/mobilus-favapp.html

¹⁶ See in particular section “Conditions”, third tab “Join the Zero Rating platform?”
https://www.proximus.be/en/id_cr_msub/personal/mobile/mobile-subscriptions.html

2.3.2. Orange Belgium

66. At the same time as for the Proximus figures, the BIPT also analysed the Q2 2020 zero rating figures received from Orange Belgium.
67. Unlike Proximus, Orange Belgium only applies zero rating to a limited number of prepaid and postpaid tariff plans that are no longer marketed. This is the case with the tariff plans for the Dolphin (postpaid), and Tempo Music and Tempo Touch (prepaid) product lines for Facebook and Twitter.
68. Although these are “old” tariff plans, the BIPT considered that a number of factors in the multi-factor analysis were such that Orange Belgium also had to take measures to eliminate the negative impact on competition and innovation found by the BIPT and also submitted to Orange Belgium the two options described above (or the possibility to make its own proposals in addition to these).
69. At the end of November 2020, Orange Belgium mentioned that it would choose the option of giving interested competing social media applications CAPs access to the offer under zero rating of the tariff plans in question.
70. Orange Belgium immediately attached a proposal for an application form and draft terms and conditions to its reply to the BIPT.
71. As these were very similar to the terms and conditions applicable to Proximus's Epic tariff plans, the BIPT replied at the beginning of December 2020 that it had no objection to Orange Belgium's proposals.
72. At the end of December 2020, Orange Belgium mentioned that CAPs could log in to the Orange Belgium website through the application form.
73. All details, including the terms and conditions, are available on the [overview page of the old tariff plans on the Orange Belgium website](#) (in French and Dutch only)¹⁷.
74. The terms and conditions have been integrated in the “conditions générales” tab of the [application form](#)¹⁸.

2.3.3 Telenet

75. In response to the questionnaire of 3 March 2020 aiming to gather information on zero rating, explained in the previous reporting period, Telenet replied that its zero rating platform was an open platform, which could be opened to competing content providers upon request and after an analysis.

¹⁷ <https://www.orange.be/fr/produits-et-services/anciens-plans-tarifaires>

¹⁸ <https://www.orange.be/fr/form/fournisseurs-dapplications-et-de-contenu>

76. However, in practice, no application form was available on Telenet's website, nor any terms and conditions.
77. Following the update of the BEREC guidelines (see the first chapter of this report), the BIPT sent a letter to Telenet at the end of July 2020 asking it to submit a zero rating access offer for CAPs that meets the transparency and non-discrimination standards defined by BEREC in the new paragraphs 42c¹⁹ and 42d²⁰ of its guidelines.
78. At the end of August 2020, Telenet asked the BIPT if its call for the opening of the zero rating would still be valid if the tariff plans with zero rating were not marketed in the future.
79. At the beginning of October 2020, the BIPT answered (in accordance with the above-mentioned position towards Orange Belgium) that it maintained its opening request even if the tariff plans could not be chosen anymore by Telenet's new subscribers.
80. A week later, the BIPT completed its argumentation on this opening with the observation that Telenet's zero rating figures for the second quarter of 2020 also showed that in some cases the volume of commercial data was no longer sufficient to use the other applications, which, according to BIPT, further underlined the relevance of opening the zero rating platform.
81. In mid-November 2020, Telenet communicated to the BIPT its proposal of terms and conditions "for including applications of providers in the zero based rating ('ZBR') offer(s) of Telenet" for comments.
82. At the beginning of December 2020, the BIPT sent its remarks on the proposition to Telenet. The BIPT's criticisms related in particular to the exclusion of certain types of applications from Telenet's open zero rating platform and to the description of Telenet's commitments in the event that a CAP would apply.
83. At the end of December 2020, Telenet submitted an amended proposal that the BIPT, subject to the response to a technical question, considered acceptable.

¹⁹ "When assessing whether the terms for joining an open zero-rating programme are transparent for CAPs, NRAs may consider the extent to which they are publicly available, as well as the availability of the ISP's contact details, and the procedure and regular timeframe for processing a request to join the programme. NRAs may also consider whether the process for CAPs to apply to join a programme is straightforward, e.g. via a standardised online form on the ISP's website, and whether a list of participants to the programme is publicly available."

²⁰ "When assessing whether the terms for joining an open zero-rating programme are non-discriminatory, NRAs may consider whether the same technical and commercial conditions are applicable to all CAPs within the zero-rated category, for example, where admission to a programme does not depend on the number of users or the turnover of the CAP concerned. Furthermore, for a programme to be considered non-discriminatory, joining the programme should be possible irrespective of the location of the CAP, origin or destination of the information, content, application or service offered within the category. NRAs may also consider whether the processing of requests to enter the programme is also non-discriminatory. The more divergent the time period for accepting different CAPs into a zero-rating programme, the more likely it is that this might have an effect on competition between CAPs, and therefore on end-user rights and innovation on the internet."

84. The response to the question of the BIPT led to a last adaptation of the terms and conditions, which eventually received a "*nihil obstat*" by the BIPT at the end of February 2021.
85. At the beginning of March 2021, Telenet published its [zero rating application form](#)²¹ on the [general contacts page](#) of the company²².

2.4. Publication and update of the information on zero rating on the BIPT website

86. As announced in its previous annual report, the BIPT published on its website at the beginning of the current reporting period an informative [overview](#)²³ of the various offers with zero rating elements which are available on the market. This overview also includes a summary of the situation for each offer from a regulatory perspective.
87. In April 2021, the BIPT updated this overview for the first time.

²¹ https://www2.telenet.be/nl/corporate/contact/zbr_app_from/. The terms and conditions for access to its open zero rating platform are available under that form.

²² <https://www2.telenet.be/en/corporate/contact>

²³ Available on the webpage: <https://www.bipt.be/index.php/operators/publication/overview-of-the-zero-rating-offers>

3. Complaints about the observance of Regulation 2015/2120

3.1. Complaints received by the BIPT

88. The BIPT is not a body that handles individual complaints.
89. It handles complaints as signals, 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.
90. During the past period, the BIPT did not receive any complaint concerning the observance of Regulation 2015/2120.
91. In the context of monitoring opinions or expressions of dissatisfaction on social media channels (e.g. Facebook, Twitter), it was decided on only one occasion to react to a tweet. This tweet asked the BIPT to change its mind on the evaluation of zero rating after the [judgment Telenor Magyarország / Nemzeti Média of the Court of Justice of the European Union of 15 September 2020](#)²⁴.
92. As a response, the BIPT tweeted that the offer examined in the judgment of the Court of Justice was a Hungarian offer, where the zero rating still applied after the general subscription fee was depleted for the Internet access service, and that such offers do not exist on the Belgian market. The BIPT added that if such offers appeared on the market, it would take measures upon them.

3.2. Contribution for complaints filed to other instances

93. As for the previous reporting period, the BIPT did not have to contribute or give an opinion in the context of cases linked with open Internet of the Office of the Ombudsman for Telecommunications, which is in principle the competent body for handling individual complaints from end-users.
94. The BIPT did not have to do so either with regard to the Office of the Minister for Telecommunication and Digital Agenda, which in the past sometimes forwarded complaints or expressions of dissatisfaction to the BIPT for opinion.

²⁴ Judgment of the Court of Justice of the European Union (Grand Chamber) in the joint cases C-807/18 and C-39/19 Telenor Magyarország Zr. / Nemzeti Média- és Hírközlési Hatóság Elnöke available on <https://curia.europa.eu/juris/document/document.jsf?jsessionid=AF2F8C14394598199E2F8AEB22ECB586?text=&docid=231042&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=42579>

Chapter 4. Promotion of the availability of IAS at levels of quality that reflect advances in technology

95. 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)

96. 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 developing and to offer transparency to users about the availability of networks. Both atlases are available on the data portal of the BIPT: <https://www.bipt-data.be/en>.
97. By means of the [fixed maps](#)²⁵ the BIPT can identify the so-called white or grey spots, where some households have no access to a 30 Mbps Internet connection yet.
98. The [mobile coverage](#)²⁶ 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

99. For the third year in a row, BIPT gathered information about the quality of experience on mobile networks during a "drive test" campaign. Measurements were taken during the period from September to October 2020. The aim was to compare operators on the basis of some twenty indicators of the mobile experience quality (voice and data) and to simulate a customer experience in an indoor environment.
100. The BIPT published the results of those drive tests here: <https://www.bipt-data.be/en/projects/user-experience>.
101. The BIPT has also kept using a crowdsourcing application²⁷ 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.

²⁵ <https://www.bipt-data.be/en/projects/atlas/landline>

²⁶ <https://www.bipt-data.be/en/projects/atlas/mobile>

²⁷ <https://www.bipt-data.be/en/projects/crowdsourcing>

Chapter 5. Conclusion

102. In this fifth annual report on the monitoring of net neutrality the BIPT started, as it did last year, with an overview of Internet traffic in the context of the Covid-19-pandemic.
103. After the entry into force of the Belgian government's measures (during the previous reporting period) fixed Internet use increased significantly, but at the beginning of this reporting period the increase in Internet traffic stabilised and no significant new peak in Internet traffic was observed.
104. However, the BIPT kept organising periodic discussions with the main operators in the sector as well as a reporting by the latter. The frequency of these reports and discussions was adapted when needed.
105. In a communication of 20 May 2020 on the availability of electronic communications networks for remote evaluations by Belgian educational establishments, the BIPT also asked operators to take a number of measures in relation with the expected remote evaluations of pupils and students, which was expected to mainly peak during the first two weeks of June.
106. Given that in the 2019 annual report of the Office of the Ombudsman for Telecommunications a thematic discussion was dedicated to complaints from end-users who were surprised to find that the "unlimited" Internet they thought they could buy was in fact limited by a "Fair Use Policy" (FUP), the BIPT decided, during this reporting period, to launch a survey among the Internet service providers (both mobile and fixed) that serve the vast majority of end-users on the Belgian market.
107. On the basis of this survey, the BIPT first established that the "unlimited" Internet offers on the Belgian market are in fact often subject to a fair use clause or a form of volume limitation.
108. The BIPT also found that in some mobile tariff plans with an "unlimited data" offer, a high percentage of users faced the FUP. It shows that for the majority of mobile products (whether as part of a convergent bundle offer or not), the FUP was exceeded by over 10% of the customers. For about a third of the mobile products, the FUP was exceeded by over 20% of the customers.
109. In the next reporting period, the BIPT will determine whether measures must be linked to the findings and if so, which ones.
110. The BIPT also analysed the data on data consumption of all mobile offers of Proximus, Telenet and Orange Belgium that contain a zero rating component.
111. On the basis of this analysis, the BIPT considered that additional interventions were necessary towards these three ISPs.
112. Proximus has been asked to take additional measures to protect innovation and competition among content and application providers (CAPs) in certain versions of its Mobilus tariff plans.

113. Same goes for Orange Belgium, which offered zero rating on Facebook and Twitter in some of its no longer commercialised postpaid and prepaid tariff plans, and for Telenet which included the “Free G” programme in its Wigo offers, for example.
114. In the case of Telenet, account was also taken of the fact that the previously promised (in principle) opening of its zero rating platform did not meet the transparency and non-discrimination standards set by BEREC in the new paragraphs 42c and 42d of its Guidelines updated in June 2020.
115. Among the proposed options, all contacted ISPs chose to open their zero rating platform to all competing applications within the same category. The terms and conditions and the application process concerned were assessed in advance by the BIPT and adapted if necessary.
116. During the past period, the BIPT did not receive any complaint concerning the observance of Regulation 2015/2120. The BIPT has also updated its overview of zero rating offers on its website and its tools for monitoring the availability of Internet access services at appropriate quality levels (Atlas, quality barometer and crowdsourcing).
117. 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 service or application blocking in the network have been found.
 - As for the end-users choice, the mobile data volumes included in the ISP offers, not only for mobile products but also for “fixed” Internet, increased once again, in order to meet the changes in the data traffic.

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