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Response to ARCEP consultation on an API to measure fixed internet QoS

Executive summary

DIGITALEUROPE welcomes the opportunity to respond to ARCEP's draft decision on an API to be installed in operators' boxes to improve ARCEP's ability to measure fixed-internet quality of service (QoS).

The solution put forward by ARCEP, which mandates direct, physical access to consumer data, is in DIGITALEUROPE's view disproportionate to the objectives of the decision and could undermine the development of more harmonised solutions at EU level.

In our response to the consultation, we'd like to point to some key aspects that require clarification from ARCEP, notably:

- ▶▶ What types of providers and offers are included;
- ▶▶ What safeguards should be incorporated to protect user's privacy and personal data;
- ▶▶ The decision's potential to impact the free movement of terminal equipment; and
- ▶▶ The inclusion of existing standards for QoS parameters, definitions and measurement methods.

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Pertinence of the solution provided

DIGITALEUROPE welcomes the goal of gathering robust QoS data in order to ensure the regulatory framework's correct implementation.

The solution offered, however, by mandating direct, physical access to consumer data by a regulator, is in our view disproportionate to the objectives of the decision. Its highly intrusive nature raises important questions of scope, safeguards and market access which have not been sufficiently substantiated, as explained in further detail in the sections below.

Such specific national solution could undermine more harmonised solutions at EU level, which would avoid inefficiencies for operators that will ultimately be compensated by consumers. As there are many different approaches across Europe when it comes to QoS for broadband networks, DIGITALEUROPE recommends a general EU approach to collecting the relevant data.

More worryingly, the proposed solution is also likely to encourage similar physical solutions outside of Europe, in markets which may not have the same democratic safeguards.

Scope

Providers included

The scope of service providers who will have to install the API in the devices deployed in residential customers' premises is not clear.

The draft decision states that it applies to operators as defined in the *Code des postes et des communications électroniques*¹ having more than one million customers on the fixed retail market. This definition seems to cover all electronic communication services (ECS) as defined in the European Electronic Communications Code (EECC).²

This definition is in our view too broad because the obligations are only relevant in relation to fixed internet access. Therefore, in order to avoid confusion on the decision's applicability, we urge ARCEP to refine the material scope and to make it clear that the obligations apply only to fixed internet access providers.

Types of offers included

Similar to our point above, the draft decision's reference to the 'marchés de détail grand public fixe' creates uncertainty as to what is covered in terms of customers and types of offers. Does this refer to:

¹ Article L32 (15°).

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

- a) Residential and/or business offers to a residential access line; and/or
- b) Residential and/or business offers to a business access line?

Since people are also working from home part- or full-time, it is important to have a full view of the cases to which the provisions would apply. Other cases should be included where there is one infrastructure provider deploying the access line and one or multiple ECS providers.

Safeguards for the processing of users' data

DIGITALEUROPE would like to stress the need for any tracking of usage data from regulators to occur in line with data protection and privacy rules.

In light of this, we believe that the draft decision lacks appropriate safeguards on the activation of the API and for collecting and processing the data listed in the annex, as well as information on user consent.

This question is particularly important given potential application of the ePrivacy Directive³ – and even more so the proposed ePrivacy Regulation⁴ – with respect to user's terminal equipment. In order to assess all possible compliance implications, we urge that all players be consulted to review the potential impacts of new rules on this decision and agree on a reviewed timeline for implementation.

Market access barriers

DIGITALEUROPE is deeply concerned that the draft decision will impact the free movement and putting into service of terminal equipment in the European Union by requiring a specific technical implementation with respect to equipment used in France.

As argued above, we recommend instead a general EU approach to collecting the relevant data.

Reference to standards

We regret that the draft decision does not refer to any standards pointing to QoS parameters, definitions and measurement methods. The requirements for such data in the annex should be grounded in existing standards such as those mentioned in Annex X of the EECC.⁵

³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009.

⁴ COM(2017) 10 final.

⁵ Annex X – Quality-of-service parameters, definitions and measurement methods referred to in Article 104.

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

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Estonia: ITL

Finland: TIF

France: AFNUM, Syntec
Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

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