

EDRi and Access Analysis on Specialised Services: **How to get it right**

In order to avoid loopholes that would undermine freedom of communication, innovation and competition in the digital single market, the definition of specialised services must include the following four criteria, in line with the guidelines of BEREC and the work of the other Opinion Committees.

Some of the difficulty in achieving a coherent definition stems from the European Commission's confusion between *Internet Access Services* (e.g. services providing network access) and *Online Services* (services available through the network). This confusion is neatly demonstrated in the last line of the Commission's proposal: “...and that is not marketed or widely used as a substitute for internet access service;”

Specialised Services must:

1. Provide an enhanced quality of service.

This is the justification for the need for “specialised” access services and not online services. Providing enhanced access to services that are not online services.

E.g. IPTV is a service whose characteristics justify a specialised access service. Twitter, Facebook, Youtube, etc. clearly do not have such characteristics.

2. Not be marketed or usable as a substitute for open internet access services.

The Commission's proposal specifies that specialised services cannot replace an “internet access service”, when it should actually specify that it cannot replace functionally identical online services.

This specification would prevent the emergence of online services that would be offered as products to replace Internet Access Services.

E.g. “Facebook Zero” (which is a low-data version of Facebook, offered for “free” by mobile operators, particularly in developing markets. This substituting for online services makes it almost impossible for local services to develop) is being used in markets where it is deployed, as a substitute for both “full” Facebook and all other online services.

3. Not replace functionally identical services.

The services being accessed by specialised access services cannot have the same function as an online service.

E.g. A specialised service can provide access to IPTV because it does not have the same functional qualities as an online service found on the open internet. Dailymotion, YouTube, Spotify, etc do not meet this criteria.

4. The network capacity used must be clearly separate from open internet access networks.

In order to ensure the quality of internet access services (e.g. to ensure they are not degraded),

specialised services must use clearly distinct network capacity. A specification that it must operate outside of the open internet is therefore necessary.

A proposed definition for Article 2(15) is the following:

(15) 'specialised service' means an electronic communications service operated **and provided** within closed electronic communications networks **that is separate from the open internet. These services** provide access for a determined number of parties to specific content, applications or services, or a combination thereof, **do not replace functionally identical services available over internet access services**, rely on strict admission control by deploying traffic management to ensure an appropriate level of network capacity and **adequate** quality relying on admission control and **are** not marketed or **used** as a substitute for internet access services;

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