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EMERG WORKSHOP ON NET NEUTRALITY

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***Derogations to the free choice of terminal equipment :
the case of Fixed Wireless Access***



Open Internet Regulation (2015/2120) provides for the free choice of the terminal equipment by the user

- *Art. 3(1) : End-users shall have the right to [...] use terminal equipment of their choice [...]*
- *Recital 5: When accessing the internet, end-users should be free to choose between various types of terminal equipment **as defined in Commission Directive 2008/63/EC**. Providers of internet access services should not impose restrictions on the use of terminal equipment connecting to the network in addition to those imposed by manufacturers or distributors of terminal equipment in accordance with Union law*



Berec Guidelines (BoR (16) 127 updated by BoR (20) 112) give indications about possible derogations:

- *Para 26: NRAs should assess whether an ISP provides equipment for its subscribers and restricts the end-users' ability to replace that equipment with their own equipment [...]*
- *Para 27: NRAs should consider whether there is an objective technological necessity for the obligatory equipment to be considered as part of the ISP network [...]*

Directive 2008/63/EC defines the Terminal equipment by referring to the network interface (art. 1):

- *Terminal equipment means: equipment directly or indirectly connected to the interface of a public telecommunication network to send, process or receive information [...]*



Directive 2002/21/EC defines the network interface as Network Termination Point (art. 2):

- *Network termination point (NTP) means the physical point at which a subscriber is provided with access to a public communications network [...]*

Directive 2018/1972 (EECC) deals with the NTP (recital 19):

- *The network termination point represents a **boundary for regulatory purposes** between the regulatory framework for electronic communications networks and services and the regulation of telecommunications terminal equipment. **Defining the location of the network termination point is the responsibility of the national regulatory authority [...]** given the variety of fixed and wireless topologies [...] ('BEREC') should [...] adopt **guidelines on common approaches to the identification of the network termination point***



NRAs had to deal with the identification of NTP location even before EECC directive and NTP Berec guidelines publications

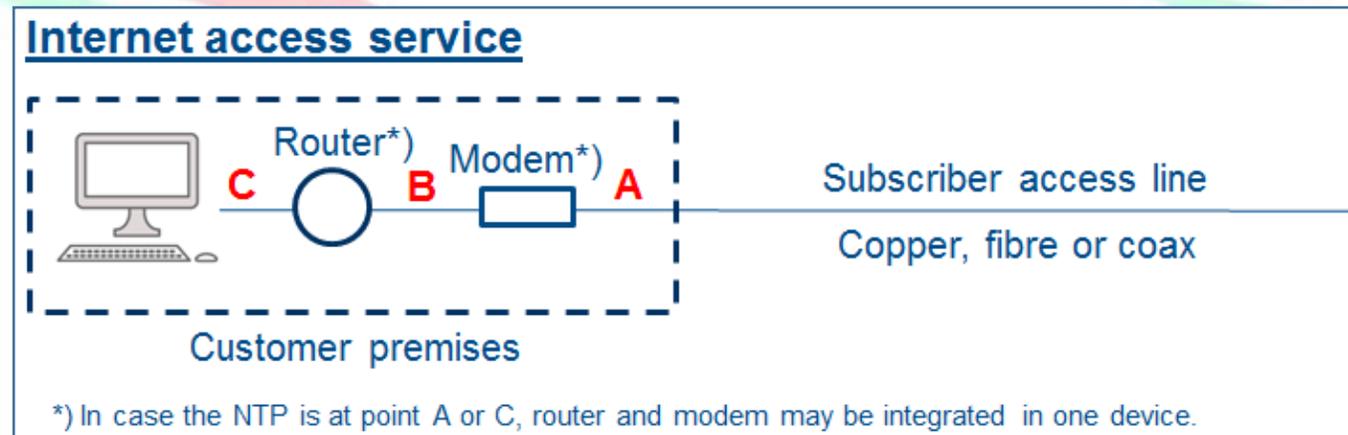
With the Decision 348/18/CONS, Agcom has defined the implementation rules for the Open Internet provisions on the free choice of the terminal in Italy

- *User is free to choose any device that is powered by her/him (at her/his premises)*
- *Any derogation request needs to be submitted to Agcom and has to be motivated with objective technological necessity*
- *The approach adopted by Agcom aimed to grant the user choice at the maximum extent, by avoiding any unjustified restriction of the user right, and to positively impact on the terminal equipment market*



Berec guidelines on NTP were published in March 2020 (BoR (20) 46) and the Agcom approach has found to be in line with them.

- *"TTE includes the maximum number of pieces of equipment at the customer premises possible and, therefore, end-users have the maximum freedom to use the equipment of their choice..."*
- Three possible locations for **fixed NTP**, Dec 348/18/CONS has placed the NTP at point A



- **Mobile NTP** is located at the air interface between the base station and the user mobile terminals
"there is no objective technological necessity for mobile equipment to be considered as part of the public mobile network"



Pre - 348/18/CONS: Many operators were binding their service offers to a specific terminal equipment (consumer protection, competition and Net Neutrality issues)

Post - 348/18/CONS: operators grant free terminal choice to users and follow transparency rules about costs and conditions when the users choose a terminal provided by the operator

Derogations have been granted on a temporary basis for some offers based on FTTH and FWA technologies



FWA offers are gaining a growing market share

Two FWA typologies:

- *"Pure" FWA (dedicated frequencies)*
- *FWA based on mobile networks (frequencies are shared with mobile services)*

Two technical solutions for the end user devices:

- *Outdoor Unit + Indoor Unit (ODU+IDU) (most widespread)*
- *Only Indoor unit (IDU) (needs high signal strength)*

Some issues in understanding FWA positioning due to the use of mobile technology and QoS

A market analysis has concluded that FWA offers are included in the fixed access market, in consequence, the user has the right to free choice of the terminal equipment



In principle, the end user is free to choose any device (IDU, ODU)

Derogation requests concerned the ODU

Operators have implemented similar solutions and, basically, derogation requests have been justified by the same arguments

Derogations have been granted on a temporary basis, Agcom monitors market and technology evolution in order to check for the permanence of conditions that have justified them



In our assessments, we have taken into account a number of aspects, our approach can be considered coherent with the Berec guidelines on NTP that have been published later

Some aspect can be considered more relevant than others, but decisions have been based on the full scenario:

- ✓ impact of a bad performing device on other users;
- ✓ need for terminal remote management and interoperability issues;
- ✓ network operations and service management simplicity;
- ✓ impact of a bad performing device on the market positioning of the offers;
- ✓ FWA user terminal market characteristics.

We will start a proceeding to get updated information about technology and market scenario. Granted derogations and future requests will be assessed by taking into account also the new guidelines (on Open Internet and NTP)