



On 4 September 2019, Cullen International hosted a seminar on zero rating. Three different studies issued by the OECD, the Austrian regulator RTR and Epicenter.works were presented by their authors.

Professor Axel Gautier (University of Liege) [presented](#) a summary of the main findings of the three studies.

The OECD and RTR studies show that, because of the variety of offers available, the effects of zero rating practices are not systematic and require a case-by-case approach from regulators around the globe.

Zero rating consists in exempting specific types of traffic from the data cap included in the end user's subscription.

In Europe, the 2015 Telecoms Single Market Regulation ([TSM](#)) does not explicitly ban zero rating practices.

However, national regulatory authorities (NRAs) should examine practices on a case-by-case basis and should be able to intervene when "*agreements or commercial practices would, by reason of their scale, lead to situations where end users' choice is materially reduced in practice*".

The 2016 [BEREC guidelines](#) on the implementation of these net neutrality provisions confirm that NRAs should use a case-by-case approach to assess if "*end users' choice is materially reduced in practice*" by a specific offer.

For more information, see Cullen International [table](#) and [infographic](#).

OECD study: the variety of zero rating practices justifies a case-by-case regulatory approach

Verena Weber (OECD) [presented](#) the [report](#) issued by the organisation in July 2019. The report looks at the economics of zero rating and compares regulatory approaches across several countries.

It underlines that social media, messaging and music streaming applications are the most common zero-rated applications.

However, other type of applications are also zero-rated in some countries, such as mobility apps (Waze or Google maps) or social services such as Childline in the United Kingdom or the South African Siyakha platform for school pupils and job seekers.

Ms Weber highlighted that the effects of zero rating on competition and innovation effects can be positive or negative and that they can occur at two different levels: on the internet service providers market, and on the content and applications providers (CAPs) market.

On the content and applications market, for example, zero rating may allow low-income groups to access certain applications without additional charge, especially in developing countries. But when used by dominant providers, the practice might impede other players from competing in a market.

The report concludes that zero rating practices impact not only economic but also non-economic policy objectives (education, health, etc...).

However "*an overall judgement on the economic consequences of zero rating is difficult*", mainly because there is no comparable data at international level on the scope of zero rating, and because it is difficult to distinguish the effects of zero rating practices from other factors (e.g. the nature of competition and the take-up of services).

As a result, the report supports the case-by-case approach to assess zero rating offers.

RTR study: no systematic effect of zero rating on price

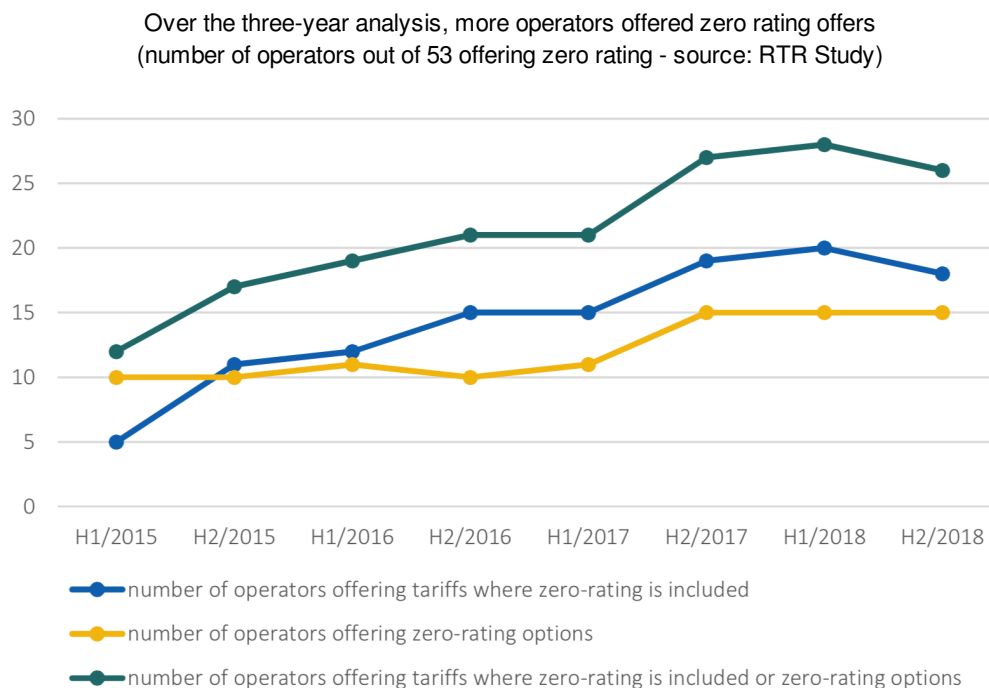
András Róbert Király and Anton Schwarz from RTR, the Austrian NRA, presented the findings of their empirical investigation into the effects of zero rating offers on data caps and prices in 15 EU countries. The study focused on mobile offers.

Based on the data of 53 mobile network operators (MNOs), the authors have not identified a systematic pattern that explains or predicts the effect of zero rating offers on other tariff characteristics such as included data, price and price per GB. Rather, the effect seems to vary across countries, periods and categories of applications.

They concluded that the assessment of potential negative effects of such offers should be done on a case-by-case basis, as country-individual market specificities and operator strategies influence the impact on the market.

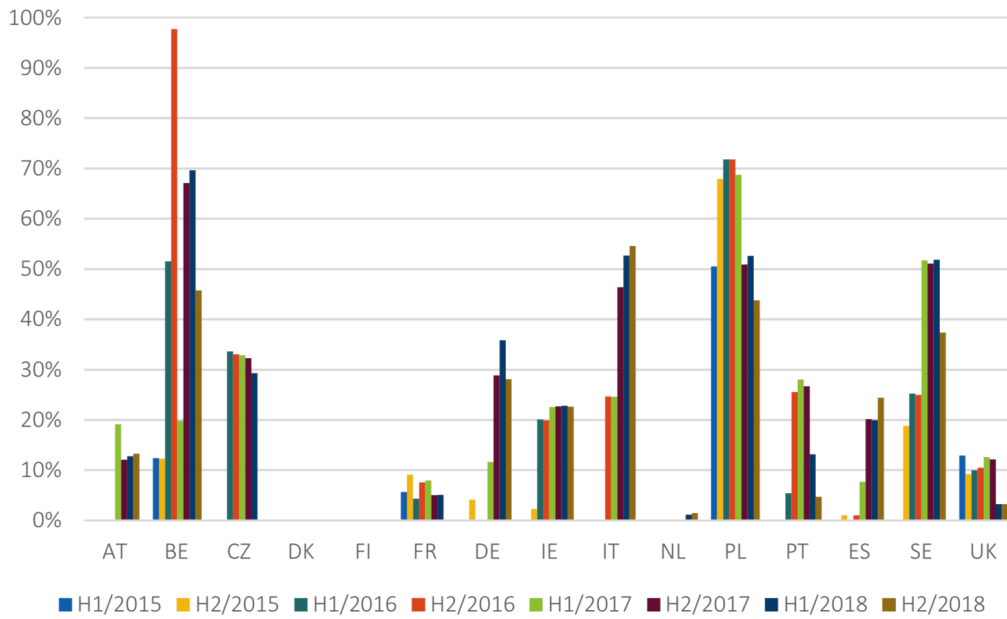
The study shows that the number of zero rating offers grew significantly over the period 2015-2018. At the end of 2018 some operators stopped their zero rating offers.

The share of tariffs with zero rating included increased fivefold over the period. The share of flat-rate offers also increased over time.



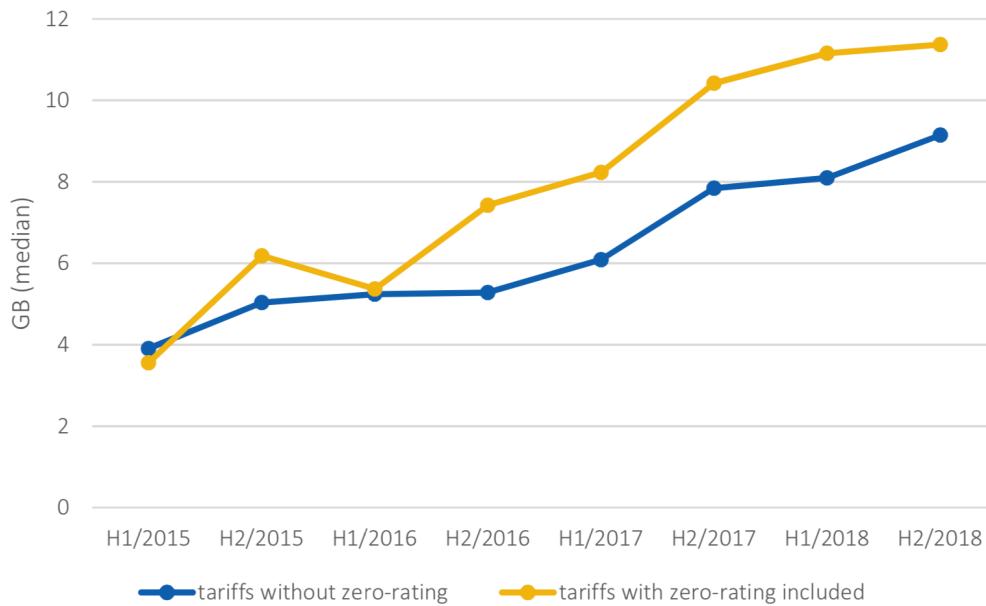
The authors found that the availability of offers where zero rating is included varies considerably across countries and also within certain countries over time.

Share of tariffs with zero rating included by country
(Market-share weighted average of MNOs - source: RTR Study)



The study shows that most zero rating offers are limited to social media and chat apps. The number of these offers has increased significantly over the period. They usually include a higher amount of data with a lower price per GB compared with tariffs without zero rating.

Zero rating offers are usually available with more expensive tariff plans, including more data (Included data in GB - median, market share weighted average - source: RTR Study)



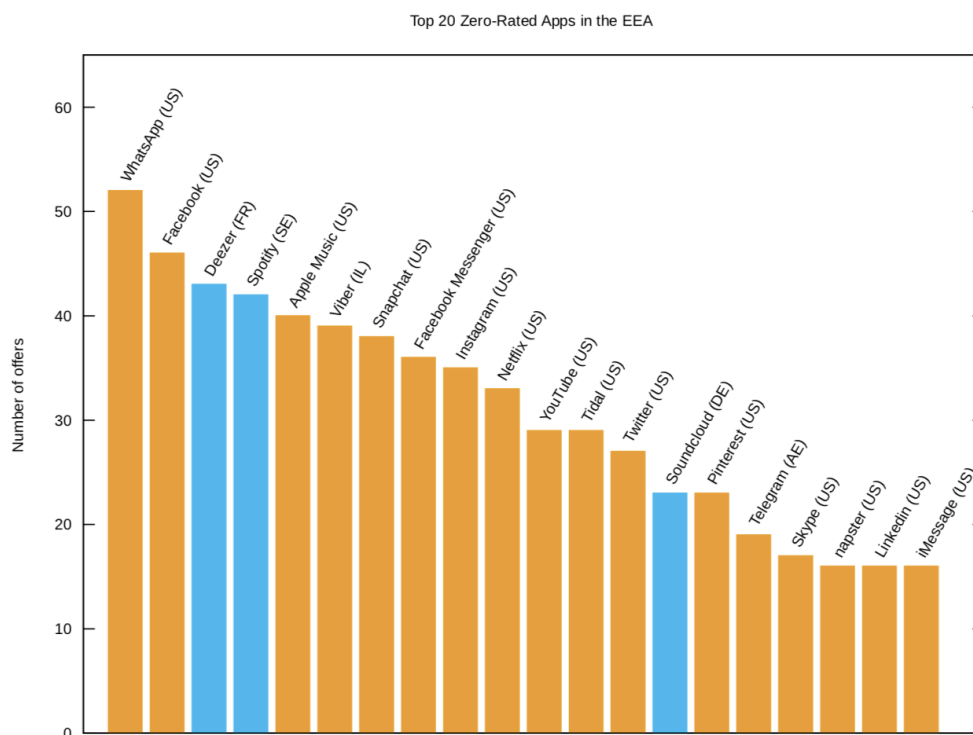
Epicenter.works study: an overview of 186 differential pricing offers

Thomas Lohninger (Epicentre.works) gave a presentation on the net neutrality situation in the EU, based on the NGO's [study](#) of differential pricing (zero rating and application-specific data volume) offers available in the European Economic Area (EEA) countries and Switzerland.

The findings of the study include the following:

- differential pricing (DP) offers are available in 30 out of 32 countries (DP offers do not exist in Finland, nor could be found in Bulgaria) ([Table](#));
- out of 186 DP offers analysed:
 - 144 are zero rating offers and 42 are application-specific data volume offers;
 - 73 offers do not particularly specify if they could be used while roaming within the EEA (roaming policies of the respective operators were not analysed); and
 - only 62 offers provide information on how content and application providers can participate in the offer.
- among the 20 most popular apps included in the DP offers, 15 apps originate from the US and only three from Europe (Deezer, Spotify, and Soundcloud).

Top 20 zero-rated apps in EEA
(source: epicentre.works)



The NGO also found that some national regulatory authorities (NRAs) of EEA countries in their annual reporting on net neutrality did not fulfil the minimum requirements specified in the [BEREC guidelines](#).

Finally, Epicentre.works concluded that only 11 EEA countries, which “*set penalties at a percentage of the annual turnover of the infringing company*”, fulfilled their obligation on the implementation of national provisions for effective, proportionate and dissuasive penalties for the infringement of the net neutrality rules.

Those countries are Belgium, Czech Republic, France, Hungary, Lithuania, Malta, Netherlands, Poland, Romania, Slovakia, United Kingdom.

The study was supported by the Austrian Federal Chamber of Labour and the Mozilla Foundation.

Debate

According to Mr Gautier, the OECD study leads to the question whether zero rating will be a concern in the long term if mobile operators offer higher or even unlimited data allowance in the future.

As far as the RTR study is concerned, Mr Gautier noted how zero rating did not bring global negative effects in terms of raising bundle prices.

Mr Gautier said that the RTR study should have differentiated zero rating plans for specific apps (e.g. Spotify) from zero rating plans for specific services (e.g. music streaming).

Mr Gautier highlighted the point raised in the study by Epicenter.works that zero rating might be a tool to discriminate between local and US-based zero-rated apps.

Moderator Philippe Defraigne (Cullen International) opened the floor to participants for further questions and reflections on zero rating practices.

In general, the use of zero rating for social services and educational purposes shown in the OECD study was praised by the audience as an example on why there should not be a black and white approach on this practice.

A comment stressed how price differentiation in zero rating offers can also have a positive effect by giving ISPs a tool to counterbalance the market power of well-established CAPs. However, Mr Lohninger found that at the moment ISPs do not seem to be using this power against Facebook, for instance.

Lisa Felton (Vodafone) objected to the findings of the study by Epicentre.works on an alleged discrimination between local and US-based apps by European telecoms operators. Ms Fulton stated that at Vodafone, the procedure to request to have an app zero-rated is open and transparent.

Anita Kovacs (Telenor Hungary) also mentioned that following the decision of the Hungarian regulator NMHH on the zero rating offers of Telenor and Magyar Telekom ([Table](#)), the Hungarian court asked the European Court of Justice for a preliminary ruling in December 2018 and January 2019 (pending cases [C-39/19](#) and [C-807/18](#)).