

DT Group Response to the BEREC Consultation on

Draft Guidelines on Net Neutrality and Transparency

Deutsche Telekom AG
Bonn, 2nd November 2011

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1. Executive Summary

Challenging Complexity

Deutsche Telekom welcomes the opportunity to enter in a constructive dialogue with BEREC on how to best implement the revised transparency requirements of the framework. We share the view that it is essential to enable customers, both end-users and wholesale customers, to make informed decisions. The Internet is a dynamic and highly competitive market place that displays an ever increasing variety of differentiated products and offerings on all levels of the value chain, i.e. from Internet access products over IP transport services, content offerings, application provisioning up to advertisement-funded over the top services. **In this highly complex ecosystem it is a challenge to establish mechanisms that will provide accurate, understandable and meaningful information.** This is nevertheless needed to establish true comparability and ultimately to achieve efficient market results.

Active Involvement

There is an active role for all actors along the internet value chain as well as third parties: The draft guidelines illustrate a number of ways in which these actors may interact to provide the desired results. This provides a basis to enter into a dialogue and agree the responsibilities of each type of actor. Deutsche Telekom is prepared to fully assume its responsibility towards its customers and play an active role in establishing mechanisms to provide accurate, meaningful and understandable information as well as assuring its accessibility and achieving comparability.

European Approach

As an operator with international activities across several member states Deutsche Telekom shares the objective of developing a common frame of reference. While national legislative requirements may vary depending on the actual transposition of the Universal Service Directive agreeing on a common terminology at the European level will clearly be beneficial towards the ultimate goal of achieving a true comparability of offerings. Choosing this approach will also be more efficient than engaging in 27 separate negotiation processes. Deutsche Telekom is prepared to participate and contribute towards this goal in the form of an industry initiative

Net Neutrality and Network Management

While we fully agree on the proposed criteria for transparency we do not see a need to re-engage in the discussion of which network management practices are “appropriate”, “reasonable” or “problematic”. **The task at hand is to find widely agreed means to communicate the actual practices and their effect on the customer experience.** The Draft Guidelines state explicitly “The purpose of this report is not to define net neutrality, but rather to provide guidance about the information that needs to be brought to the attention of end users ...” (p. 7). However, BEREC in the following proposes a working definition which is unnecessary for the purposes of the present guidelines and goes far beyond the Net Neutrality approach promoted by the European Commission. The European focus is on safeguarding its citizens’ net freedoms and competition, not on prescribing equal treatment of IP packets or white-listing specific traffic management measures.

Next Steps

DT shares the objective of establishing transparency and welcomes an open industry-driven process to agree on a common European frame of reference which further specifies the five criteria. In order to discuss based on a ‘symmetric’ level of information we would also appreciate gaining more insights into the process of drafting the BEREC report on QoS, which is referenced several times in this consultation. References to an unpublished future report remain unclear unless more context on the content of the report is given.

2. General Remarks

Deutsche Telekom has explicitly expressed its support for the European approach to net neutrality. The non-intrusive stance will allow the industry to develop new business models with positive impact effects for EU citizens and the whole ICT sector. Allowing commercial solutions will also help to achieve the ambitious broadband targets of the Digital Agenda. Commissioner Neelie Kroes has repeatedly stressed the need for a regulatory framework which promotes private investment in next generation networks. Investment in broadband networks in Europe crucially depends upon network operators' freedom to innovate and develop new business models in line with EU competition and consumer protection rules. European companies have to compete on a global scale while respecting the legal European framework. It is therefore indispensable to carefully evaluate the costs of implementing additional regulatory prescriptions versus market-driven and commercially negotiated outcomes.

In the response to the European Commission's Consultation on Open Internet and Net Neutrality, Deutsche Telekom has committed to:

- **Continuing to provide best effort internet connectivity.** This implies, that we will continue to invest in our networks. Our customers expect us to be able to cope with ever more "bandwidth hungry" services and contents and keep our networks running smoothly. In order to meet this expectation we also have been and will have to continue relying on network management.
- **Communicating the implemented measures transparently** and allowing our customers to make informed choices about the services and products that best meet their individual needs. As traffic volumes are expected to grow at rates that physical infrastructure roll out will not be able to keep up with, the role of network management will most likely increase in the future. The importance of transparency over network management will rise as a result.

Deutsche Telekom believes that any forward looking deliberation on the policies that best promote an open and innovative Internet should not get side tracked by discussing "if" specific forms of network management should be allowed or not. The relevant task at hand is "how" to communicate the measures that have been implemented and their effects on the customer.

As BEREC outlines in the Draft Guidelines this is a task that will involve the cooperation of network operators, internet service providers, third parties (for indirect communication) and possibly regulatory authorities. Deutsche Telekom is prepared to fully assume its responsibility towards its customers and play an active role in establishing mechanisms to provide accurate, meaningful and understandable information as well as assuring its accessibility and achieving comparability.

Deutsche Telekom is prepared to participate and contribute towards this goal in the form of an industry initiative. There clearly is a need to work out how to further specify the five criteria and to agree on the modalities of communicating, processing and validating the relevant information. As recognised by BEREC, it is essential that in doing so the proportionality of the transparency measures is also a key criterion, i.e. it is important that the costs of information gathering and processing do not exceed the utility created for the consumers and businesses. We would also appreciate gaining more insights into the process of drafting the BEREC report on QoS, which is referenced several times in this consultation. References to an unpublished future report remain unclear unless more context on the content of the report is given.

3. Specific Comments

3.1. Chapter I – Purpose and scope of the guidelines

While it is clear that establishing transparency is an integral part of the European approach to net neutrality there is no necessity to re-open the discussion of how net neutrality should actually be defined within the scope of this consultation. The Draft Guidelines state explicitly “The purpose of this report is not to define net neutrality, but rather to provide guidance about the information that needs to be brought to the attention of end users ...” (p. 7). However, this is followed by proposing a working definition which is completely unnecessary and far beyond the Net Neutrality approach promoted by the European Commission. The European focus is on safeguarding its citizens’ net freedoms and neither on prescribing equal treatment of IP packets nor on white-listing specific traffic management measures.

Deutsche Telekom does share the assessment that “...transparency is a tool that enhances the ability of end users to make informed choices and to choose the quality of service that best fits their needs. This will contribute to greater levels of competition on the market” (p. 8). It is evident that transparency by itself will not establish effective competition. But it is important to recognize, that quality of service is an important dimension in a competitive market and that user preferences and needs are very heterogeneous. This is especially true when “user” refers to customers on both sides of the two-sided market within the Internet. The goal is to provide customers with the required information for choosing the products and offerings that best fit his or her individual needs. As long as there is competition, quality of service will effectively be a major differentiator in the market.

3.2. Chapter II – Major requirements for a net neutrality transparency policy

Empowering consumers to make informed decisions to subscribe to those services which our customers want lies at the centre of Deutsche Telekom’s strategy to increase customer satisfaction and retain customers over and beyond contract. Consumers rely on diverse sources when making decisions upon purchasing a product or subscribing to service in the area of electronic communications: own experience, spread of words, recommendations from friends and family, print and audiovisual media, dedicated consumer advice websites with comparisons, written and verbal advice from the offering companies and in some occasions regulators.

It is however hard to assess whether consumers actually seek information and impossible to ensure that consumers have taken into account all information when taking purchase decisions. The concept of transparency therefore is to *provide* information to consumers so that they *can* base their decision on it. Deutsche Telekom thus welcomes BEREC’s understanding of the characteristics information should have: accessibility, understandability, meaningfulness, comparability and accuracy. Likewise we support BEREC’s assumption that not every source of information has to meet all of these characteristics but a combination of them.

Contractual information primarily serves the objective to set out rights and duties of both parties concluding a contract. Contracts therefore have to be very clear in the wording used in order to solve

legal disputes. This in turn, unfortunately, requires the use of legal terminology rather than plain language and is as such more complicated to understand even for average customers. In terms of satisfying the BEREC's characteristics of information contractual information serves first of all the purposes of meaningfulness and accuracy rather than the other three characteristics.

With a strong presence over marketing channels with direct interaction with consumers – high-street shops and telesales – verbal information plays a crucial role for Deutsche Telekom's customers. If customers seek verbal advice through these channels it is our objective to meet customers' needs and expectations. This points clearly to the fact that general consumer information and education on what customers should acknowledge when choosing an internet service provider is of superior importance to achieve BEREC's policy goals. A concentration on written information from the service provider is therefore inexpedient. NRAs and consumer organizations can play a vital role in educating consumers how to make informed choices.

Among the sources of information set out above, service providers possess specific strengths regarding their ability to fulfill required characteristics of information: While service providers can make information on their online stores easily accessible for those seeking internet access and support comparisons between different products their strength lies in the accuracy of the information provided to consumers by own means of information or those of third parties. On the other hand, comparability and understandability are met by third parties such as consumer organizations and price & service comparison websites already today as they generally are more competent in serving these objectives. Such an approach would help meeting the proportionality required by the EU legal framework.

Distinguishing between 'problematic' and 'non-problematic' traffic management measures seems to be missing the objective of transparency policies which is to enable customers to make a decision not to prejudge as regulator what in their view is problematic. For example, from the view point of the customer the potential limited accessibility of Voice over IP services is completely irrelevant when internet access is bundled with a PSTN voice in an attractive flat rate bundle. It is thus crucial for a successful transparency policy to avoid such pre-established judgments and enforce technology neutrality in any transparency guidelines.

As a general comment on all characteristics highlighted by BEREC it should be stressed that the European Union and national laws are in place for many years to ensure consumers are not unfairly informed about products and services. Most notably the Unfair Commercial Practices Directive and the Unfair Consumer Contract Terms Directive' just recently amended by the Consumer Rights Directive, provide a high level of protection for consumers horizontally for all products and services of all sectors in the Union. Any BEREC guidance must not interfere with this legislation. The guidance should set out how it relates to the relevant horizontal consumer protection law in order to be proportional – including a comparison to transparency requirements in other industry sectors.

3.3. Chapter III – Contents of a net neutrality transparency policy

Deutsche Telekom shares the view that transparency is about enabling customers to make informed choices. Thus customers have to be provided with an appropriate and understandable set of information in order to reach comparability among the numerous offers of various operators that customers are able to choose from.

To this extent BEREC considers it to be necessary to specify the contents of transparency policies and therefore argues for defining a set of criteria and factors on which operators will have to provide certain information. According to BEREC this should encompass the whole range of information categories: generic/comparative/individual indicators; scope of the services and limitations.

Deutsche Telekom welcomes a dialogue between operators but also between operators and BEREC respectively National Regulatory Authorities to define such a set of criteria.

The network operators have already committed themselves to enable consumers to choose the product which best meets their individual requirements. It is therefore in the operators interest to clearly provide comparable information whether and to which extent access, bandwidths and volumes may be limited or any specific service treated in each of the different offers and how this impacts on the quality of the end user experience.

This information will be provided in the terms and conditions of the contract signed between customer and operator. Furthermore and in order to make it easier for consumers to compare competitive offerings also before a contract is signed it might be useful to agree a common template for the description of services to enhance the accessibility of information. The information on key criteria and factors will then also be included in consumer facing materials like operator's websites and tariff brochures etc.

However the information provided to the customers should strike the right balance between providing comprehensive information to end users so they can fully exercise their choice and the risk of providing an overload of complex information that would create the opposite effect. Deutsche Telekom is confident that this balance will be found by operators aligning on a common approach and materials.

With regard to specific tools to monitor and identify any limitations to access services Deutsche Telekom advocates a careful approach as such measurement tools are not standardised yet and the results of such tools may depend significantly on the methodology and parameters chosen. Furthermore it has to be considered that there are plenty of aspects which are not under control of the operator and which may also affect the results of such monitoring processes. It has to be avoided that non-standardised approaches produce misleading information which is confusing for the customers and possibly damaging to operator reputation.

Transparency measures should apply to all actors in the internet value chain. Especially the quality of services delivered over the public internet also depends on various factors which are controlled by third parties or which may not be influenced at all. Many of these aspects e.g. transit routes and content servers as well as environmental influences are beyond the control of the access network operators. In order to fully inform the consumer and explain the impact of various parties on a specific connection transparency can not exclusively focus on access network operators but should be established along the entire internet value chain.

3.4. Chapter IV – Ensuring transparency

Who presents and how information is being presented is the crucial part in any transparency policy. Consumers should not be forced to acknowledge transparency information. Such information should only be offered to consumers who wish to make informed decisions. As described in relation to chapter II of the consultation paper, consumers rely on diverse and mixed sources of information when taking purchase decisions. The obligation of transparency on service providers cannot be

turned into an obligation to force consumers to acknowledge the information provided to them. Consumers are free to accept information provided to them – or not.

Therefore the five characteristics – accessibility, understandability, meaningfulness, comparability and accuracy – developed by BEREC are very relevant when structuring the information. Since consumers must be aware that such information exists and where it could be found, Deutsche Telekom believes that awareness raising measures should be accorded a high relevance too in order to achieve BEREC's and the legislator's objectives. While service providers play a crucial role in contributing to deliver on all of the five characteristics plus awareness raising, service providers have certain strengths in providing technical information and descriptions on the service offered and less accredited consumer trust in comparability characteristics with other companies products.

When it comes to contractual information the emphasis must be on accuracy as contracts and its terms of conditions must be legally unambiguous. The above referenced horizontal EU consumer protection framework assumes already today a crucial role when it comes to protecting consumers from surprising small print rules in terms and conditions of contracts. It is therefore unclear, how specific guidance from BEREC can further improve transparency on contracts. In addition, the Universal Service Directive provides that consumers have to be informed and can make a new choice when contractual conditions are being changed unilaterally by service providers.

While NRAs can play a role in ensuring that relevant technical information and product specifications are made available by service providers – save business confidential and network security relevant information – independent consumer organizations and comparison websites receive the highest level of trust today. Consumers are used to turn to these existing institutions when searching for information. Awareness raising activities can further increase consumers' usage of such offers. Especially comparison websites seem to be innovative in the way consumers are helped to make choices. Rather than opting for one central website by NRAs, BEREC should focus in encouraging independent institutions to support transparency in order to allow consumers to make a choice from different offers.

Consumer choice of transparency information sources will also help to diminish a major problem when making transparency information understandable and comparable: there is a clear risk of a selection bias by those deciding which criteria should be chosen and what weighting they should assume against each other. For example, do we want consumers only to judge on price comparisons or should e. g. installation and 24h customer service availability be taken into account as well? If yes, how much weight should these two criteria assume? While a young and experienced internet user might only need a no-thrills provider and elderly consumers might need an installation service and subsequent customer service.

Any traffic light system would massively suffer from the failure of NRAs making value judgments on behalf of consumers with very diverse needs. Choosing a 'red' light for service offers with lower speed or less flexibility would clearly signal even to cost-sensitive consumers not to choose such offers. Traffic light systems would therefore divert demand into more costly offers consumers actually do not need and wish. Instead of forcing NRAs to make a judgment on behalf of consumers regarding their values and preferences, Deutsche Telekom proposes to consider an approach of a combination of awareness raising by NRAs and supporting consumers to express their preferences to support choosing among offers from one or more operators.

3.5. Chapter V – Practical examples, outlooks and conclusions

We note BEREC's doubts whether an approach based solely on industry self-regulation, i.e. with NRAs only stepping in in case the process does not deliver results, is viable. Deutsche Telekom supports the view that a policy approach that relies on self-regulation that is supported by regulators is most promising (cf. options b) and c) described in chapter 5 of the consultation document). We see a role for BEREC/NRAs to monitor a process of self-regulation as well as to enhance trust in the process especially in the form of validating third party processing of information.

As the responsibility and the knowledge to properly inform the customers are both attributed to the industry, the process of agreeing a European frame of reference and/or negotiating a code of conduct should be industry-driven. Deutsche Telekom hereby commits to play an active and constructive role in this.