

Chairman

Brussels, 2 November, 2011

Mr Chris Fonteijn,
Chairman, BEREC
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Dear Mr Fonteijn:

May I thank you for the opportunity to respond to the current public consultation regarding Net Neutrality and Transparency. I have read BEREC's detailed document with great interest. I would be glad if BEREC and your members would take into consideration the following comments and observations:

1. With respect to the **regulatory aspects of Network Neutrality** and the Internet, the current consultation is incomplete. The BEREC consultation document specifies about seven other related consultations and work items which have not yet been completed or undertaken. Thus, it is quite difficult to respond in a fully informed manner to the present consultation regarding transparency, alone.
2. In general, the BEREC document places undue emphasis on the idea that **"the end user must be able to make informed choices"** (p.3), and gives the impression that BEREC might consider that transparency and - perhaps - competition would suffice. Whereas the consultation document itself acknowledges that "transparency alone might not be sufficient, notably when competition is not effective ... " (p.8). More specifically:
 - (a) effective competition between ISPs in Europe prevails mainly in the larger cities. There is not effective competition in large areas of Europe.
 - (b) BEREC advocates several models for informing the public about the ISP offerings, emphasising the advantages of on-line information and third-party sources of comparative data. However, for many potential users, alternatives to on-line information will be very important to help them make informed decisions.
 - (c) BEREC implies that the contractual conditions may be inspected and negotiated by the end user. In practice, this is not so. ISP contacts are not negotiable (e.g. 'click here to accept') and - in some cases - the contract is only made available, if at all, after the user has bought the service. In general, the acceptability, legality and user-friendly nature of ISP contracts should be verified and accredited by the responsible NRA who should publicise these facts. Individual members of the general public are not usually in a position to verify and amend these contracts in their interests.
 - (d) With respect to "switching", it is already clear that the ISPs have understood that this is an issue, and have responded by at least two specific restrictions:
 - twelve month 'lock-in' contracts
 - dedicated, non-portable e-mail addresses

3. Different types of offers (p.19):

In general, please recall that managed services do not constitute "Internet access" and should not be labelled or sold to consumers as such. Specifically, BEREC introduces distinctions between different types of Internet access services, including "best-efforts" Internet services and "specialised services". In particular, "... specialised services can only be supplied with the support of management measures that ensure the allocation of network capacity." (p.20)

This last assertion is not evident. Before entertaining such distinctions, some very serious thought needs to be given to the longer-term implications, including social and innovation aspects. In particular, who is to decide what is or is not a "specialised service".

4. Problematic and non-problematic traffic management:

I take good note of BEREC's intention to address this question in another project (f.n. 23, p.20) and consequently, meanwhile, would refrain from detailed comments. However, the document suggest a neutral and agnostic approach on the part of BEREC (pp. 20, 32) which would be a cause for great concern. Certain forms of traffic management are not acceptable. In particular, deep packet inspection should be prohibited except under a Court Order.

5. Intermediation between ISPs and users:

BEREC also discusses the merits of obliging the ISPs to provide adequate information directly to their customers, under the supervision of the NRAs, (direct) and the potential for third parties to provide monitoring tools and comparative information regarding service provision and contractual conditions among competing operators (indirect - rather like Rating Agencies). The BEREC discussion is inconclusive. From the users' point of view, one might suggest that the NRA is the relevant third party for most purposes, and it is not at all clear what might be the merits of delegating this responsibility to self-appointed organisations. Particularly as such entities would, in turn, also have to be monitored and regulated by the NRAs.

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In conclusion, allow me to say that a consultation of the general public on the basis of a 60 page technical document is rather a tall order. In future a more user-friendly format might be envisaged.

May I also take this opportunity of drawing your attention to the additional submission that you will receive from the ISOC staff, particularly regarding terminology and the classification of Internet Services.

Should BEREC or its members have any questions or comments regarding this submission, we would be glad to cooperate in further consultations, as necessary.

Yours sincerely

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