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Body Of European Regulators  
for Electronic Communications

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Kraków, 2 November 2011 r.

**Re: Public consultation on BEREC draft Guidelines on Net Neutrality and Transparency**

On 3 October 2011 Body of European Regulators for Electronic Communications (BEREC) opened consultation on draft Guidelines on Net Neutrality and Transparency : Best practices and recommended approaches.

Below please find comments of Grupa Onet.pl S.A. on BEREC draft guidelines.

Grupa Onet is a leading Polish New Media company. Our main activity is focused on internet marketplace.

Onet.pl is the biggest and most popular multimediu in Poland. Apart from marketing operations (advertising, e-commerce, search advertising) we provide various e-services for the users (premium content services, e-mail and hosting, e-auction, personal and dating, telecommunication services).

*Introductory remarks*

First it should be noted that the Guidelines, in accordance with its assumptions, focuses mainly on transparency and information obligations of internet services providers. However the approach to transparency should result from common and non-controversial understanding (among all entities – private and business) towards the possibility and borders of any intervention in the transfer of information between content providers and end-users, made with the use of internet. Such transfer of information – of a bilateral nature – ISPs serve, mainly, as intermediaries (medias). In our opinion to date no agreement has been reached on possibility of interfering in the transfer of any legal content via internet; still, discussions are held when and how



such interference complies with European and local laws on data protection, copyright, competition, e-services and assuming liability for content provided in these means.

In our opinion the unilateral perspective of ISPs should be avoided, where ISPs may interfere in net neutrality, and all that should be discussed are limitations of such net management, mainly in the area of transparency and information provided for end-users.

We find BEREC guidelines to be ambiguous in this respect. It seems that proportions and assumptions on net management is reversed, since the Guidelines show that the transparency is the pre-condition on possibility of net management, whereas at the same time BEREC agrees that it is not sufficient without competition and liquidation of barriers in change of service providers.

Therefore in opinion of Grupa Onet.pl, and in accordance with BEREC Guidelines any transparency rules may not be deemed sufficient in the situation where there exists limited choice of internet service providers on any community market.

BEREC Guidelines does not refer to technical and factual aspects of planned net management actions, interfering with net neutrality and blocking parts of pockets transferred by ISPs (telecoms in particular). Latest news on telecoms plans in this respect show that – apart from general categories of transfer or services (VoIP, IP TV, P2P, VOD) – several content may also be limited, which are an uniform part of the content, e.g. blocking of advertisements in free web sites.

#### *General rule: the right perspective*

The BEREC Guidelines ignores participation of third parties – content providers (ICPs) – in regulating net management. In the opinion of Grupa Onet.pl end users do not possess sufficient tools, knowledge and experience to control consequences on ISPs net management, because they are not, as a rule, interested in the manner of content generation, the cost of generation and acquisition (from the perspective of an end-user: free or partially payable), means of transfer etc. As a result it is necessary to analyse the possibility of limitation and rules of net management also from the perspective of those entities that use internet for the purpose of reaching their customers or clients and providing any content for the end-users. ICPs should be invited to participate in review and acceptance of any such rules.

#### *Direct and indirect approach*

Taking the above into consideration Grupa Onet.pl is of opinion, that in order to ensure free choice of their ISP by end-users the indirect approach is more applicable, with ensuring more active role of European and local regulators.

The information provided by ISPs should be separated from tariffs and advertising information, as well as it should be objective to take into consideration the perspective of content providers.



### *The information requirements*

Furthermore in the opinion of Grupa Onet.pl the list of information shown in chapter III.3.a of the Guidelines is the absolute minimum of information that should be provided for the end-users before, at the time of contracting and during service to facilitate their decision. The scope of information shown in chapter III.3.a of the Guidelines are the most material not only from the perspective of the end-users but also content and services providers, that directly contract with end-users in the area of e-services.

In the opinion of Grupa Onet.pl, in the situation where there is uncertainty as to the scope of net neutrality violation and used technical means of net management, the ISPs should provide exhaustive information in relation to:

- The scope of accessibility to given web pages, services and content
- Possibility and limitations in end-user generated content
- Description of used technical means in the area of net management by ISP, in particular interfering with personal data
- Consequences of modifying the transferred information and of limitation in access to information.

As a consequence, in the opinion of Grupa Onet.pl, the transparency of the provided internet access services and ensuring that the end-users receive proper and exhaustive information will not be a tool of limiting the access to internet but the mean of net neutrality.

In the opinion of Grupa Onet.pl both BEREC and NRAs should play an active role in net neutrality/net management supervision, and they should be provided with adequate tools to do so.

