



**Tele2 is one of Europe's leading telecom operators, always providing the best deal.** We have 31 million customers in 11 countries. Tele2 offers mobile services, fixed broadband and telephony, data network services, cable TV and content services. Ever since Jan Stenbeck founded the company in 1993, it has been a tough challenger to the former government monopolies and other established providers. Tele2 has been listed on the NASDAQ OMX Stockholm since 1996. In 2010, we had net sales of SEK 40.2 billion and reported an operating profit (EBITDA) of SEK 10.3 billion.

## **Comments on the DRAFT BEREC Guidelines on Net Neutrality and Transparency: Best practices and recommended approaches**

### **Tele2 Group Position**

**November 2011**

Tele2 AB ("Tele2") welcomes the opportunity to comment on the draft BEREC guidelines on Net Neutrality and Transparency. In Tele2's view it is important to secure transparency in order to guarantee that the end-users are able to make informed choices and thus maintain the possibility for an open Internet over time. Tele2 would hereby like to submit the following remarks.

Tele2 strongly believes that customers should be ensured access to a wide range of different access forms to the Internet with different specifications, capacity, quality, terms and conditions etc. Tele2 supports the main principles of Net Neutrality and thus that Internet users are entitled to an Internet connection with a predefined capacity and quality, enabling them to send and receive content of their choice, use services and run applications of their choice and to connect hardware and use software of their choice as far as these do not harm the network. Further, Internet users should



be entitled to an Internet connection that is free of discrimination with regard to the type of application, service or content or to sender's or receiver's address.

As has been pointed out by BEREC, it is important to underline that transparency alone is probably not sufficient in order to achieve Net Neutrality, but that the existence of competition in the market, and thus the ability of end-users to choose and switch between operators as well as between service providers, also has to be taken into account in this regard in order for the transparency measures to have an effect. In this regard the NRAs have an important task to secure that the 2009 Regulatory Framework is effectively implemented.

The Internet is rapidly changing with new applications, new forms of access and connectivity, while new business models are constantly developing. The entire Internet ecosystem is characterized by fierce competition. In Tele2's opinion, fierce competition together with transparency requirements as mandated under general marketing and/or consumer protection laws and the possibility for consumers to switch Internet provider, is the most efficient way to ensure a continuous development in the market and to protect Net Neutrality. Therefore, in Tele2's opinion, new regulations on Net Neutrality could even be detrimental to the continuous dynamic development and change of the Internet. In Tele2's view, promoting competition in the broadband market and thus ensuring there are no barriers to competition, would be the best solution to avoid compromising Net Neutrality. Tele2 believes that under the regulatory framework for electronic communications, it is the role of the Commission and of the NRAs to ensure effective competition in the broadband market. If that objective is met and a high level of transparency is provided, the end-users' demands for different levels of quality of service will be met by competing providers.

As has been pointed out above, consumers are currently offered a wide choice of broadband providers and service offerings based on different technologies. Competition is increasing steadily and new, innovative services and technologies are being introduced in the market. This area is surely the most dynamic and fast-evolving market not just for now, but also historically, and customers are being offered new and innovative services that bring them new benefits and possibilities in a quite dramatic pace. Any service provider that seeks to restrict access to information will be deserted by consumers in favor of a provider that safeguards their net freedoms. The ability of the consumer to switch from one provider to another, and the ease with which this can be done, safeguards the principles of Net Neutrality. This minimizes the risk of network services forming a bottleneck that might threaten the

openness or neutral nature of the Internet. Thus, competition among service providers, coupled with the instrument of transparency, means that end-users will have the flexibility to move to the provider that satisfies their requirements. It is also crucial to point out in this regard that as the demands from end-users increase, investment in higher-capacity networks is needed in order to continue to offer high-quality services and avoid network congestion. In Tele2's opinion, it is very important that Internet Service Providers (ISP) are free to offer different levels of service to their customers, respectively priced at different levels and in a transparent manner in order to enable end-users to make well-informed choices.

In the draft guidelines BEREC points out the role of different parties in communicating information (i.e. ISPs, NRAs, third party commentators). In Tele2's view, the ISPs should continue to be responsible for providing information about their services to their clients as they are best placed to do so due to the knowledge they have of their business and of their customers.

It is of utmost importance that transparency requirements bring "real" transparency for consumers and not just burden consumers and providers with requirements to include overly complicated, detailed and extensive technical specifications and descriptions in all market communication. According to Tele2's opinion, it is important to ensure that the relevant technical, commercial and quality characteristics for different service offerings are described in a clear, concise and easy to understand way. Tele2 believes that the development of industry standards for describing the relevant (from an end-user perspective) characteristics of different service offerings can be one way to achieve real transparency. Thus, ISPs should be encouraged to develop and commit to providing a consistent and comparable set of information about their services in the form of a voluntary code of practice.

Generally it should be highlighted that Tele2 is also concerned about conflicts between traditional legislations in the areas of marketing, consumer protection and telecom regulation and in Tele2's view such conflicts need to be addressed and resolved rather than introducing even more complexities in this regard.

Regarding the content of a transparency policy, any policy should in Tele2's view take into account the minimum clear information that the end-user needs in order to make an informed choice as too comprehensive and technical information would be costly for the ISPs and not understandable to the consumer. End-user information on

such topics as speed, principles for traffic prioritization and prices for different services would be the basic information which should be included in a clear and transparent manner.

Hence, in Tele2's view, the NRAs may leave the design of transparency solutions (i.e. a transparency policy enabling end-users to compare the offers available in the market) to the ISPs and step in only if the self-regulatory approach, which should play a decisive role in this regard and should be further promoted, is not delivering transparency. However, it may be useful for NRAs to facilitate this effort and also to have the general task of making sure that transparency obligations are respected and that the information provided to the end-users is accurate, complete and offered in way that allows customers to compare the market proposition made available by different ISPs, i.e. provide guidance and monitor the implementation of such self-regulation.

The fact that unjustified differences in transparency policies between EU Member States could create a fragmentation in the market should be considered in this regard. However, it should be highlighted that the prerequisites for any industry standard would most likely differ between various countries and markets, since customer requirements, cultural and communication traditions, and market offerings differ. Therefore, national circumstances has also to be taken into consideration in order to obtain a balanced view and, as pointed out by BEREC, any transparency policy should be proportionate in terms of the administrative burden on IPSs, as well as costs incurred.

As acknowledged by BEREC, internet access services need a fair level of traffic management in order to fulfil end-users' expectations. Traffic management, in general, is necessary for providing high-quality and diversified services and to be able to offer end-users attractively priced services for different levels of quality of service. Since the capacity of a network is limited, traffic management principles are already employed to avoid network congestion and to maintain and improve the quality of services offered, as well as to fulfill legal requirements of certain services. Traffic management is also necessary to filter identified spam and malware. Hence, it should be pointed out that the differentiated treatment of network traffic is not indicative of an anti-competitive behaviour, but is a necessary and important tool for providing high-quality services as well as enabling for customers to pay only for the service they need

and not forcing them to subsidize other customers' use of applications such as real-time applications.

Transparency is crucial for consumers and business users to fully understand what service offerings are available, to differentiate between those and to be able to choose the service offering that best matches their needs. A description of the traffic management principles employed by ISPs is a necessary part of such transparency. However, for transparency to be an efficient method of safeguarding net freedoms, a choice of ISPs must exist and barriers to switching must not be too high. Tele2 believes that this reflects the current situation in Europe.

In this regard it is essential to point out that Tele2 is strongly opposed to all forms of illegal anti-competitive behavior, including, of course, the abuse of traffic management practices that could, if applied to content, raise privacy-related concerns. However, Tele2 would like to underline that the market has the necessary tools, both technical and economic barriers, to make such anti-competitive actions unlikely.

As set out earlier in this response, Tele2 believes that a market characterized by competition and enforcement of the current regulatory framework is self-sufficient to avoid any potential discriminatory behavior related to traffic management. Already today existing regulation at national level requires ISPs to provide transparency to their clients by specifying in their offers that some traffic might be prioritised.

Further, it is essential to point out that the principles governing traffic management should be the same for fixed and mobile networks since any differentiation in regulations on Net Neutrality between fixed and mobile technologies could distort the technology investment decisions and, in the end, this would be detrimental to end-users as it would harm the market. However, it should be noted that the need for traffic management is, at least presently, higher in the mobile networks.

Yours sincerely,

Rebecka Frisk di Meo  
Regulatory Affairs,  
Tele2 AB