



WIND contribution for the

Public consultation on draft Guidelines on Net Neutrality and Transparency



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Introduction

Over the past two years the issue of technological neutrality, better known as net neutrality, has aroused the interest of many and different subjects, from regulatory bodies, opinion movements on freedom of expression, industrial groups, to directly involve national governments (e.g. U.S.A. and its current president).

There is no doubt that the issue is both topical and important at the same time and need to be discussed deeply. For this reason Wind welcomes the opportunity provided by this consultation in order to forward its view, both with fixed and mobile networks point of view, on the matter of transparency on open internet and net neutrality.

Executive Summary

Currently the Commission's approach on Net Neutrality is based on principles that on one hand safeguard customers' interests, from freedom of expression to freedom of legal usage, and on the other hand promote competition, which in turn is seen as one of the best means to guarantee network neutrality and transparency.

Even though this is a paramount point of view, as well as the Commission's public consultation on net neutrality, the BEREC's guidelines on transparency start from a definition of "net neutrality" that is not yet widely agreed nor well defined. For this reasons it is fundamental avoid radical definitions and don't confuse "network neutrality" principle with "network freedom" principle. In our opinion, following the "network freedom" principle, any European citizen should be free to access any information on the Internet, with no discrimination from the ISP/Network Operator (NO) based on the nature of that information.

In this view it is necessary to remark that the competition is one of the strongest tools to grant the "network freedom" principle for all costumers. Confusing the concept of network neutrality with the one of network freedom could lead to hamper the competition dynamics of the service, application and network markets and consequently could prevent the willingness of all interested players to invest in services, infrastructures and innovation.

Considering that, we totally agree with BEREC believing that transparency regarding net neutrality is a key pre-condition of the end users' ability to choose the quality of the service that best fits their needs. Wind is convinced that transparency alone is not sufficient to achieve network freedom, but transparency coupled with fair and healthy competition can contribute *incisively* to do it.

Moreover, the draft consultation document draws guidelines without distinguishing customers, so we want to stress that transparency measures would not be exhaustive for high-end business services receiving bespoke offers for which the required transparency is usually provided in the negotiation phase. In this context it is paramount to exclude bespoke offers such as those provided to high-end businesses from the scope of any transparency obligation.

As regards the quality of service (QoS) requirements (within the 2009 revised framework), there are still some strong concerns about both its definition and its scope with reference to fixed and also to mobile networks. Considering that, it should be also clearly stated by the ISPs and Regulators that due to technical performance of each operator's network, a transparent and comparable offer, which could give the confidence to switch from one operator to another, is based on statistical measures. Anyway We believe that QoS requirements should be discussed in a separated and dedicated public consultation.

For what concern the relation between advertised speed and actual speed it also can be influenced by these factors and also by other ones, outside the operators' control (e.g., different devices, operative systems, hardware, etc.), so the user's experience (i.e., the speed perceived), related both for fixed and more so for mobile networks, may be

significantly influenced by them, even if it is not measurable but, on the contrary, is strictly subjective.

For all of the above reasons, we are not concerned about providing transparency nor providing further parameters to meet customer's need, on the contrary we are worried about their interpretation, especially by those customers without a good technical background. Beyond all we suggest again that this particular aspect of minimum quality of service should be discussed in a separated and apposite consultation.

For what concern the common terms, these should be settled with the participation of all stakeholders, first of all with ISPs to avoid any restriction to their commercial freedom, considering that these common terms could influence the way to commercialize offers by ISPs. By the way, we would stress that there is no real benefits for a classification such as problematic and non-problematic measures.

Above all these consideration, Wind believes that ISPs should continue to be the principal actors in providing transparency to their clients.

We promote an efficient and proportionate transparency policy involving also the interaction with third parties but also the information provided by these third parties must fulfil all the characteristic set out by BEREC in this consultation (e.g., Accessibility, Understandability, etc.) and that these third parties should be monitored by the NRA as well as provider due to their potential influence on customers choice.

However, if NRA, due to country's specificity, believes that further intervention on transparency are needed, we believe that such a decision and the consequently measures should be taken in coordination with all the stakeholders, as well as monitoring system that could imply huge costs for operators and it should be well considered "where" it is necessary.

Finally it is worth noting that the strengthening of the transparency measures in the 2009 revised framework, raises some concerns about the amount of information that NRAs will be able to impose on operators. The Regulatory Framework guarantees the widest protection for users under the non discrimination and transparency principles and the existing privacy regulation complements the safeguard provided by the framework itself. Indeed, if on one hand a reasonable amount of information could help consumer to better understand services, applications or contents that they would buy, on the other hand an overload of information could confuse the consumer itself and bear upon operator's costs disproportionately: is our opinion that the overload of information for customers in turn is equal to no-information, for this reason we propose to add to the five characteristics listed in this guidelines for NRAs a 6th characteristic, namely "proportionality", to avoid any extra-burden of information both for customers and operators if the benefits from information don't exceed the costs to provide (and fully understand) them.

Wind strongly believes that is the self regulation approach that should be firstly promoted and that additional guidance on net neutrality is not necessary; regulation promoting competition in broadband services is the best solution.



We are convinced that effective telecoms regulation brings open and competitive markets, which in turn promote investment. Investment in higher-capacity networks will allow us to avoid congestion. Competition among service providers, coupled with transparency, will allow us also to solve QoS problems (if any) as consumers will have the flexibility to move to the provider that satisfies their requirements and content/service/application providers will have the right-sized QoS to support their services.

Competitive risks may instead come from Content/Service providers which already detain a considerable market power (e.g. Google, Youtube, Apple, etc.) to the detriment of smaller or newcomers network operators. In fact, a not competitive/pluralistic Service Application market may negatively limit the possibility to access contents and services for the end-user. For this reason, we would stress that Over the Top players should in principle be subjected by the same transparency obligations as well as other players (ISPs, Network operators, MVNO, etc.).

Moreover it is worth to highlight that regarding common terms they should be settled with the participation of all stakeholders, first of all with ISPs to avoid any restriction to their commercial freedom, considering that these common terms could influence the way to commercialize offers by ISPs.

Finally monitoring systems could imply huge costs for operators and it should be well considered "where" it is necessary, namely where competition is not working well.

In conclusion We believe that EC (as well as NRAs) should examine which effects will have the new Regulatory Framework in terms of transparency on each MS before burdening providers with further details, considering the new regulatory tools in terms of transparency that this Frameworks give to NRAs and that less than half of member states have fully transposed the 2009 Regulatory Framework.

WIND COMMENTS

Finding 1 - Consumer choice and information on the differences between offers help end users obtain the services that they want. Thus, transparency is a fundamental mean to achieve regulatory objectives. BEREC will also analyse, in different projects, other net neutrality aspects that need to be considered in complement to transparency.

The BEREC's guidelines on transparency start from a definition of "net neutrality" that is not yet widely agreed nor well defined (i.e., "all electronic communication passing through a network is treated equally."¹). The term is often used in the press, by politicians and regulators with different connotations, involving quite different concepts, going from the technical management of the communication networks, to the universal principle of freedom of expression. For this reasons it is fundamental avoid "radical" definitions and to don't confuse "network neutrality" principle with "network freedom" principle. In our opinion, following the "network freedom" principle, any European citizen should be free to access any information on the Internet, with no discrimination from the ISP/Network Operator (NO) based on the nature of that information.

In this view it is necessary to remark that the competition is one of the strongest tools to grant the "network freedom" principle for all costumers. Confusing the concept of network neutrality with the one of network freedom could lead to hamper the competition dynamics of the service, application and network markets and consequently could prevent the willingness of all interested players to invest in services, infrastructures and innovation.

The Internet evolution is not easy to foresee, so we believe that a too stricter approach on transparency could limit ISPs freedom to propose new offers on the market, targeted to different users and usages, even with "protocol based" offer.

This draft consultation document draws guidelines without distinguishing customers, so we want to stress that transparency measures would not be exhaustive for high-end business services receiving bespoke offers for which the required transparency is usually provided in the negotiation phase. In this context it is paramount to exclude bespoke offers such as those provided to high-end businesses from the scope of any transparency obligation. In this view we are convinced that application/content providers should be not included in the general category of end-users, but rather as a business category, starting to the fact that if there is any commercial agreement between network provider and content provider, this should be considered as a business to business agreement.

¹ DRAFT BEREC Guidelines on Net Neutrality and Transparency: Best practices and recommended approaches October 2011, Chapter 1, pag.7.

Wind's opinion is that the gap between the bandwidth offered in the contractual terms and the actual speeds experienced is not a strict "transparency matter", but on the contrary is more an issue related to technical networks' features.

As regards to the quality of service requirements within the 2009 revised framework, there are some strong concerns about both its definition and its scope with reference to fixed and also to mobile networks.

In this respect, for fixed networks, it is a key point to understand that the quality of service offered by operators (especially an alternative operator, which uses the incumbent's network) strongly depends on many factors, including:

- the quality of the existing access network of the incumbent
- the distance from the exchange to the end user's premises
- the number of subscribers that use, at the same time, the bandwidth

Because of these factors and the difficulty in predict the performance of the single physical access, Wind allows its own customers to test their speed² with the Internet Access Measuring tool through an official web site (available at www.misurainternet.it.) monitored by the Italian Authority. The tool provide the customer with an official document including all the technical parameters (e.g, uplink bandwidth, downlink bandhtwith, latency) of network performance and can be used by the customers in case of disputes with their operator. However this tool can't be applied in 'subscribing phase' nor to every potential users to accomplish the measure and required the line to be 'active'.

For what concern mobile networks, it is a key point to understand that in practice it is not applicable a minimum quality of service level, since the mobile access is based on a shared access modality used by customer in mobility. This should not surprise considering that the cell sizing is based on statistical numbers which vary cell-by-cell, therefore it doesn't allow a *one fit for all* of minimum quality of service level. Since we know these mobile networks limitation, in Italy Wind doesn't use the maximum speed as a selling point in Wind's Mobile Internet communication, but rather we promote the benefit of surfing without extra cost .

Moreover from the point of view of an alternative operator, which uses the incumbent's network to reach its customer base, QoS may strongly depend on the QoS of wholesale products provided by the incumbent.

Considering that, We believe also that It should be clearly stated by the ISPs and Regulators that, due to technical performances of each operator's network, a transparent offers, which could give the confidence to switch from one operator to another, is based on statistical measures. As a matter of fact, even though, once connected, the user can tests new network's performance, performance advantages cannot be strictly guaranteed before his switching.

² following the AGCOM Delibera 244/08/CSP

This is due to the fact that, for example, in fixed network the quality of the copper line cannot be tested every time before a new contract due to the excessive cost of this procedure (in case of the consumer segment of the market). This also true in mobile network where, for example, among those factors which influence QoS, there is also the difference among subscriber's terminal and operative systems which are outside the operators control.

For all of the above reasons, we are not concerned about providing transparency nor providing further parameters to meet customer's need, on the contrary we are worried about their interpretation, especially by those customers without a good technical background. Beyond all we suggest that this particular aspect of minimum quality of service should be discussed in a separated and apposite consultation.

Moreover, Wind's opinion is that transparency helps customers to make well informed choices among different offers offered by different operators, and is in favor of a maximum "reasonable" transparency toward end users.

However is Wind's opinion that additional guidance on net neutrality is not necessary; regulation promoting competition in broadband services is the best solution. We are convinced that effective telecoms regulation brings open and competitive markets, which in turn promote investment. Investment in higher-capacity networks will allow us to avoid congestion. Competition among service providers, coupled with transparency, will allow us also to solve QoS problems (if any) as consumers will have the flexibility to move to the provider that satisfies their requirements and content/service/application providers will have the right-sized QoS to support their services.

Competitive risks may instead come from Content/Service providers which already detain a considerable market power (e.g. Google, Youtube, Apple, etc.) to the detriment of smaller or newcomers network operators. In fact, a not competitive/pluralistic Service Application market may negatively limit the possibility to access contents and services for the end-user. In fact these players are able to create "telecom-like" services (like VoIP and MoIP) without being obliged to provide any kind of assurance nor transparency, with the likely consequence to confuse customers, which may suppose to have the same service provided by a Network Operator.

For this reason, we would stress that Over the Top players should in principle be subjected by the same transparency obligations as well as other players (ISPs, Network operators, MVNO, etc.).

As an example, OTT players should inform customers that some of their specific contents (e.g., Video) are bandwidth hungry and could have impacts on customer internet usage (e.g., Youtube).

Finding 2 - The transparency objective is backed up by strong and detailed requirements on ISPs in the revised electronic communications framework. Other legal provisions in consumer and competition law are also relevant, but are not the focus of this paper.

Wind believes that the 2009 revised regulatory framework is able of dealing with the issues identified in this public consultation and absolutely capable to guarantee an adequate implementation of the network neutrality principle.

However the strengthening of the transparency and quality of service measures raised several concerns on its implementation and needs to be well understood before its adoption to avoid any distortion of the market as is today.

The strengthening of the transparency measures in the 2009 revised framework, raises some concerns about the amount of information that NRAs will be able to impose on operators. The Regulatory Framework guarantees the widest protection for users under the non discrimination and transparency principles and the existing privacy regulation complements the safeguard provided by the framework itself. Indeed, if on one hand a reasonable amount of information could help consumer to better understand services, applications or contents that they would buy, on the other hand an overload of information could confuse the consumer itself and bear upon operator's costs disproportionately.

Anyway Wind is strongly convinced that the existing framework is completely adequate to manage the present networks and the evolution toward the New Generation Access Networks (NGANs) and that regulatory Authorities should be very careful to introduce further regulatory constraints to MNOs/NOs which could prevent the developments and evolution of new services.

Finding 3 - *For net neutrality transparency, information is needed on both the general scope of the offer and on the limitations (general and specific) of the offer.*

Wind supports the self regulation as the first best solution for transparency. Then the direct approach can be agreed but not on a standalone basis, that means we believe that is more appropriate that NRAs should propose together with the ISPs which information are more relevant, in relation to transparency, and in which form they should be publicized, rather than impose any rigid measures.

Wind partially shares also the indirect approach but it is very important to avoid any misleading circumstances, in particular due to the fact that the role of the third party can be crucial in the process choice of the customers. In this view we want to highlight some risks related to third parties' role as information provider:

- a general decrease of customer trustiness on ISPs, likely due to the fact that if the third party is imposed by regulation this could implies the implicit message that there is a need of an external actor to grant transparent communications, for example, on quality of services;

- if information is not well conveyed by these third parties, it can confuse customers, for example with limited statistics, measures, especially on mobile networks, not providing the final understanding of the complexity of the service offered

For all of these reasons we are convinced that the information provided by these third parties must fulfill all the requirements set out by BEREC in this consultation (e.g., Accessibility, Understandability, etc.) and that also that these third parties should be well monitored by the NRA, for example assuring their independence by specific companies, clear comparison methodology, understandability of comparisons and so on.

One of the main Wind's purpose is satisfying the consumer's need to have information which must be clear and precise, also in order to ensure comparability between different offers, including quality of service offered. This is obviously also the interest of NRAs, but if requests are not reasonable, namely proportionate, due to *over-assure* transparency, the overload of information for customers in turn is equal to no-information, for this reason we propose to add at this stage of guidelines a 6th characteristic, described by BEREC in chapter II.2.d, namely "proportionality" which should be taken into account by NRAs as a principle to avoid any extra-burden of information both for customers and operators if the benefits from information don't exceed the costs to provide (and fully understand) it.

We are strongly convinced that proportionality is important as well as all five characteristics set out by BEREC in chapter II.1. A fully effective transparency policy cannot be built by any NRA without proportionality, both for customers and ISPs, for these reason, as we explained previously, we propose to add it as 6th characteristic to be satisfied to fully effective transparency policy.

For what concern the "general information about the market as a whole", we don't believe that such a information can be useful, in fact it should be considered that, for example, in mobile networks the main performance KPI in a region/country can strongly depend from BTS coverage (small footprint size). On the other hand, for what concern the need for more specific information, we would highlight that today Wind gives several specific information on its traffic management but not describing in detail how these policies can influence the user experience, due to the fact that a one-size-fits-for-all solution doesn't exist. For example, on the Infostrada website the customer can find the following note: *"Infostrada, in addition , may adopt traffic management and shaping procedures with exclusively technical reasons to control congestion and optimize the use of the Network, with the only objective of guaranteeing a uniform and homogeneous service to its users"*. In addition, in line with the Annex 6 of the AGCom's Delibera 244/08/CSP, which *inter alia* is publicized in each service of Infostrada , we provide detailed information on eventual limitations of the ports (actually no limitations), on eventual limitations in the Internet access service (today none) and on mechanisms of QoS. Moreover, quoting again the Wind-Infostrada's website, *"Infostrada applies a policy to ensure correct use of the wide band ("fair use") with the aim to optimize the average quality of the service to the advantage of all the users. This policy gives priority to conversational traffic (e.g., browsing, email, VOIP). The QoS policy adopted by Infostrada does not block any type of traffic"*.

Problematic versus non-problematic traffic management measures

Considering the issue related to problematic and non-problematic measures stressed in BEREC's document, from Our point of view there is no real benefits for a further classification such as to divide (and classifying) traffic managements measures between problematic and non-problematic measures. This kind of distinction could lead only to classify extreme cases while the largest part of measures will not be included in these two categories. Anyway such a definition should be leaved to each NRA, in consultation with all interest parties (e.g., consultation on QoS).

However, in general a non problematic traffic management will a have a small effect on the single user, but this is not necessarily always the case .A significant example can occur when the operator, in order to protect the internet experience of the majority of users deems it necessary to reduce the bandwidth. In particular when few heavy users would use an excessive amount of bandwidth to the detriment of other users. This can occur when a certain threshold is overcome, for example in certain hours of the day. When this condition is transparently described and applied we consider this as a non problematic traffic management measure. In general ISPs may apply traffic management procedures not only to protect the network against degradation but also to protect the average final user to allow inoffensive packets to flow through the network without their being excessively damaged by a small number of users.

Different types of offers

Wind believes that in order to increase Internet penetration, each operator should provide an efficient transparency offer. Transparency is not only a philosophical approach, but also a commercial one. This was exactly the approach of Wind's mobile internet offers launched in early 2010. These offers are virtually unlimited, because there is no a "fair usage policy" by which an extra fee is charged to the user, but only a maximum allowance for each offer (after which the speed is throttled down) allowing the user to browse without limits till the renewal of the offer (weekly or monthly). Maximum flexibility is left to the user with monthly bundles that can be purchased again in case their speed has been throttled down. These kind of offer has been immediately adopted also by all other major Italian operators, helping also the end users to subscribe a mobile internet bundle with a clear and transparent understanding of what is offered with a general improvement of transparency on the whole market.

From our understanding of the market, the possibility to have a special price on dedicated, even if limited, services is an advantage for the end user that pays exactly for what is intended to use. Internet evolution, especially on mobile market where services like Apps or M2M are still "growing", cannot be easily foreseen, so any kind of business model could be possible in the future. That's why different model of offer should be provided to end users, even "service dedicated" ones (e.g., music service coupled with "embedded connectivity", namely where connection price is within the service's cost).

Different types of networks and technologies

We are strongly convinced that distinguish between fixed and mobile networks is necessary and is a priority both from a technical point of view and in terms of the “meaning” of the information that will have on customers. In a general way fixed and mobile networks must fulfill the same transparency principles but not share the same measures. Network speed can depend from several parameters that are in most cases not predictable nor the same for these two networks. It can also be argued that in case of fixed ADSL access at least the first part of the connection between the user and the equipment terminating the copper line (i.e., DSLAM) consists of a dedicated copper line , even though the quality of the copper can differ and influence the performance. Instead, in the mobile case even the first part of the connection between the user and the radio base station is a radiofrequency *common* resource between all users, making it much more difficult to predict and easily describe performance to users.

Different types of end users and usages

To help user to find the best offer for its needs, some ISPs already give suggestions for Mobile Internet Bundles, indicating what is the best suited offer for customer's handset (e.g., Wind offer is differentiated for smartphones, tablet or PC users³). This is an easy way to improve understanding and comparability between competitors' offers and to help customers to find the right offer for their usage, paying exactly what they need.

Finding 4 - *For net neutrality transparency, it is necessary to consider both direct and indirect actions. A direct approach is compulsory. An indirect approach has a complementary nature, but NRAs should definitely evaluate their role in promoting it. Indeed, how effectively an indirect approach is promoted will have impacts on the efficiency and proportionality of a transparency policy, with the potential for greater achievement on that market.*

See comments above. However, as stated before, Wind supports the self regulation as the first best solution for transparency. As an evidence of this approach for Mobile Internet scenario, Wind has been the first in Italy, without regulatory imposition and by its own, to launch offers without extra-cap – to prevent any kind of bill shock to customers. These offers are based on a maximum allowance (e.g., Wind's Internet No Stop offer⁴ where customers pay for a monthly 1 Gigabyte allowance) after which the speed is throttled down. This structure of offer were immediately proposed also from other operators with a reasonable improvement of user experience, due to its wide adoption, and transparency in the communication of the offer for all Italian customers.

³ <http://www.wind.it/it/internetmobile/hp/>

⁴ <http://www.wind.it/it/internetmobile/pagina87.phtml?sez=Privati>

Then the direct approach can be agreed but not on a standalone basis, that means we believe that is more appropriate that NRAs should propose together with the ISPs which information are more relevant, in relation to transparency, and in which form they should be publicized, rather than impose any rigid measures. Wind partially shares also the indirect approach but it is very important to avoid any misleading circumstances

Finding 5 - *Common terms of references about aspects of the Internet access service, including agreement on which traffic management measures are “non-problematic”, can help to make the transparent information to end users simpler, and therefore can make a transparency policy more effective.*

Wind’s opinion is that common terms of reference for the description of Internet access services are useful and can increase comparability between different providers’ offers but it is worth to highlight that such common terms should be settled with the participation of all stakeholders, first of all with ISPs to avoid any restriction to their commercial freedom, considering that these common terms could influence the way to commercialize offers by ISPs. However, the current competition is already pushing ISPs to adopt similar/same terms to explain their offer’s features, so this process should be left to the market dynamics rather than address it with regulatory impositions.

We would stress again that there is no real benefits for a further classification such as problematic and non-problematic measures. This kind of distinction could lead only to classify extreme cases while the largest part of measures will not be included in these two categories (for more details see Findings 3). Moreover it could be argued that traffic management techniques don’t specifically refers to access services.

Finally It may emphasized that the proposal to use measurement methods closer to the end-user experience should complement, but not substitute, more objective methods, such as for example the tiered approach, that is more user friendly, due to its tiers of information about the operator’s offer.

Finding 6 - BEREC finds it very important that definition, characteristics and consequences of fair use and data caps policies are fully explained to end users.

Scope and content of the offer

Wind agrees with BEREC that it's really important to enforce customer trustness and to inform them about the features of the service offered. Wind already does it by publishing on its web site the general conditions for its services.

However, as previously stated, a common terminology among operators is a good starting point to enforce offer comparability but it should be clear that is not possible to restrict commercial freedom of operators forcing a common commercial terminology.

Actual speed

For what concern the relation between advertised speed and actual speed, we want to remark that exist several factors that are outside the operators' control, but which influence significantly the experience of users. In fact, the actual speed, from the customer's point of view, is not a measure that can add more awareness on the service bought from operators, due to the fact that is the perceived speed that influence the user's experience, even if this is not measurable and it is strictly subjective.

It must be well pointed out that in the case of fixed access the speed experienced by the user depends, for example on the quality of the copper pair, the distance from the Central Office, the home wiring and eventual wireless configuration and that the advertised speed is not a guaranteed value but a typical average. So it should be recognized that exist several conditions which are not under the ISPs control and that can affect the experienced speed, which resides in the level of *total* ISPs network traffic which is also function of the concentration of users in busy hours and in other congestion points in the path to the final destination which are also not under the ISPs direct control. In this view, on the Wind-Infostrada web-site the following notice is present: *"Infostrada, in addition, may adopt traffic shaping mangement policies with exclusively technical reasons, to control congestion and optimize the use of the Network, with the only aim to guarantee an homogeneous and uniform use of the Network. The speed of 20 Mega is in addition dependant on the use of ADSL routers compatible with ADSL2+ standard."*

Since we cannot perform a prequalification of the copper line before the contract, we cannot strictly guarantee all technical parameters, for this reason we usually give average or statistical measures to the user that chooses a certain advertized profile. In the contractual phase only the advertised speed can be taken into account.

The actual speed of each user depends on "the way" the ADSL modem connects to the network, every time it is activated and depending on the quality of the copper line and its length and interference status.

In the *Carta dei Servizi*, available on the Infostrada web-site, the guaranteed speeds for each commercial profile are displayed in compliance with the AGCom's Delibera.244/08/CSP. These are determined by applying a precautionary margin to the statistical values measured on representative lines of an average user in ideal conditions for each of these profiles. So the actual speed will be determined by the frequency step at which the ADSL modems automatically sets itself which is dependant on the quality of the copper pair and which may be verified only on demand following a specific complaint by a single user, or it can be read directly by the user on the ADSL modem.

Moreover, from a mobile point of view for example, there is a huge difference in browsing experience on smartphone or on PC. In general, phone browsing needs a more limited bandwidth than the PC's one to perform a good navigation, due to the fact that there is already an optimization by some mobile phone's browsers or web sites to increase user's experience.

In this view is clear that, both for fixed and mobile networks, users can use a great number of different devices, handsets, operative systems, hardware and so on, that may affect significantly the user's experience and so the speed perceived. For these reason we strongly believe that all of these factors should be well considered during the evaluation process by NRAs (but also by BEREC with this document) and during the writing of information list to be fulfilled by each operator.

Transparency on minimum QoS offered and other service quality parameters

As already underlined above, both for fixed but especially in mobile network, no minimum QoS can be guaranteed, and Anyway it should be discussed in a separate consultation.

Transparency on fair use policies

It would be possible to agree through a consultation process on a set of thresholds relative to fair usage, however it would be necessary to be very careful not to create legal conflicts as a consequence of incomplete comprehension or of excessive details to the users.

Anyway, we would underline that the general disclaimer on "a fair usage" requested to customers in operators' contract is used almost always as a moral suasion and not as a real rules of intervention on customers' behaviors. In fact the Wind's Contract Template includes specific article (i.e., article 4.12) which refers totally to the Customers Responsibility of a 'fair usage' of the Services. The article warns the user not to cause damage or bring outrage by using the service.

Wind believes the this warning represents a reasonable measure to inform the customers whereas specific policy for every single case would be objectively difficult to be individuated and applied.

Moreover and specific for Mobile Internet portfolio, Wind adopts a sort of embedded "fair usage policy", namely the maximum data cap allowance (see also the above comments): actual portfolio is mainly based on unlimited offer with an allowance (in GB) after which

customer speed is throttled down, but never blocked, and user can browse as much as he wants. However, for pre-paid customer, exists the possibility to purchase again the offer if the allowance is exceeded.

Finding 7 - *With regards to the regulatory remit of transparency, BEREC believes that NRAs should focus on the following objectives:*

- the highlighting and clarification of what can be considered as reasonable limitations to an unrestricted offer of access to the Internet;
- the empowerment of users, which in this regard includes monitoring tools that are described below.

Wind shares the BEREC's general approach to provide more information to end-users capable to increase the consumer awareness when choosing among different operators.

Moreover we believe that too much information is equal to no-information, so a balance between costs and benefits of each information requested by NRAs is necessary to avoid the information overload which in turn both reduces the customer's awareness about operators' offers and increases significantly the operators' costs to provide and update these information.

Bearing in mind these considerations, we are in favor of providing information about operators' traffic management techniques and in most cases these information are already present, in a general way, on Wind communication (e.g., if congestion management and/or throttling are used or not) but we are not confident with the needs of more specific information (e.g., application agnostic), especially if the majority of end-users haven't a technical-background that is capable to fully understand these consideration. Anyway we consider that a national public consultation should be encouraged by BEREC, adding a respective wording, also in respect of the questions listed in the document (e.g., questions in Chapter III.3.a),

Finally, for what concern the relation between policies and end-user experience, we want to remark that exist several factors that are outside the operators' control, but which influence significantly the experience of users. In fact, both for fixed and mobile networks, users can use a great number of devices, handsets, operative systems, hardware and so on, that may affect significantly the user's experience as well as actual speed perceived, even if the latter is not measurable but on the contrary is strongly subjective. For these reason we strongly believe that all of these factors should be well considered during the evaluation process by NRAs (but also by BEREC with this document) and during the writing of information list to be fulfilled by each operator.

Finding 8 - *With BEREC finds it particularly helpful that appropriate tools are made available for the users to monitor their access service.*

We would stress some more carefulness on tools listed by BEREC, in particular these should not be excessively technical-oriented, they should be more oriented to allow the user to verify the good performance of the connection. It would be inappropriate for users to enter into the details of traffic management processes but it is appropriate for them to monitor their user experience. Anyway Wind's believes that, in general, some Tools can be useful if operators can receive a feedback to improve performances of the connection and the overall user experience, where needed. We believe that this should produce mutual benefit for both operators and customers.

Finding 9 - *BEREC considers that a transparency policy should encompass the whole range of information categories: generic/comparative/individual indicators; scope of the services and limitations...Data may thus need to be organized through a multi-approach system of transparency, adapted to the main different situations.*

See comments on findings above.

Finding 10 - BEREC notes that all three types of bodies have strengths and weaknesses with regards to the provision of information. A successful transparency policy depends in part on the possibility to promote each party's participation where it is the most relevant.

Wind believes that ISPs should continue to be the principal actors in providing transparency to their clients. As recognised by BEREC, ISPs are best placed because of the knowledge they have of their business and of their clients, provided that the burden on ISPs is proportionate and reasonable.

However, we partially support an *efficient* and *proportionate* transparency policy involving also the interaction with third parties (such as the NRAs, consumer associations or comparison sites) to implement a system allowing end users to compare more easily and effectively the quality provided by different ISPs (see findings above, in particular Finding 3).

In this view we are convinced that also the information provided by third parties must fulfill all the characteristic set out by BEREC in this consultation (e.g., Accessibility, Understandability, etc.) and that these third parties should be monitored by the NRA as well as provider due to their potential influence on customers choice (for example assuring third parties independence, assuring that methodologies used for comparisons are fair and understandable, etc.).

Finding 11 - BEREC considers that bringing together all key information (not only related to net neutrality) in one place, such as a one-page summary (as mentioned in the Tiered Approach example), would simplify matters for end users. This provides a great challenge, but could be favoured if NRAs advertise relevant third parties initiatives.

We are in favor of the current transparency approach (designed by 2002 and 2009 Regulatory Framework) and we don't see the need of further regulatory interventions on it, both for fixed and mobile networks.

However, if NRA, due to country's specificities, believes that further intervention on transparency are needed, we believe that such a decision and the consequently measures should be taken in coordination with all the stakeholders. In this view a tiered approach can be discussed.

On the contrary, from Wind's point of view, it seems to be too early to introduce visual representations systems, such as the one described by the study of Technologia and reported by BEREC (i.e., represented in Figure 2 in Chapter IV.2.a.c).

We believe that EC (as well as NRAs) should examine which effects will have the new Regulatory Framework in terms of transparency on each Member State before burdening providers with further details, considering the new regulatory tools in terms of transparency

that this Frameworks give to NRAs and that less than half of member states have fully transposed the 2009 Regulatory Framework⁵. Moreover EC should also considers what is the balance between costs and benefits of each information to be provided, that is not the same but on the contrary vary case by case. In this light, only once EC will find a common and harmonized approach to transparency (e.g., terms, parameters, etc.) it will be possible to discuss on such a visual representation.

For what concern the real time information tools, as previously underlined, too technical tools would confuse customers.

Anyway, Although there are a lot of different users, we prefer to have a simple, easy to understand level on information not generating confusion to the huge part of users with too much technical details.

Finally improving access to information through more effective means of transmission can be done with the company's web page but not through "push systems", such as (non-requested) SMS to the users, that can be very costly and not fully understandable (e.g., SMS text is too short to be considered exhaustive related to contractual terms)

Finding 12 - *BEREC believes that the end of comparability is required, whatever the means of achieving it. It considers that NRAs have a role to play, either by directly devising a common framework of reference, based on industry-wide metrics, or by supporting self- or coregulatory approaches.*

Wind strongly believes that is the self regulation approach that should be firstly promoted. Collaborative approaches are in the best interests of all market players and, as shown in the UK KFI example, they can deliver balanced results but should be well evaluated (for more details see Finding 3).

Wind believes that NRAs should foster self-regulation in the context of a common framework of reference promoted at EU level, monitoring the implementation of self-regulation and act accordingly. This approach would avoid the adoption of measures taken at national level exceeding the required level of regulation.

Finding 13 - *BEREC considers fundamental to ensure that information is able to be verified on a regular basis. Monitoring processes should be based on clear, industry wide principles. Ideally, these should be auditable and designed to capture all aspects of the operators' policy evolutions (general and specific limitations, etc.)*

Generally speaking it is important to underline that accurate transparency measures doesn't require a strict monitoring. As correctly states by BEREC it is worth recognizing that perfect accuracy is usually not possible and in a competitive market normally no operators want to give non-accurate information.

⁵ Finding from COMMUNICATIONS COMMITTEE, 46th MEETING – 18 October 2011



A monitoring system could imply huge costs for operators and it should be well considered “where” it is necessary, namely where competition is not working well. Today, the competition and the NRAs' powers to intervene both ex-ante and ex-post are strong tools to discourage non-transparent commercial practices. Tools to monitor dynamically the transparency of ISPs would be too costly and with problematical implementation and maintenance.

For these reason We believe they are not feasible and we state they should not be recommended and we are not convinced that a monitoring system is necessary, instead it seems to be a good system to make up a situation where regulation and competition are not enough to ensure transparency. Such a tool could be used by each member state, if required and on a case by case basis, if significant evidences of malpractice/complaints are judged as a lack of accuracy.