Body of European Regulators for Electronic Communications

BEREC

BEREC CHAIR 2012 AUSTRIA

PRESS RELEASE

BEREC publishes net neutrality findings and new guidance for consultation

Today BEREC has published the results of an investigation into traffic management and other practices resulting in restrictions to the open Internet in Europe. This was carried out jointly with the European Commission. The findings represent a “snapshot” of the European market based on over 400 responses to a questionnaire addressed to European operators in fixed and mobile markets. This is the first analysis of its kind and with it BEREC aims to further contribute to the European debate on this important matter.

At the same time, BEREC is consulting on three new publications in the context of Net Neutrality:

- quality of service guidelines,
- a report on differentiation practices and related competition issues,
- a report on IP Interconnection.

This follows its earlier adoption of Transparency Guidelines and a quality of service framework report, both published in December 2011.

To help explain how the various pieces of work fit together, BEREC has produced an **explanatory note**, in which it makes the following observations:

- The IP interconnection market has developed very well to date without any significant regulatory intervention.
- The separation of network and application layers is a characteristic feature of the best effort Internet, and has enabled innovation and growth.
- While traffic management and differentiation practices are not intrinsically harmful, they are nonetheless capable of being used for questionable purposes or in an inappropriate manner.

- The situation is different in different Member States, and BEREC is proposing general criteria to enable NRAs to evaluate these practices on a case-by-case basis in their respective markets.

BEREC's conclusions on the issue of net neutrality include the following:

- Competition is expected to discipline operators, and ensure the best offers for consumers, but this critically relies on effective transparency and the ability of end-users to easily switch service providers.
- Both NRAs and end users should be able to monitor the performance of the Internet access service, and of the applications used via that Internet access service.
- Where competition and transparency are inadequate or insufficient to address concerns, existing regulatory tools (including quality of service requirements) should enable NRAs to address net neutrality related concerns for the time being (though not all of these tools have been fully tested yet). NRAs are ready to act without hesitation if necessary.

BEREC is committed to the open Internet and will continue to closely monitor the evolution of the market and seek to ensure that NRAs are able to respond swiftly and effectively to any future net neutrality related developments.

What the documents cover

According to the **traffic management data** gathered by BEREC, a majority of ISPs offers Internet access services with no application-specific restrictions. But specific practices, such as blocking or throttling of peer-to-peer traffic or VoIP (which occur more often in mobile than in fixed networks), could create concerns for end-users. One of BEREC's findings is that at least 20% of mobile Internet users in Europe experience some form of restriction on their ability to access VoIP services, although there are differences by country (depending for example on the number of operators providing unrestricted access).

The report on **differentiation practices and related competition issues in the context of Net Neutrality** provides a conceptual framework for analysing the effects of differentiation practices, such as blocking or prioritisation of traffic, on competition and innovation. It examines various differentiation practices applied to Internet access services and considers how these might, in principle, harm the interests of end-users and have a negative impact both on electronic communications markets and on content application and services markets.

The **guidelines on quality of service in the scope of net neutrality** advise NRAs on when and how to exercise powers to impose minimum QoS requirements on operators in order to prevent traffic degradation. They provide guidance to NRAs on how to assess the nature of traffic management practices, and how to reflect the particular context of the national market in question.

The **assessment of IP Interconnection in the context of net neutrality** explores how the unregulated IP interconnection market between ISPs and other intermediaries in the Internet value chain has developed. The report analyses how deviations from net neutrality might be reflected at the interconnection level, and considers related regulatory issues.

The public consultation on the three documents is open until 31 July 2012. Responses can be sent to the BEREC Program Management mailbox at pm@berec.europa.eu. Comments should preferably be given in English.

29th May 2012

Note for the editor:

About the Body of European Regulators for Electronic Communications (BEREC)
BEREC is composed of a Board of Regulators consisting of the Heads of the 27 national regulatory authorities (NRAs) with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services. BEREC will advise the European Commission and the NRAs, and assist the European Parliament and Council, on issues related to the application of the EU regulatory framework for electronic communications. BEREC will help to ensure fair competition and consistency of regulation in the internal market for electronic communications to benefit consumers. In particularly providing expert advice on market definitions, analysis and remedies, definition of transnational markets, cross-border disputes and numbering issues. Furthermore, BEREC will provide expert opinions on emerging challenges such as the promotion of broadband, net neutrality and converging markets, and is ready to play an active role in the discussions in the public domain on these issues.

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