

Traffic Management Transparency

BT's response to BEREC's draft guidelines on Net Neutrality and Transparency: best practices and recommended approaches¹

1. BT welcomes BEREC's active interest in internet markets, but considers that a set of principles, rather than a detailed set of guidelines on transparency, would be more beneficial at this time.
2. We agree wholeheartedly with the European Commission's and BEREC's view that competition, including low barriers to switching, is a pre-condition of an open internet. We also concur that transparency is part of the same foundations that will ensure the internet continues to deliver benefits for all stakeholders. Indeed, it is for this very reason that BT has been at the forefront of the UK Industry initiative which has this year seen a step-change in ISP transparency about traffic management practices.
3. The promotion of competition in internet services, including transparency with regard to internet access, is one of the cornerstones of the revised European Framework Directives, as BEREC recognises in its introduction. These Directives were implemented in Member States less than six months ago. It therefore seems premature to be drafting detailed guidelines to address perceived failures in transparency, and certainly without a proper assessment of how the new transparency requirements have been implemented.
4. It is not at all clear from the draft document, the extent to which the guidelines have been based on actual research of end-user needs. Given that three of the six characteristics of effective transparency (that is, accessibility, understandability² and meaningfulness) can be determined neither by regulators nor providers, it is crucial that end-users' requirements are fully taken into account. Yet barely four paragraphs in the draft guidelines touch on end-users' needs. Whereas some UK experiments and related research are cited in Chapter IV, the actual supporting evidence is not available publicly as yet; this makes it impossible for respondents to come to a reasoned view of much of Chapter IV's content.
5. Furthermore, the draft guidelines refer extensively to other work that BEREC is in the process of conducting³. This includes the forthcoming *Quality of Service* report, to which is deferred a number of concepts that appear to be crucial underpinning elements of any traffic management transparency requirements. These notably include the methodology for defining and distinguishing between 'problematic' and 'non-problematic' traffic management measures, and yet these terms are nevertheless used widely in the draft guidelines. Given that BEREC's own assessment of these vitally

¹ BoR (11) 44 published 3 October 2011 at http://erg.eu.int/doc/berec/consultation_draft_guidelines.pdf

² Incidentally, we would recommend that the construction throughout is changed to "understandable"; "accessible"; "comparable"; "meaningful"; "accurate"; "proportionate"; this would avoid the use of "understandability" which is not a recognised word in English.

³ We also note from the introduction at http://erg.eu.int/doc/berec/consult_info.pdf that BEREC is carrying out other work on inter-related subjects such as competition, discrimination, innovation and consumer welfare. These seem to us to be crucial parts of the jigsaw, to which we might add protection of children (transparency requirements for which will be distinguishable from general transparency requirements). We would suggest that none of these facets can be examined in isolation from the others.

important facets of the market is not yet apparently far advanced, it seems to us premature for it to be drafting detailed guidelines and certainly for comments on these to be invited before much of the supporting work has yet to be published or even completed.

6. The case studies from other sectors (in Annex B) are interesting, but surprisingly limited for such an important and comprehensive paper. One of the three sectors does not operate in a commercial or competitive market and it is not clear whether the other two are intended as good examples or not. Certainly, it does not appear that other comparable sectors have embarked on transparency requirements of the same level of prescription - detail down to the relative size of fonts is included on page 40 – as is contemplated here.
7. We think the market would undoubtedly benefit from a common set of principles for effective transparency – and BEREC's proposed criteria of accessibility, “understandability”, meaningfulness, comparability, accuracy and proportionality appear to us to be perfectly reasonable.
8. The internet has developed very rapidly and continues to attract new business models and innovative solutions. Industry and consumers will be in a better position than regulators to understand and adapt to such changes. BT therefore believes regulators should allow the market to take the lead in putting the above principles into practice and respond to consumer demands accordingly. Industry will probably need a good deal of help from regulators and other stakeholders such as consumer representatives and third-party comparison organisations. From our own experience in the UK, we are convinced this is an area that will benefit greatly from a collective – and iterative – effort, based on guiding principles, rather than a unilateral approach.
9. Given that neither the Commission nor National Regulatory Authorities have identified a market failure, it seems inappropriate for NRAs to contemplate prescriptive remedies, of which a 63-page set of detailed guidelines is redolent. While BT welcomes any constructive role that NRAs might play in promoting transparency, it cannot accept that in any competitive market there would be justification for concluding that “NRAs should decide which types of information are the most relevant for end users, and in what form such information must be provided” [page 16], certainly without a comprehensive and evidence-based rationale.
10. BT definitely welcomes the inclusion of ‘proportionality’ in the criteria for an effective transparency policy, but believes this has been given insufficient emphasis. There is a need for a comprehensive cost-benefit analysis of any NRA transparency requirements which should include an assessment of the likely indirect costs (for example the effect on competition and innovation) as well as the direct implementation costs. The likely impact on smaller players as well as larger ones must also be a key factor in the assessment. It is, of course, consumers who will ultimately be paying the cost of transparency and so it is crucial that the benefit to them justifies the cost.
11. We are particularly concerned that BEREC appears to consider application and content providers to have the same needs of transparency as domestic consumers and therefore

to need the same safeguards. While we note from the top of page 8 that no specific requirements are analysed in the draft guidelines in relation to this category of 'end user', we believe BEREC should first establish that the Commission intended transparency provisions to extend into the commercial/wholesale markets in which multi-million dollar enterprises operate, given that the focus of the European Framework is unequivocally on the consumer. It would be advisable for BEREC to be explicit about what further work it proposes in order to assess the transparency requirements of other categories of internet user.

12. BT looks forward to responding to Ofcom's own consultation on these and related matters when this is published imminently. We trust this will provide an opportunity for other stakeholders to examine the research on which BEREC has relied for a number of the suggestions in its guidelines.
13. In the meantime, BT would recommend that BEREC considers extracting from its draft document a set of principles for use by internet stakeholders and returns to the draft guidelines as necessary once it has completed its other important work in this area. We think Chapter II Section 1 and Chapter V Section 2 might lend themselves well to this.
14. BT believes it is the role of National Regulatory Authorities (in conjunction with the European Commission) to ensure that wholesale markets are subject to effective competition. If that objective is met and a sufficient level of transparency is provided, the demands of consumers - including any demands for different levels of quality of service - will be satisfied by competing providers. BEREC should therefore focus first and foremost on assessing and ensuring wholesale broadband markets are open to full and effective competition, setting out principles of best practice accordingly. Only if there is then a demonstrable failure by the market to meet those principles should detailed guidelines be contemplated.

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