

LIBERTYGLOBAL



Liberty Global

This response is provided by Liberty Global Europe BV on behalf of itself and the other companies in its group (together Liberty Global).

Liberty Global is the leading international cable operator offering advanced video, voice and broadband internet services to connect its customers to the world of entertainment, communications and information. Liberty Global operates next generation hybrid-fibre-coaxial (HFC) networks that pass 31.4 million homes serving 17.6 million customers in 14 countries, employing 20.000 worldwide, 85% of which are located in Europe¹.

Through its UPC Broadband division (UPC), Liberty Global is active in 10 countries in Europe offering video, broadband internet, and voice services to customers. UPC operates cable networks in Western Europe (Germany, the Netherlands, Switzerland, Austria, and Ireland) and Central & Eastern Europe (Poland, Hungary, Romania, Czech Republic, and Slovakia) under the brands UPC, Unity Media, Cablecom and Telenet. Our network passes 22.8 million homes providing services to 13.4 million customers. LGI is a long term industrial operator in Europe investing and driving innovation and ensuring healthy competitive dynamics as the most reliable challenger to incumbent telecommunications operators.

Our businesses have played a leading role in the growth of fixed high-speed broadband networks and services across Europe, and today through our Next-Generation broadband internet services we offer some of the fastest down-stream speeds – up to 120 Mbps – right across Europe. We offer some of the fastest broadband speeds available in Europe. Our continued investment in, and management of, hybrid fibre co-axial (HFC) networks is focused on delivering high quality, secure broadband connectivity so customers can access the content, services and applications of their choice.

¹ www.lgi.com

We are committed to a policy of transparent and clear communications with respect to the capabilities of our broadband connectivity products and believe this is the foundation of customer choice and flexibility in determining which provider can meet their service requirements most effectively and efficiently.

General observations

Liberty Global welcomes the focus of BEREC's consultation on transparency of consumer offers from competing internet service providers. In our view transparency is key to ensuring that the consumer fully benefits from the rich and complex competitive environment for ISP connectivity services, one in which Europeans have a meaningful choice amongst network operators. Indeed, we also note how **transparency is an increasingly significant factor in the process of competitive differentiation** through which operators are seeking to retain existing or attract new customers.

Whilst recognizing that consumer facing transparency measures are a significant factor in ensuring consumers are well informed of the competitive choices available to them, it is important that the guidelines fully recognize the need for transparency from other players supplying services and applications into the wider internet ecosystem.

In this respect, we would welcome a broader policy commitment to enhancing consumer awareness and understanding of broadband offerings, and the roles which differing suppliers of services play within this ecosystem, as part of a wider package of education measures NRAs, consumer authorities and other governmental organizations could consider.

The internet is a public and global system of interconnected computer networks, a network of networks consisting of millions of private, public, academic, business, and government networks linked by a broad array of electronic and optical networking technologies. It has no centralized governance in terms of technological implementation or policies for access and usage; each constituent network sets its own standards. Within this global framework, LGI's hybrid-fibre-coaxial networks in Europe are one of approximately 50,000 networks which currently make-up the Internet.

As such BEREC and national regulators must recognize the limitations of transparency undertakings by ISPs. **We recommend transparency measures directed at ISPs are complimented by similar commitments from content, application and service providers** to improve consumer awareness and understanding of the choice of broadband services available to them.

The broader internet ecosystem is widely acknowledged to be a two sided market in which content, applications and service providers have the ability and the incentive to potentially restrict access to their offerings over broadband connections or devices, either for the purposes of content protection or as part of a wider commercial strategy.

In this respect, and in particular to ensure consumers are fully aware of the implications of any 'quality of service parameters' an offering may include, **we would urge BEREC not to confine its guidance on transparency only to suppliers of broadband connectivity services.**

We also believe **the draft guidelines are right not to attempt to develop policy guidance with respect to traffic management practices, policies or technologies**, and to how potentially, these practices can be used to implement differentiated quality of service arrangement for end consumers, and whether such ISP practices and policies are considered acceptable or not to policy makers and regulators. It is only right that these thorny and controversial aspects of the net neutrality debate are the subject of a separate consultation exercise by BEREC, the findings of which will be published in early 2012.

In terms of its relationship to existing legislative measures to enhance transparency, we believe the draft guidelines should be amended to reflect **a phased approach**

1. the EU telecom package obligations to inform consumers of ISP practices in regard to traffic management are in the first instance the most effective means to improve consumer information on broadband connectivity
2. That their widespread application by Member States has yet to be undertaken and therefore it is too early to conclude that additional obligations are necessary
3. Only in the event where Member States find that implementation of these obligations have been insufficient in ensuring meaningful levels of consumer transparency, and where market failure has been deemed to have taken place, should additional, self-regulatory measures be implemented to address specific and identified gaps in the provision of transparent information to consumers.

We consider that NRAs should be directed by BEREC to implement the provisions of the EU telecoms package as quickly as possible and, as a first step of a graduated or phased approach to transparency in this area.

Consideration of additional obligations, for example, a process of self-regulation led by industry should be a subsequent step to be undertaken only upon effective implementation of the relevant legislative obligations, and where pre-identified market failure conditions have been breached by ISPs operating in a Member State.

BEREC's analysis and draft guidelines are likely to promote best practice on the principles of transparency in individual Member States. However, they should not set a favored or mandated set of transparency obligations to be applied on a Community wide basis. **The choice of approach to enhance transparency of broadband connectivity services to consumers should in our view remain the sole preserve of national regulators**

Additional transparency obligations deemed to be necessary must, should as a general principle, be agreed and implemented across an entire national ISP community on a technology neutral basis in order to ensure predictable regulation and a level playing in each Member State.

An uncoordinated approach between competing ISPs with respect to the transparency obligations derived from a process of self-regulation could in our view have unintended consequences and lead to an uneven competitive market place, and may serve to undermine the incentives for operators to continue the process of network upgrade to meet the rising demand for data bandwidth capacity.

NRAs and other national authorities have a key role to play in leading such initiatives to ensure that they are accepted by all ISPs

The role of different actors in the provision of transparency

We have already observed that transparency is key in allowing consumers to gain the benefits of competition between platforms. As a result, and where the legislative obligations of the telecoms package have, subsequent to implementation, not provided sufficient consumer transparency conditions, NRAs should ensure that industry delivers appropriate self-regulatory initiatives. In addition, there is also the added incentive upon industry to enact these measures in place of more formal regulatory obligations. .

In general terms we favour the direct approach toward transparency in which the ISPs are responsible for the provision of information regarding traffic management practice affecting connectivity services, guided by NRAs in accordance with implementing the provisions of the EU telecoms framework.

However, we do agree with the draft guidelines that the indirect approach compliments undertakings made by ISPs directly. In particular, and across a range of EU markets in which we offer services, we support the development of a healthy and competitive third party price or service comparison website market place² and in some instances we seek to integrate their services within our own product marketing, for example by directing consumers to these sites from our national homepage.

Our support for 3rd partys comparison sites is, however, conditional upon their service being externally validated or endorsed by a national consumer body or a NRA, to the effect that their services are trustworthy and their data sources and analysis are reputable. In this respect, we do see potential merit in the development of an accreditation scheme underwritten by either a national consumer organisation or an NRA, that could declare a price comparison service as fit-for-purpose.

Whilst indirect approaches of this nature are valuable, we would not support a policy of mandated engagement under which ISPs would be required to supply specific information, or information in a specific format, to third party comparison sites. In our view, this market should not be artificially supported and should operate on the basis of self-supplied publicly available data to supply price and service comparison services to the general consumer market. Failing this, we would urge BEREC to ensure that any data gathering requirements an NRA may seek to impose should not be allowed to drive product design.

A notable omission in the draft guidelines is recognition of the power consumers have already in gathering information on traffic management practices, based not on legislation, but on existing transparency practices by ISPs. Consumer demand for meaningful and comparable information to base their choice of supplier on is already a powerful force, and one which compels ISPs to be clear about the scope, limitations and capacities of their service offering.

The content of a transparency policy

² For example, we welcome OFCOM's accreditation of cable co uk's price comparison service on November 2nd. See <http://www.cable.co.uk/>

As already observed above, we recommend that transparency measures directed at ISPs are complimented by similar commitments from content, application and service providers as part of a wider commitment to transparency aimed at improving consumer understanding of broadband service offerings in their entirety.

However, we strongly concur with BEREC's analysis that too much detailed information will be counterproductive to ensuring consumers are adequately informed to allow them to take informed decisions. The key to a successful approach to transparency is to ensure a comprehensive but targeted informational experience for the consumer without the imposition of overly burdensome obligations on providers that could jeopardise future investment and innovation.

With respect to the discussion on a single page summary of broadband offering, we welcome voluntary efforts by ISPs to make available the general principles of traffic management practices on their webpages. However, we would caution against regulators mandating the technical details and requirements to be included in a summary of a service offering.

As regard the provision of real-time information on traffic management (page 44) we would strongly recommend against this level of granular detail to be made a consumer information requirement. In our view, this would run counter to the objective of providing comprehensive but targeted information to consumer, and has the potential for widespread mis-interpretation by consumers. It could also be technically difficult to implement in systems which are not necessarily managed or reporting in real-time.

In light of our earlier comments, we do believe that the availability and use of simple speed measurement tools³ by consumers is beneficial, and enables them to assess key competitive differentiators between service providers more easily. However, this tool, or any other, should not be made a mandatory transparency obligation by an NRA or BEREC.

Finally, and in general terms, it is important that additional transparency requirements over and above those in the Universal services Directive and considered necessary by NRA in a given Member State should not disrupt the freedom of ISPs to package broadband connectivity products flexibly, nor unnecessarily restrict product design and innovation.

Transparency of traffic management

BEREC is right to focus draft guidelines on transparency measures that will improve consumers' access to simple, clear and meaningful information to compare offers from competing providers.

With this in mind the transparency of traffic management practices by ISPs are not the sole determinants of an end customer's broadband experience. Accordingly, the information obligations applicable to ISPs should be limited to those which are relevant to the delivery of advertised speeds, or where the choice of a broadband package might result in specific limitations a consumer will encounter in terms of access to content or service (noting the

³ For example <http://www.speedtest.nl/>

importance of complimentary transparency from suppliers of content, application and service providers as above).

In our view, making explicit a requirement for transparency regarding the details of traffic management techniques, or the protocols used, will not provide meaningful information to consumers. Rather, the provision of clear and understandable information about the circumstances in which traffic management is employed, the impact it will have on access to certain content, applications or services, and clear identification of which economic operator's active in the internet value chain has invoked such a limitation, is substantially more useful.

In general, we applaud the draft guidelines even handed analysis of the essential role traffic management plays, when and if applied, in ensuring quality assurance for end consumers.

As set out above, the draft guidelines are right not to attempt to develop a detailed analysis of traffic management practices, policies or technologies. One notable exception to this occurs on page 24, and the finding that '*common terms of reference about internet access services and agreement on which traffic management measures are non-problematic can make transparency policy more effective*'.

The correct focus of BEREC's transparency guidelines should be to provide clear, targeted and meaningful information to consumers. In our view, a broader discussion of traffic management measures considered to be problematic or otherwise from a competition analysis perspective will do nothing to improve the provision of this kind of information to consumers.

These complex and controversial aspects of the net neutrality debate are being examined in a separate analysis being undertaken by BEREC, the findings of which will be published in early 2012.

Conclusion

The provision of meaningful transparency is essential to consumers' ability to make informed decisions about the choice of competing broadband providers available to them in a given market place. Increasingly it is also a major factor in how ISPs differentiate themselves from their competitors, in a process to retain existing or attract new customers.

In focusing on the transparency obligations which ISPs can undertake, the draft guidelines overlook the importance of improving consumer's general understanding of broadband services and how their delivery is dependent on a range of economic players. ,

With respect to additional transparency obligations being developed at national level, we believe it is premature to consider these until the provisions of the Universal Service Directive have been fully implemented by Member States.

Only in the event where Member States find that implementation of these obligations have been insufficient in ensuring meaningful levels of consumer transparency, and where market failure has been deemed to have taken place, should additional, self-regulatory measures be implemented to address specific and identified gaps in the provision of transparent information to consumers.

Longer term, and given the exponential growth of data traffic across all broadband networks, we urge BEREC and NRAs to consider the role of traffic management practices and techniques from the perspective of ensuring robust and future proof broadband quality assurance for consumers.

For further information, please contact

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