

Contribution of Orange – France Telecom
to the public consultation on the BEREC
*Draft guidelines on Net Neutrality and Transparency:
Best practices and recommended approaches*

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About Orange - France Telecom

Orange – France Telecom is one of the world's leading telecommunications operators which accounts for a turnover of 45.503 billion Euros at the end of 2010. At 30 June 2011, the Group had a total customer base of more than 217 million customers. These include more than 158 million mobile customers and 14 million broadband internet (ADSL) customers worldwide. Orange is one of the main European operators for mobile and broadband internet services. In the European Union, Orange footprint covers 10 countries.¹ Under the brand Orange Business Services, Orange is one of the world leaders in providing telecommunication services to multinational companies.

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¹ Austria, Belgium, France, Luxemburg, Poland, Portugal, Romania, Slovakia, Spain and United Kingdom.

Orange – France Telecom (hereafter ‘Orange’) welcomes the BEREC’s consultation on its ‘*draft Guidelines on Net Neutrality*’.

In line with BEREC’s view, Orange believes that transparency is key to ensure Net Neutrality (NN) alongside with other factors such as competition in the retail market. As mentioned in its [response of September 2010](#)² to the European Commission’s Consultation on Open Internet and Net Neutrality, Orange advocates:

- its willingness to contribute to works aiming at improving transparency (general conditions, publication of Key Performance Indicators (KPI), common terminology standards). Orange is already engaged in actions at national level and works together with public authorities and other stakeholders;
- to struck a balance between technical detail and the need to provide consumers with meaningful information when applying the new rules on NN;
- that transparency measures should apply alongside the value chain, especially to players who directly supply end-users with services consuming large amount of bandwidth. Choices exercised by some other players not covered by the electronic communications’ regulation can heavily impact end-users’ experience. Introduction of relevant provisions in the cross-sector regulation could be assessed with a monitoring by the relevant authorities;
- to maintain and improve the overall quality delivered to consumers. In that respect, sound business models are necessary for a sustainable internet growth.

The BEREC document covers a wide range of complex issues that require deep consideration. The very short delay offered to answer does not allow us to elaborate as fully as required. Our answer will thus focus on general principles without going into details. Orange remains at the disposal of the BEREC, and its working group on NN, to further assess and discuss each of the below items.

Purpose and scope of the guidelines

Orange fully shares BEREC’s analysis on transparency regarding net neutrality. Transparency is a key prerequisite of the end-user’s ability to choose the service that best fits its needs. Thus, the goal of ensuring that end-users benefit from effective transparency should prevail as general principle for policy on transparency. This means in particular that:

- information provided to end-users should be defined according to their needs;
- to ensure that end-users are able to properly compare services, every step of information given to the customer must be harmonised. This includes the information itself, the format, the medium, the timing, the information provider and of course how information is verified.

In this respect, we reaffirm our commitment to work together with NRAs, in countries where we operate, BEREC and other stakeholders on how to deliver and improve transparency for the end-user. However, we observe that the Internet value chain is complex and includes a wide range of players. It therefore seems essential that every player in the value chain, including content providers and handset manufacturers, also communicates relevant and correct information to end-users. Furthermore, it must be made clear that each player is to be held responsible regarding transparency for its own operations only. For instance, an Internet Service Provider

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http://ec.europa.eu/information_society/policy/ecomms/doc/library/public_consult/net_neutrality/comments/01operators_isps/orange_france_telecom_public.pdf

(ISP) does not operate the entire network which serves to deliver the traffic: its operations, like the information it is able to provide, are limited to a part of the network only.

Major requirements for transparency

Orange agrees with the characteristics that, according to BEREC, an effective transparency policy should deliver: accessibility, understandability, meaningfulness, comparability and accuracy.

Orange believes that all these items are important. However, their usefulness depends on the 'comparability' which is critical. If the information is not comparable, the other criteria are useless to fuel the choice of end-users. It is essential to ensure their correct information; that should always be kept in mind when defining and producing the KPIs. Orange wants to highlight the potential detrimental effect on competition that may result from publications leading to unfair comparisons of ISPs. In that sense, the criterion of 'objectivity' may also be added to the BEREC list of relevant characteristics.

Robust comparability should be a prerequisite to any method and tool for providing information transparently. NRAs have important responsibility in ensuring that information provided to end-users is comparable and not distorted.

Self & Co regulation - NRA intervention to be clarified

Orange supports a meaningful and consistent implementation of the transparency obligations deriving from the revised framework. As end-users' expectations for transparency and characteristics of retail offers vary from country to country, the intervention at national level to specify actual measures is the most relevant, taking into account the general principles as highlighted by the BEREC. Orange is already involved in contributing to actions in some of the countries where we operate. Nevertheless, we believe that specific and detailed regulatory intervention on transparency should be avoided. In any case, regulatory intervention should stay a last resort solution to be considered only when industry fails to deliver transparency.

Indeed, we favour a process of self-regulation or co-regulation at national level whereby industry develops a framework or a code of conduct enabling end-users to access comparable information. This work is naturally to be done together with other relevant stakeholders, and particularly with consumers' associations. Thanks to their experiences and tools (opinion poll, surveys...), ISPs together with consumer associations may be better aware than NRAs of end-users perspective.

To be efficient, such process needs to gather all ISPs to commit to apply the same rules in order to ensure fair and competitive comparison (see above). This implies a collective work between competitors related to their retail offers. Of course, the sharing of information has to be framed and endorsed by the NRA. The National Competition Authorities (NCA) should also support the legitimacy of this work in order to avoid legal uncertainties. Alongside, NRAs and NCAs could justly frame discussions, ensure trust in the process, and make sure that every ISP participate into the working group and commit to apply the agreed rules.

Consequently, self-regulation process involving both ISPs and consumer associations, framed by relevant authorities, is indeed the most efficient way to define meaningful and understandable information. The self-regulation approach has proved to be fruitful in the UK and a form of co-regulation is ongoing in France.

Content of a transparency policy

Orange shares the BEREC's analysis that a balance needs to be struck between information of relevance to end-users and network management practices without direct relevance to the end-users. Orange deems this differentiation important.

In order to efficiently define a transparency policy enabling the end-user to exercise informed choices, the definition of information should take into account the particularities of offers, networks and technologies, and end-users' usages. The criteria and vocabulary should also be adapted to each kind of end-users and harmonised between ISPs.

Orange agrees with BEREC on the general definition of the information that should be brought to the consumer: information on the scope and content of the offer on the one hand, information on the limitations of the offer on the other hand. That is to say, if information is defined as important for the consumer, it should be provided for every offer and by all ISPs present in the market. But at the same time, any rule on transparency should also allow for differentiation on offers, i.e. should not *per se* impose constraints on the nature of offers proposed to the market, which would be detrimental to innovation and competition.

Indeed, differentiated offers are beneficial to customers. Operators may choose to provide packages that include certain applications and services and others that do not. It is the consumer who decides which tariff or package best suits his needs. For instance, a service that allows a customer to use a limited amount of services at lower cost is not necessarily 'problematic'. Orange believes that the BEREC guidelines on transparency should avoid any judgement on problematic/non-problematic traffic management techniques. To ensure that end-users are informed only about relevant traffic management measures, a categorisation of 'relevant' versus 'non-relevant' practices could be established, which avoids any hasty judgement on legitimate traffic management as the terminology 'problematic' and 'non-problematic' suggests. Orange believes that relevant information for end-users about traffic management should primarily focus on the traffic management measures involving limitations to their usages.

Moreover, in many respects, the consumer also needs to be educated. This ability to understand is necessary to grasp the reasons of potential limitations of the offers. For instance, traffic management is not a straightforward issue to be explained to consumers. Indeed, the impact of traffic management practices is only one among many factors on the consumer's experience when using broadband services. There are many other reasons to explain why an end-user does not enjoy the best quality of its Internet access: elements in the consumer's home (the domestic wiring or the processing power of the end-user device), the technology or type of network used to deliver the service, bottlenecks in other parts of the networks, as well as constraints related to the sharing of scarce resources (the number of consumers sharing the available bandwidth within a given area), etc.

Ensuring transparency – who and how to do it

Concerning the production of the information, information with regards to the content or limits of offers should be differentiated from information relating to the quality of service (QoS). First, ISPs have a commercial responsibility to comply with an obligation to produce reliable and relevant information about their offers. However to ensure comparable information about each ISP's quality of service, such information could be produced by a third independent party to ensure robust comparability. We understand that this topic of quality of service is dealt with by the BEREC in another report and we look forward to contributing to this analysis.

Concerning the question of who provides information to the consumer, we recommend that every ISP provides its own data, in accordance with the rules concerning the accessibility that are to be defined. Indeed, the ISPs know all the characteristics of their offers (services, technologies, etc.)

and are thus in the best position to provide relevant and complementary explanations allowing end-users to understand in detail those specific offers. We recall that NRAs should make sure that every ISP commits to apply the agreed rules. Furthermore, the assurance of comparability of certain information will probably request the audit of their production by a third party.

In case of indirect approach to provide information, any publication by third party will have to respect the characteristics of an effective transparent policy and should be certified by NRAs.

Finally, as regards the question of how to provide the information to the consumer, we believe that a 'tiered approach', or a 'various levels of details to different sorts of users' approach would help reaching the goal of providing accurate information to the public that needs it. Nevertheless the more the tools are segmented, the more difficult it will be to harmonise implementation within each country. Concerning the presentation of information, for example the use of visual representations or real time tools, we believe that those approaches should require further analysis.

Traffic Management – Forthcoming BEREC's report on quality of service

The traffic management measures are a vital tool in ensuring the efficient operation of the Internet and providing a good experience to end-users. Network management allows efficient day to day operations, copes with network congestion and shapes network operations to meet services quality requirements. We refer to our answer to the aforementioned EC consultation on NN for further details on this topic.

We observe that the current consultation document refers regularly to another BEREC report on quality of services to support its conclusions or analysis. In order to contribute on the most accurate and complete basis, it would have been useful to have the two documents released simultaneously to fully understand BEREC's assessment of those topics. We might therefore have additional comments on transparency once the other report is released and we look forward to further contribute to BEREC's work on Net Neutrality scheduled in 2012.