

04 November 2011

## **RTR's comments regarding the Draft BEREC Guidelines on Net Neutrality and Transparency**

RTR welcomes the opportunity to comment on the Draft BEREC Guidelines on Net Neutrality and Transparency: Best practices and recommended approaches.

First of all we appreciate the draft written by the BEREC working group and the various good ideas and approaches for the implementation of the transparency obligations from the framework. The report will enrich the discussions about net neutrality and the need for transparency and we see the document as a starting point for our internal discussions about how to implement the new transparency obligations into our daily practices.

In the following we briefly present our remarks:

- We have some doubts concerning the prominent role the indirect approach (p. 16) has in the report. Although it is clearly stated that the indirect approach is complementary to the direct approach the document refers several times to the indirect approach.<sup>1</sup> Due to factual existence of third party information, which is mostly out of the scope of possible (legal) interference by the NRA, we do not see the need to distinguish between the direct and the indirect approach in the way it was done in the report. Instead of presenting both approaches as equal options, we would prefer to elaborate more on the direct approach with additional information on how to cope with third party information. From our perspective, third parties, not including the NRA, will always be market participants and a

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<sup>1</sup> For example: In chapter 3a when dealing with the problem how to provide the end user effectively with information.

given factor in the telecommunication sector. Hence more information on the following aspects would be appreciated:

1. The report does not deal with the question of who is responsible for the misleading provisions of information for the end user by independent third parties. In case end users make wrong choices on the basis of this misleading information, does the NRA need to take actions? And if yes, what are the options for doing so?
  2. The relation between the NRA and other third parties is not analysed. If the indirect approach is a complementary element of the transparency implementation one could assume a monitoring role of the NRA to prevent a scenario described in (1). If so, on what legal basis should the NRA act? And what are the options of the NRA in promoting the third party's activities.
  3. It would be good to develop further thoughts on how the NRA can support and advice third parties to create an environment in which the third parties contribute to the implantation of the transparency standards set out in the report?
- The outcome of the evaluation of the possible transparency tools (see tables starting from page 41) depends to a great extent on the assumptions made for the implementation of these tools e.g. in table 2 on page 41 the comparability is rated with "weak" because it is not assumed that industry wide standards are implemented. However this needs not to be case either because the NRA has competence in setting these standards or the stakeholders could agree on industry wide standards. In case the assumptions are made differently the outcome changes, hence the report should point out that the assumptions can differ in each Member State.

Finally we want to emphasise one more time that the report contains very valuable input for the discussion about Net Neutrality and transparency and that we - besides the two remarks - welcome the analysis made in the document.