

Response QSC AG to BEREC 's Guidelines on the Implementation by National Regulators of European Net Neutrality Rules

Cologne-based QSC AG offers small and mid-size enterprises an extensive range of ICT services - from telephony, data transfer, Housing and Hosting right through to IT Outsourcing and IT Consulting. The QSC Group numbers among the leading mid-size providers of ICT services in Germany. QSC offers custom-tailored Managed Services for individual ICT needs, as well as a comprehensive product portfolio for customers and marketing partners that can be modularly adapted to suit the communications and IT needs in question. QSC offers its services on the basis of its own Next Generation Networks (NGN) and operates an Open Access platform, which unites a wide range of broadband technologies.

QSC AG ("QSC") would like to comment on the BEREC 's Guidelines on the Implementation by Nationale Regulators of European Net Neutrality Rules.

QSC appreciates that BEREC is aware of the importance of net neutrality and the need for harmonization to strengthen end-users rights but also competition concerning internet access in all EU member states. These guidelines may help NRAs to implement a European-wide homogeneous level not excluding variations depending on national characteristics.

There is no doubt that Net Neutrality is one of the most important principles in the market for internet access and services. Net Neutrality guarantees the accessibility of all servers connected to the Internet - and is by this way an expression of the freedom of non-discriminated communication.

Net Neutrality, the freedom of communication and its positive economic and political effects can only be guaranteed, if the end users can freely choose the service and provider which fits best to them. This can only be guaranteed through effective competition on the access and service layers. In order to enable end users to make informed choices, transparency of all necessary information is needed. To reduce competitive distortions the transparency requirement should be valid in the same way for all internet access products with no differentiation between fixed, mobile or cable products.

Article 1 (Subject matter and scope)

QSC does not agree with BEREC 's conclusion that "end-user" refers to all individuals and businesses, consumers as well as CAPs. In recital 3 sentence 1 all participants of internet access and services are listed: end-users, providers of content, application or services and providers of internet access services. In spite of the fact that CAPs are also dependant on an open internet access without discrimination, blocking or other measures they cannot be seen as end-users because of the clear demarcation stated above. In our opinion a mixture of "end-user" in the classic meaning and CAP lead to an inadequate confusion. Therefore end-users and CAP should be addressed separately.

In addition BEREC states that end-users do not provide own public available communications networks or services. This is correct. On the other hand BERECs sees CAPs as end-users although they are operating own networks. Interconnection agreements between ISP and CAP shall be distinguished from internet access services. A clear demarcation between interconnection and internet access is not possible. In our opinion CAPs with own network and interconnection should not be seen as benefited end-user.

Response QSC AG to BEREC 's Guidelines on the Implementation by National Regulators of European Net Neutrality Rules

Furthermore in a constellation where the CAP provides internet access services to end-users itself the ISP is only providing wholesale services.

Net Neutrality obligation is necessary to protect end-users choice but not wholesale partners or resellers with own customer relations.

Is has to be stated expressly that the net neutrality rules are not applicable in wholesale and reseller relations except this would lead to a circumvention.

Article 2 (Definitions)

When electronic communication services or networks are publicly available they are part of the Regulation. We agree with BEREC 's conclusion that access to internet provided by cafés, shops etc. is not publicly available because of its limited amount of users. Recently also towns offer free access to internet using WLAN. Also these cases have to be defined as not publicly available although more end-users can make use of the internet access. In these cases transparency obligations according to paragraph 4 are hard or even unlike to fulfil.

Article 3 (Safeguarding of open internet access)

Article 3 (1)

According to BEREC the end-user 's right to choose the terminal equipment can be restricted by an objective technological necessity. Indeed there are more technological necessities than those stated by manufacturers. In cases where ISP can only verifiably offer its services and guarantee a certain QoS if ISP has direct access to the terminal equipment (for example to prioritize VOIP), the end-user 's right to choose has also be allowed to be restricted.

The end-user should also have the choice to abstain voluntary from its right to choose the terminal equipment to make use of all services wanted and to gain the highest level of QoS guaranteed.

Article 3 (2)

QSC supports BEREC 's opinion that in general open internet access shall be granted and end-users have the choice which services and applications they want to use. It is very important to assess practices of zero-rating because these pricing models are able to restrict competition. If end-users do not have to pay for one individual application but for all other applications they will likely use only or mostly this free application. Providers of applications are confronted with unfair competition-practices especially if they are new at the market or not as popular as other ones.

Article 3 (3) first and second subparagraph

Ins QSC 's option net neutrality is one of the most important principles and all internet traffic should be treated equally. Nevertheless we support BEREC 's statement that network-internal mechanism assisting endpoint-based

Response QSC AG to BEREC 's Guidelines on the Implementation by National Regulators of European Net Neutrality Rules

congestion-control does not lead to an unequal treatment if it is application-agnostic. Congestion-control is very important to guarantee the functionality of the network and disposability of all services.

Beyond congestion-control also other traffic management measures might be necessary. BEREC is right not prohibiting these measures under certain conditions. Because of the different and unequal requirements of traffic categories it must be possible to treat them unequally. That is no kind of discrimination because this means treating something equal unequally.

In the last years VOIP has been spread and every year more accesses are switched from PSTN to IP telephony. Using VOIP it is necessary that every time the needed bandwidth is guaranteed. For this purpose it must be allowed to prioritise the traffic corresponding to VOIP.

According to BEREC 's guidelines traffic management measures shall not be based on commercial considerations. This requirement is hard to fulfil because all decisions and measures made by a telecommunication operator participating in competition are in a way commercially based. Regarding this requirement traffic management measures are not allowed at all.

For this reason we suggest to rework figure 65: "In the event that traffic management measures are **ONLY** based on commercial grounds, the traffic management measure is not reasonable. However, NRAs do not need to prove that a traffic management measure is based **ONLY** on commercial grounds; it is sufficient to establish that the traffic management measure is not based on objectively different technical QoS requirements."

A traffic management measure may have commercial reasons but may also be technical necessary. It would be wrong calling this measure unreasonable.

If the traffic management measure is implemented for wholesale internet access products it must also be possible to charge the implementation and current costs to the wholesale customer 's account.

Distinction from specialized services: According to BEREC it is important to clearly distinguish "categories of traffic" from specialized services. In reality sometimes there is no clear cut between these both, e.g. regarding VOIP. VOIP can on the one hand be defined as a category of traffic if these categories are referred to generic application types (VOIP, instant messaging.) If VOIP shall function permanently and without disturbance a guaranteed bandwidths and therefore prioritization is necessary.

On the other hand VOIP is clearly to separate from other voice call using the internet like Skype. Some VOIP applications have other requirements and need a higher QoS. Therefore it can be defined as a service in addition to internet access services not being a replacement.

If services can be defined as traffic categories as well as specialized services ISP must be allowed to offer them as specialized services.

Article 3 (5)

We support BEREC 's conclusion that ISP must be able to offer specialized services which are not internet access services without the restrictions named in Article 3 (1)-3 (4). In future more services concerning for example M2M and IoT will be offered. These services are not internet access services in the classic meaning and need a higher QoS. To support innovation and new services it is necessary that these specialized services have an exclusive position.

Response QSC AG to BEREC 's Guidelines on the Implementation by National Regulators of European Net Neutrality Rules

Nevertheless the possibility to offer specialized services is not allowed to circumvent the net neutrality principles. If every service independent of its requirements could be arbitrary determined as specialized service, net neutrality would be washed out. Therefore the national regulatory authorities should regularly assess which services can be defined as specialized services and which not. Newly innovated services can be presented to the NRA before commercial launch and can be rolled-out if the NRA does not contradict. This means a kind of opt-out solution for new services, so the launch is not dependant on a previous permission. This solution can be regarded as an adequate reconciliation of interests.

Business services:

BEREC hints at the important fact that a certain QoS is often necessary for corporate customers and that they are in need of specialized services. Business customers often ask for combined products comprising internet access services as well as additional services. A clear cut between these services can't be made. In our opinion business products/ services designed for corporate customers should be treated separately and differentially. It must be possible for ISP to fulfill individual needs of their business customers, for example also prioritization of a defined traffic category, and therefore charge a fee. Application of the general net neutrality rules does not fit here and would prevent business providers from developing and launching new specialized business products.

Article 4: Transparency measures for ensuring open internet access

Transparency measures are meaningful to inform end-users about the conditions of their accesses and possible restrictions.

Net Neutrality and transparency measures are protecting all kind of end-users, consumers as well as business customers. Like we stated above, some net neutrality rules should be restricted in case of business products. Nevertheless also business customers are interested in necessary information.

The requested information shall be included in all contracts and are also published for example on the ISP's website. All contracts- existing and future ones- shall be concerned. The requested information shall be divided into a general part and a more specific one.

In our opinion these obligations are not appropriate and have to be interpreted restrictedly in practice. Where the guidelines do not foresee this limitation they have to be revised.

In detail:

Obligation to transparency measures is only justifiable if it is proportionally. This means purpose and costs have to be in a well-adjusted proportion.

Existing contracts:

The obligation to conclude all requested information also in existing contracts is hard to fulfill. This would mean sending new contracts to all customers and begging them to sign the new ones. ISPs would have a significant ex-

Response QSC AG to BEREC 's Guidelines on the Implementation by National Regulators of European Net Neutrality Rules

penditure and high costs. Purpose of the transparency measures is giving end-users the chance to choose between different offers and to inform themselves about the actual conditions of the access. Customers with existing contracts have been using the internet access services sometimes for years now so that they know about the real performance. The requested information would not help them any more making their first choice.

Regarding these facts the obligation to change all existing contracts is not justifiable. The obligation has to be interpreted restrictedly so that publishing the requested information on ISPs website is sufficient.

Business customers:

All requested information has to be concluded in contracts for consumers as well as for business customers. Like we stated above, some net neutrality rules should be restricted in case of business products. According to these restrictions the corresponding transparency measures also have to be restricted.

In contrast to consumers business customers mostly make no use of standard but of individual designed products with different kind of internet access services combined. In these cases it is very difficult to fulfill all requested transparency obligations, e.g. about the bandwidth listed in Article 4 (1) letter d. On the other hand business customers are more interested in a certain QoS so that facts about parameters like delay and jitter are more important to them.

Because of that we support a differentiation between transparency obligations for consumers and business customers regarding their different services and interests.

Level of detail:

The requested information shall be presented in two parts: one with general information and one with more technical parameters.

Most end-users have no idea about the meaning of jitter, delay and other technical parameters. It is more interesting for them which services they can use and which are excluded. Especially regarding consumers it might be not necessary to conclude all these technical information in the contract. In our opinion it is sufficient to publish this information on the ISPs website and to integrate it in the contract on the end-users explicit wish.

Traffic management/ QoS / volume limitation

If the ISP uses traffic management measures like prioritization of VOIP it is adequate to hint to this fact in the contract.

End-users shall also be informed about QoS parameters like delay, jitter and packet-loss and which services cannot be used or a restricted because of the given parameters. Like we stated above most end-users won't know what delay, jitter etc. mean. So this is a kind of information not useful. It should be sufficient to inform end-users about services not being supported or being possibly restricted because of the parameters. Technical data might be additionally be publishes on the website.

In addition, ISPs in many cases uses wholesale access products like bitstream access to provide internet access services to end-users. In these cases the parameters are not implemented by the ISP so the ISP has no influence

Response QSC AG to BEREC 's Guidelines on the Implementation by National Regulators of European Net Neutrality Rules

on the definition and on the guaranteed provision. ISPs obligation must be restricted to inform the end-users about the wholesale access conditions.

In conclusion the obligation to inform about QoS has to be restricted concerning the described facts above.

End-users shall also be informed about volume limitations. This is useful because recently some mobile operators used to hide this restriction somewhere in the GTAC and end-users felt deceived. Because of that it is necessary to hint to this fact expressively so that deceptions are avoided. Information and examples when this data caps can be reached can also be listed. We support BERECs view that these information and examples are voluntary. There are so many different services able to exceed this limit that a few examples can only be a part. Furthermore listing examples may lead to the wrong impression that only these services are of high data-use. Because of that we do not regard this information as important and useful as other compulsive ones.

Conclusion

QSC supports the necessity of guidelines for the implementation of the net neutrality rules. In our opinion the Guidelines should be overworked and revised concerning the aspects and arguments listed above.