

Telefónica's Comments draft BEREC transparency guidelines - BoR (11)44

Introduction

Telefónica would like to thank BEREC for producing a useful and complete document on transparency. It gathers a good variety of options and provides many ideas on this complex issue.

Telefónica understands that providing transparency is important in the context of the NN discussions, to facilitate users' choice, and more in general to have a relationship of trust between operators and customers. We believe that ISPs already provide a fair amount of information to users, and in some countries there are industry self-regulation initiatives to provide information to users. However, according to our experience, end users have shown limited interest on these issues up to this moment. Customer purchasing decisions are normally based on other features of the telecommunications services.

We agree with the BEREC document about the fact that transparency in this context is complex and that it is not easy to find a solution that provides the information users need in a clear, simple and meaningful way.

We think that mandating detailed and rigid requirements will risk failing to meet the target, and impose unnecessary burden and cost on industry.

Telefónica supports an approach that relies as much as possible on operators and industry initiatives, which can evolve and improve in a flexible way as experience is gained in this process and practices evolve. It will be difficult to provide a sound framework that has rigid administrative definitions that operators have to implement and redefine from time to time.

We think that specific regulatory intervention about transparency should be avoided, or in any case be considered only when industry fails to deliver transparency.

Chapter I – Purpose and scope of the Guidelines.

The Document states that only transparency issues will be tackled in the Paper, however, also contains some specific views, such as: (pag. 9) "if ISPs increasingly allocate most of

their capacity to specialized services rather than the internet access service, **this could have a serious effect on the scope for innovation in new content, applications and services**". This is a complex issue, and the document here is judging operators choice of allocating their capacity in the resources that best suits their clients needs. We believe they should be removed from the document and be discussed in other context (i.e. Quality of Service project).

Chapter II - Major requirements for a net neutrality transparency policy

Telefónica supports the five basic principles that are included in point 1 of this chapter (accessibility, understandability, meaningfulness, comparability, accuracy), and especially that primacy relies on the end user perspective.

Point 3 of this chapter deals with how to adapt a transparency policy to net neutrality related issues. Here the document enters into some "difficult" questions such as: *"To aid understandability, it is important to distinguish between those traffic management measures that are problematic and those that are not problematic"*

Telefónica thinks that classification of network management practices is subject to discretion and ultimately depends on the individual user (and the quality /price relation that best suits users' needs). The BEREC document seems to recognise it when it says on page 22 that: In any case, end users do not have the same needs, so key characteristics of Internet offers vary from one type of end user ...

We think that the BEREC guidelines should avoid this type of judgements. It is up to users to decide whether a practise is problematic or not for the use he is going to make of his BB connection. User expectations and internet applications requirements vary between different user profiles. Traffic management may have different impacts on different users; for instance, certain practises can perhaps be considered "problematic" for a few users, but not for other. Even some practices that can be considered "problematic" for some users, such throttling some types of traffic at some hours can be beneficial overall.

It is important that transparency reflects the information in an objective way, and avoids qualifying it as good/ bad or putting red, yellow or green lights to certain practices.

This comment also applies to the finding on point 4 about common terms of reference. We think it is not necessary that these common terms of reference include agreement on what is “non-problematic”. They are necessary in order to make the information can be easily comparable, and as simple for customers as possible. But the qualification between problematic/ non-problematic should be out of the scope of this work on transparency.

Contents of a net neutrality transparency policy

We think that the initiative to provide transparency on network management relies first on operators and in the telecommunications industry in general. Detailed and rigid requirements, or an exhaustive set of parameters and issues to provide transparency can lead to an out of proportion outcome and sometimes to more confusion for end users or third parties, for example, we can point at the issues of “actual speed” and “monitoring tools”.

“Actual speed”

Transparency about actual speeds is a tricky issue, as the actual speed does not depend exclusively on the ISP. Providing customers with information about the speed they can typically expect can be misleading, as it depends on a series of issues, such as: the customer network, the terminal equipment, and the status of this equipment (optimization, browser set up, antivirus and firewall settings, etc.), the capacity of a particular content provider server, the number of users accessing that content provider service at any given time and the policies of this provider, etc.

ISPs can provide information on the speed that can be provided by their network, but at the same time customers have to be aware of the other issues that may affect speed, or otherwise it would be confusing. The draft guidelines say that “ISPs should also be more transparent on the conditions where the advertised speed may not be ensured (for example depending on the type of connection, the moment, or the level of use of the network and server to which the customer is connected).” We agree that it is important that users are aware of these issues, but some of them do not fall under the ISP responsibility, and it would be necessary that the other providers in the value chain provide this type of information.

Additionally, this issue of real/advertised speeds has been already regulated or self-regulated in some countries. If this is already happening in a given country, we think that transparency related to NN issues should be limited to the traffic management issues and leave out the real vs. advertised issue.

Provision of tools to enable customers to monitor their access service

Telefónica is willing to facilitate that users check traffic management practices, but it is necessary to assess this carefully bearing in mind the proportionality principle. This type of tools can imply an important investment for operators and should be developed when it is appropriate and proportional to do it. For example, it is clear that it is necessary a tool to check data volumes used when the tariff has a specific data cap. Other types of tools look more dubious. This seem to be partially recognised by the draft guidelines when it states on page 46 that “these are potentially expensive to implement, as they require special software and/or *hardware, with potentially only a few customers appreciating and using this functionality*”

Chaper V – Practical examples, outlooks and conclusions

Telefónica basically agrees with the section on “learnings for BEREC”: promote mature, win-win relationships between operators and their customers, play the role of trust-enhancer, empower the end user. Regarding the last point about promotion of comparability, we agree that comparability is important, but we are not convinced that we need a high level set of information norms at European or even international level. Of course that depends a lot on what this set of norms mean. A high level approach towards information provision and the principles it has to follow can be useful, but if that means having a set of standardised parameters (such as a KFI table), we think that it is better to develop it at national level.

NRAs approaches (page 56)

The document describes four ways of NRA involvement. We think that point a) should clearly be given priority over the other three, and leave the design of transparency

solutions to the industry. The use of self regulation provides a much more flexible means to respond to a complex and dynamic market environment. The structure and content of the information can be agreed with input from relevant telecom operators to ensure that it enables consumers to make informed choices, should they find the issue of traffic management relevant in their purchasing decision.

It is generally accepted that it is the ISPs role to ensure it communicates with existing and potential customers in a clear and transparent manner. NRAs should only consider intervention if it is proven that the ISP has failed to deliver a sound transparency framework. It is worth noting the point on page 36 which highlights the expense and complexities that can be associated with NRA hosted sites and such intervention cannot be justified where the NRA has not exhausted the self regulatory approach.