Telekom Austria Group´s input to BEREC´s Consultation on "Draft Guidelines on Net Neutrality and Transparency"

I.   General Remarks

Telekom Austria Group ('TAG')[1] welcomes BEREC´s initiative to open the discussion on how to ensure transparency for customers in the context of network management and net neutrality.

As a starting point, we would like to **underline the importance of transparency** in the given context. We consider the provision of transparent information on network management activities to our customers essential to our business operations. Proper information on if and how network management techniques are used by network providers **shape customers´ buying decisions** and enable them to decide what kind of internet services suits their needs best. Furthermore, a high degree of transparency contributes to increasing customer trust and finally ensures a competitive environment in the telecommunications sector.

We also want to clarify that we fully support the generic view taken by the European Commission. We believe that network management measures that are motivated solely by technical necessities (such as protection against network outage etc) have to be without any doubt fully legitimized. With respect to network management measures that are (partly or entirely) commercially motivated (such as e.g. offers with guaranteed quality levels), we believe that the European Commission is right in building on the following cornerstones: Ensure competition in the market, guarantee full transparency for customers on network management techniques and keep barriers to switching low. Provided that these conditions are met, we are fully **convinced that the power of market forces will find the best balance between strongly managed and fully unmanaged IP traffic flows**.

Against this backdrop, we make the following six comments from an operator's point of view to enrich the discussion on the controversial issue of net neutrality and transparency.

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[1] Telekom Austria Group is a leading communication provider serving approximately 22 million customers in eight countries in Central and Eastern Europe: Austria (A1 Telekom Austria), Bulgaria (Mobiltel), Croatia (Vipnet), Belarus (velcom), Slovenia (Si.mobil), the Republic of Serbia (Vip mobile), the Republic of Macedonia (Vip operator) and Liechtenstein (mobilkom liechtenstein). In 2010, the Telekom Austria Group employed about 16,500 people, generating revenues of approximately EUR 4.65 billion.

II.   Telekom Austria Groups Comments on the BEREC guidelines:

Comment One: The scope of 'network management' and consequently of 'relevant information on network management' requires further clarification

In a competitive market environment, there is a **long list of criteria that influence and finally determine a customers´ buying decision** for an internet access product, including **price, quantities, a huge variety of quality criteria** (network coverage, speed, latency,…) as well as quality expectations, access hardware (and also software) etc.

In the given context, we understand that the final goal of transparency guidelines is to **increase the customers` knowledge** (and/or at least the ability of customers to acquire such knowledge) **on the actual or potential application of network management techniques as such.** The guidelines` scope might even be broader to include expected consequences of such network management measures on the service quality experience of the customer when using the internet access product.

We feel that the BEREC report is rather unclear on what kind of information should or should not be included in the scope of measures to improve transparency on network management activities. **We think that the 'relevant information' (in the given context) should only consist of information related to network management, potentially including expected consequences of such network management activities on the service quality experience of the customers.**

To make the point clear, we give just one example of a piece of information that is very likely to be relevant for the customers buying decision. It does however not have any to network management and its quality implications: mobile network coverage (rural, but also indoor).

Consequently, we claim for a closer elaboration of the scope of 'relevant' network management techniques and 'relevant' expected quality of service implications.

Comment Two: Any information on network management shall not imply a qualitative judgment – customers' buying decision is a generic decision that shall not be biased by any information on the application of network management techniques

Customers need to have the full range of relevant information available allowing them to make effective buying decisions when choosing between different internet access offers. Information on internet services in general and on network management practices in particular need to be transparent, but also **need to exclude pre-established value judgments:**

Transparent and relevant information is key for the customers´ ability to assess effectively which products and services suit them best and enable them to take effective buying-decisions. However, we

believe that the **information provided (especially if provided by third parties) must not judge or pre-qualify certain network management activities as being 'problematic' or 'non-problematic'**.

It needs to be the end-user who judges if a specific practice is problematic or not. For example, if a network provider informs its customers that it might throttle peer-to-peer traffic during a certain period of the day if required, this might be seen by customers positively or negatively, depending on their intended use of the access service: If they do not (or not frequently) use peer-to-peer services, this information might be qualified as positive, because it increases the likelihood of good quality internet experience during (also) during this period of the day; other customers, however, who frequently use such services might see it exactly the other way around.

Therefore, we are convinced that relevant information to the customer needs to address meaningful parameters **in a neutral way** that help customers make their own choice corresponding to his or her particular demand.

Comment Three: Transparency guidelines shall fully harmonize transparency requirements for network operators across the whole Common Market

Telekom Austria Group **supports a harmonized approach at EU level to ensure internet service providers comply with the principle of transparency about their network management activities**.

Defining transparency guidelines at EU level is a **much more efficient** way than leaving the task to national decision–makers:

- It ensures an EU-wide **common understanding** on the scope of 'relevant information', on the principles (e.g. the five key criteria for transparency; see below) to be applied, as well as, hopefully, a clear guidance as to what exactly is expected/required by regulators.
- It helps to **avoid over-/under-/wrong fulfillment of transparency requirements**, with its negative consequences for customers, competition and operators (e.g. via application of transparency measures that are not in accordance with the best practice).
- Finally, it **helps to strengthen the common market**: Customers learn how such information is/has to be provided and can use this information when travelling/moving across Europe; Service providers that operate in more than one member state might use economies of scale and learning advantages much easier, if the same rules apply across Europe; etc.

In this sense, any unilateral attempts on national level to come up with specific transparency guidelines should clearly be avoided. These would contradict the Digital Agenda's goal of achieving a digital single market and would generally undermine the efficiency of the European ICT sector.

<u>Comment Four: In general, the five key criteria are a good starting point to drill down the necessary information requirements; however, we believe that these criteria need to be further developed and defined</u>

Telekom Austria Group agrees with BEREC that the **five key criteria** (accessibility, understandability, meaningfulness, comparability, accuracy) **define the starting point in the discussion on how effective transparency on network management measures can be achieved**. We believe that these are the core criteria to evaluate if a given transparency measure can be expected to be effective.

However, we also believe that much **more work is needed in order to develop these criteria in a set of effective and relevant network management information package**. It is by far not clear what exactly is the expectation of customers/regulators e.g. when it comes to 'accessibility'. What needs to be done? Via which channels needs the information to be presented? Pull or Push? Etc…

We are also convinced that these criteria need to be adapted, e.g. to the different stages of the cycle of the commercial relationship.

Furthermore, we believe that a differentiation is required in a) criteria that are useful for a *direct* information approach and b) criteria that are useful for an *indirect* (i.e. third party) approach. For example, we believe that 'comparability' as a criterion in principle cannot be fulfilled via a direct information approach. Below, you find an an overview as to what criteria we believe should be relevant, depending on the the way how the information is provided (direct vs. indirect):

Useful characteristics of a direct approach	Useful characteristics for an indirect approach
Accessibility	Accessibility
Understandability	Comparability
Meaningfulness	Accuracy
Accuracy	
As for comparability: we believe that the customer needs to be provided with operator-neutral information in order to be informed in a meaningful way	

Having said this, we call for further constructive discussions including BEREC/NRAs, consumer interest groups and service providers/network operators in order to fill these criteria with meaningful and effective content. At the end of the day, it should be clear for every service provider/network operator within the EU a) what kind of information is required and b) in what form and when it is to be presented to its customers in order to fulfill the transparency expectation of customers and regulators likewise. We would support such a dialogue and offer our contribution of substantial input.

<u>Comment Five: For the direct information approach, an additional criterion should be included: Service providers shall be obliged to not less (but also not more) than 'reasonable efforts' in order to make/keep their customers informed about network management measures relevant to them</u>

When reading the BEREC report, we missed any reference as to the question of 'reasonability of efforts' in order to provide customers with relevant information on network management. Clearly, from a theoretical point of view service providers/network operators might spend huge amounts of time and money in order to produce all kinds of information, especially accurate information on quality of service parameters. However, all required efforts need to be brought in line with the benefits achievable. It should not be overseen that any kind of additional information gathering/offering activity produces costs, which increase the total overheads of the European service providers/network operators, which finally will be reflected in one or the other way in their retail pricing. Therefore, we urge all stakeholders involved in the transparency guidelines discussion to keep expectations as to what is reasonably possible on a realistic level, and to 'formally' include 'reasonability of efforts' as additional criterion, especially for the directly provided information.

<u>Comment Six: Pro further discussion on an indirect approach to producing understandable information to end users</u>

We **support BEREC´s suggestion of an active role of a third party to produce comparable information** related to network management activities at a national level. We are convinced that **only a *fully independent* third party will comply** with the criterion of 'comparability' of network management information provided. Looking at the options given (e.g. consumer interest groups, providers of comparison websites, etc) we are convinced that **only the National Regulatory Authorities are truly and fully independent**. NRAs core competence is to foster competition on the local markets; therefore NRAs are the perfect provider/the perfect 'owner' of the process to provide comparable information on network management measure.

In this context, we want to underline (again) the necessity that such **third party information needs to be unbiased.** It is of extreme importance that such a third party does not pre-qualify (or pre-judge) any information found and presented to the brought public. Otherwise, the third party (NRA) would risk to itself influence the competitive process, diametrically opposite to its core task.