



Net Neutrality

the Dutch perspective

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Agenda

- 1) A brief history:
Net neutrality in the Netherlands
- 2) Overview of EU net neutrality rules
- 3) An actual case:
T-Mobile's zero-rating

1.1) A brief history of Dutch net neutrality

- 2011: KPN & Vodafone announce to increase prices for the use of certain specific internet services, e.g. WhatsApp, making use of DPI techniques
- This caused a huge public debate in NL, including discussions in Parliament
- 2012: Parliamentary bill resulting in article 7.4a Telecommunications Act (net neutrality rules)
 - Prohibition of blocking & throttling (art. 7.4a(1) Ta)
 - Prohibition of any form of tariff discrimination (art. 7.4a(3) Ta)

1.2) A brief history of Dutch net neutrality

- January 1st, 2013: Dutch net neutrality rules enter into force
- Enforcement: two cases; KPN and Vodafone
 - 2015: Fine on Vodafone for violation of art. 7.4a(3) Ta (zero-rating *HBO GO*)
 - 2015: Fine on KPN for violation of art. 7.4a(1) Ta (blocking)
- November 2015: net neutrality regulation adopted

1.3) A brief history of Dutch net neutrality

- April 2016: net neutrality regulation into force
- NL Minister keeps strict zero-rating rules in place in Dutch law
- Early 2017: ACM starts investigation into T-Mobile zero rating case under Dutch law and forces T-Mobile to stop
- April 2017: Dutch court declares national net neutrality to be **not binding** due to incompatibility with EU law, ACM decides not to appeal
- May 2017: ACM starts assessment of T-Mobile zero rating case under the net neutrality Regulation

2) Overview of EU NN

- [European Regulation on open internet](#) (binding)
- [BEREC guidelines](#) (guidance, not binding)
- End user rights (article 3(1)):
 - Free choice of **apps, sending and receiving data**
 - Free choice of **terminal equipment**
- Commercial agreements (article 3(2))
- Traffic management rules (article 3(3))
- “Specialized services” (article 3(5))

3.1) A new Dutch zero-rating case: *T-Mobile's Music Freedom*

- Platform with registered providers of music streaming services
- Music streaming services are zero-rated
- Registration on platform is free but takes some time
- Every music streaming service can be registered
- Questionnaire for CAPs required for registration
- Service is sold as an extra,
only for customers with data bundle ≥ 6 GB

3.2) Assessment within BEREC Guidelines

A comprehensive assessment of commercial and technical conditions should take into account:

- Whether the practice **circumvents** the aims of the Regulation
- The **market positions** of ISP and CAP(s)
- The effect on **end-user rights** (both CAPs and consumers):
 - The effects on the **range and diversity** of content and applications
 - Is the end-user **incentivised** to use certain content?
 - Effects on the functioning of **internet ecosystem** as an engine of innovation
- The **scale** of the practice and the presence of **alternatives**

3.3) Assessment within BEREC Guidelines

And, specifically for zero-rating:

- End-users are **incentivised** to use zero-rated (classes of) applications and disincentivised to use other (classes of) applications.
- The lower the **data cap**, the stronger the influence on end users' incentives
- Zero-rating **individual** applications more likely to undermine goals of the Regulation than zero-rating **classes** of applications

3.4) Guidelines and *Music Freedom*

How to apply the Guidelines to *Music Freedom*?

- T-Mobile has market share of 15-20% (is market share useful in assessing limitation of individual right?)
- Many end-users are using the service
- Preferences of end-users (customers) determine who is on platform
- Zero-rating a category of applications, all music streaming services can register
 - however registration takes time (4-6 weeks). At this moment 19 music streaming applications are zero-rated
- Data cap of 6 GB (limitation of end-users' rights?)

3.5) What is next?

- Assessment is pending
- Decision expected this summer