

**BEREC report on the public consultation on the draft  
BEREC Guidelines on Transparency in the scope of Net Neutrality**

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<b>1</b>	<b>Introduction.....</b>	<b>3</b>
<b>2</b>	<b>Summary of stakeholder responses .....</b>	<b>4</b>
<b>2.1</b>	<b>Chapter I - Purpose and scope of the guidelines .....</b>	<b>4</b>
2.1.1	Definition of Net Neutrality .....	4
2.1.2	Scope of the guidelines: Transparency across the value chain.....	4
2.1.3	Definition of “end user” in the scope of transparency .....	4
2.1.4	Transparency is necessary, but not sufficient.....	5
<b>2.2</b>	<b>Chapter II - Major requirements for a net neutrality transparency policy .....</b>	<b>6</b>
2.2.1	Relevant characteristics on information to be transparent for end-users .....	6
2.2.2	Three different stages in the commercial relationship.....	6
2.2.3	A range of useful forms of information for end users: from general to individual cases .....	6
2.2.4	Direct/indirect approach .....	6
2.2.5	Proportionality.....	7
2.2.6	Problematic vs. non-problematic traffic management practices .....	7
2.2.7	Different types of networks and technologies .....	7
2.2.8	The role of common references (see also below point 2.4.5) .....	8
<b>2.3</b>	<b>Chapter III – Contents of a net neutrality transparency policy.....</b>	<b>8</b>
2.3.1	Problematic vs. non-problematic traffic management practices .....	8
2.3.2	Internet vs. non Internet.....	8
2.3.3	Quality of Service (QoS) .....	8
2.3.4	Nature of provided information (general vs. detailed).....	8
<b>2.4</b>	<b>Chapter IV – Ensuring transparency .....</b>	<b>9</b>
2.4.1	Information intermediaries (ISPs, NRAs, third parties).....	9
2.4.2	Visual representation of the services’ features .....	10
2.4.3	Tiered approach.....	10
2.4.4	Real-time information tools.....	10
2.4.5	Improving comparability through building on common references.....	11
2.4.6	Regulatory / self-regulatory approach.....	11
<b>2.5</b>	<b>Chapter V - Practical examples, outlooks and conclusions.....</b>	<b>11</b>
2.5.1	NRA’s approaches: self-regulation / co-regulation / NRA led-regulation.....	11
2.5.2	Case studies in electronic communications (Annex A) .....	12
2.5.3	Case studies in other sectors (Annex B).....	13
2.5.4	Learnings for BEREC.....	13
2.5.5	Understandability and comparability: recommendations on common language (see also above point 2.4.5).....	13
2.5.6	Role of end users .....	13
2.5.7	Role of BEREC: the national and European levels.....	14
2.5.8	Role of NRAs with respect to third parties (see also above point 2.4.1) .....	14
<b>2.6</b>	<b>Other remarks received.....</b>	<b>14</b>

## 1. INTRODUCTION

On 3 October 2011 BEREC launched a consultation on “draft Guidelines on Net Neutrality and Transparency: Best practices and recommended approaches” (the title was changed after the comments received to “draft Guidelines on Transparency in the scope of Net Neutrality: Best practices and recommended approaches” to better reflect the intended scope of the document). The draft guidelines describe transparency as the first of several regulatory remedies to promote net neutrality, as it enhances the end users’ ability to make informed choices among service offers. The guidelines underline the responsibility of NRAs to ensure that consumers are benefitting from effective transparency and analyse some possible approaches and tools that could be put in place to help reach this goal.

The consultation was published on the BEREC website, inviting stakeholders to send their answers up to 2 November 2011. A total of 77 responses were received, coming from a range of organisations, including consumer associations, operators, content providers and device manufacturers, as well as from individuals.

This report is not aimed to be a comprehensive compilation of the responses gathered. Its purpose is rather to provide a general overview on the main comments and views received around the key topics of the draft guidelines.

BEREC welcomes this feedback and thanks the respondents for their efforts and submissions. The full text of these documents is available on the BEREC website.

The guidelines have been modified in order to take stakeholders’ comments into account and to provide some clarifications.

## 2. SUMMARY OF STAKEHOLDER RESPONSES

### 2.1 Chapter I - Purpose and scope of the guidelines

#### 2.1.1 *Definition of Net Neutrality*

Some stakeholders disagreed with referring to Tim Wu's net neutrality definition because some forms of traffic management are mandatory and necessary for the efficient functioning of networks. They would not include a concrete definition in the report or, at least, use a more structured definition in accordance with EU regulatory framework. For instance, it was suggested adding a precision at the end of the definition: "*all electronic communication passing through a network is treated equally in analogue conditions*".

Conversely, other stakeholders agreed with the general principle that all electronic communications passing through a network should be treated equally, without any kind of differentiation, regardless of content, application, service, device, source or target.

#### 2.1.2 *Scope of the guidelines: Transparency across the value chain*

A lot of respondents saw the need for transparency obligations to apply to the whole value chain. Indeed, some were of the opinion that ISPs represent only a small part of the value chain, which should be taken into account by NRAs when putting into place a transparency policy in the scope of net neutrality. Some general observations made were around the fact that there is a risk of imposing disproportionate obligations and costs on a single link of the value chain, at a time when important network investments are required (with the need of an adequate return of investments and a reasonable balance between all the actors in the Internet value chain). Accordingly, some felt that BEREC should address this issue even if the other players in the market are not bound by the EU electronic communications regulatory framework.

Another specific comment received around this topic was the need to extend transparency to interoperability, in both services and equipment. In this regard, one stakeholder asked BEREC for a wider public consultation on more general and wider regulatory obligations. Several respondents pointed explicitly to the fact that transparency should not only be restricted to ISPs but expanded to applications and content providers, as well as terminal suppliers (the so called "device neutrality"), because they also have a decisive influence in the end user's service experience.

#### 2.1.3 *Definition of "end user" in the scope of transparency*

Various stakeholders were of the opinion that business services should not be subject to specific transparency requirements and should be excluded from the scope of this report as there is no asymmetry of information in their case. Also, some opinions received in this regard clearly stated that the European Framework is focused on the consumer (residential end users) and not on business users.

Some stakeholders considered that content/application providers, as end users, should be included in the scope of the report; they felt that a more detailed analysis on the specific requirements for this category is needed and proposed that a specific item should be included for this purpose in BEREC Work Programme for 2012. On the other hand, some other stakeholders would not include application and content providers under the end user definition.

Other respondents said that, while net neutrality provisions in the current Framework relate only to end users at the retail level, the interests of wholesale stakeholders (e.g. providers depending on access obligations) should be included as well. It was also mentioned that the revised Framework enables NRAs to monitor both transparency at the wholesale and retail levels and that NRAs must ensure that the necessary transparency conditions are provided in the wholesale market by the incumbent operator.

#### **2.1.4 Transparency is necessary, but not sufficient**

Regarding the relationship between competition, transparency and other factors considered to achieve net neutrality, there were four main groups of opinions:

1. In the view of some respondents, the existence of competition in a market, the reduction of barriers to switching and transparency **are sufficient** to handle net neutrality concerns. Some stakeholders emphasised the role of transparency as a key factor that, if implemented effectively, can address most of the problems mentioned in the public debate. Other stakeholders pointed out that traffic management is necessary for ensuring quality and differentiation of services, and that additional regulations in that regard could be counterproductive in a dynamic market, such as the provision of Internet services.
2. Competition is the real key to achieve net neutrality. Some opinions received stated that it is very important to prevent discrimination and that the debate on net neutrality should not lead to an increase of the remedies already imposed at the national level. The regulations must be proportionate and balanced, fostering competition and avoiding the imposition of burdensome obligations.
3. Transparency and the other factors taken into account by BEREC **are not sufficient** to achieve net neutrality. Therefore, the proposal of respondents who share this opinion was to establish more prescriptive regulation and propose measures that protect net neutrality. In general, their view was that transparency is a mere regulation to help the comparison of products in a framework where net neutrality is no longer ensured (transparency itself highlights the breaches to net neutrality). Furthermore, it acts as a kind of “loophole” which enables operators to introduce restrictions as long as they inform their customers about it. In addition, it was remarked that the lack of competition, remaining barriers to switching and the net neutrality interferences already occurring in Europe show the insufficiency of this approach. BEREC should take a harder position on net neutrality and on traffic management in particular.
4. Lastly, a few opinions recognized that transparency and competition are part of the answer, but remarked that they do not provide the full solution.

On specific issues, some stakeholders pointed out that the relation between advertised speed and actual speed can also be influenced by other factors, outside the operators' control (linked with the comments received on the need to apply transparency to all the actors in the value chain, see point 2.1.2 above). Another comment received was a proposal to delete the paragraph regarding the effect of capacity allocation on the scope for innovation (on page 9 of the draft guidelines).

## **2.2 Chapter II - Major requirements for a net neutrality transparency policy**

### ***2.2.1 Relevant characteristics on information to be transparent for end-users***

The overall reaction regarding the five characteristics (accessibility, understandability, meaningfulness, comparability and accuracy) for an effective transparency policy was positive. Only a few specific questions were raised by some stakeholders, such as the confidentiality of certain information; price information; difficulties in reaching the right balance among the five characteristics or of having a rigid approach; or the need to further develop the characteristics.

Some stakeholders mentioned that at least in some cases not all of these characteristics (also mentioned as criteria) can be fulfilled at the same time and that trade-offs must be possible.

### ***2.2.2 Three different stages in the commercial relationship***

There is a general positive opinion on this topic, agreeing on the need to deliver transparency at each stage.

### ***2.2.3 A range of useful forms of information for end users: from general to individual cases***

The majority of comments on this topic indicated that it is counterproductive to provide information that is too much detailed: the main information should be given in a clear and concise manner (for example, in one single page), and more detailed information should be available as an option (see also below point 2.3.4 and 2.4.3). It was also indicated by one stakeholder that specialists already have access to detailed information. Several individuals, operators and other organisations highlighted the importance of “educating” end users, because they might otherwise be unable to understand and correctly interpret the limitations of their service, especially those ones without technical background.

### ***2.2.4 Direct/indirect approach***

There was a general consensus among the different parties that this combination is relevant (see also below point 2.4.1), particularly if underpinned by the five characteristics for making information transparent.

The majority of comments regarding the direct approach pointed to the ISPs as having the most important role in making information transparent to the end user, as they are the best placed parties to do so. Nevertheless, one respondent expressed a negative view about the direct approach and another one was of the opinion that an indirect approach is more applicable.

A great number of comments were received with regard to the indirect approach. Many respondents, mostly operators, stated that the indirect approach should not be imposed and should only be complementary. Some of them expressed a negative view of the indirect approach, and felt that the draft guidelines gave it a too important role. One consideration formulated by many respondents is the need for NRAs to provide some kind of guarantee (e.g. certification, accreditation schemes, etc.), about the quality of third parties. Lastly, some mentioned that detailed information should only be provided to NRAs and not to other third parties.

### **2.2.5 Proportionality**

Most of the comments about the draft guidelines on this topic were positive and welcomed the proportionality criteria, confirming that proportionality is indeed very important. Some operators and associations of operators highlighted the importance of not imposing excessive administrative and operational burdens upon the operators, and drew attention to the risk that such costs would need to be transferred to the end user.

Regarding more concrete aspects, one remark was received indicating that the principle should be set out in more details, for example on how lighter measures could be optionally proposed to end users.

### **2.2.6 Problematic vs. non-problematic traffic management practices**

Many stakeholders (mostly operators) were reluctant about the use of these terms, and argued that guidelines should avoid any descriptions of traffic management as problematic or not, as it should be left to the user to decide on what is a problem for him (for example, while the use of a certain traffic management principle on peer-to-peer traffic may be qualified as problematic, a VoIP user may actually see the same traffic management principle as positive because it gives them a better experience of using a VoIP service). Therefore, guidelines should avoid any “judgements”, as this could have negative effects in terms of the perception of end users. They suggested instead using objective/neutral terms as mentioned in the Framework, such as “limitations”.

On the other hand, another section of respondents (mostly consumer associations and content/service providers) wanted BEREC to be clear about which practices are problematic, and even potentially subject ISPs using such practices to sanctions by NRAs. For instance, one stakeholder suggested to include a statement indicating clearly that the blocking of applications is always problematic, and another one considered that methods of deep packet inspection should be explicitly prohibited unless imposed by a court order. Another proposal issued in this regard is that measures applied at a termination point or by user choice should be qualified as reasonable, and measures that block or throttle traffic within the network, and/or based on source, destination or service provider are unreasonable. Other stakeholders were of the view that NRAs should provide clear and well-defined concepts about what is “legitimate” traffic management and what is not. Some positively referred to, for instance, guidance already issued by some national regulators (e.g. ARCEP).

One respondent noted that the categorisation of traffic management in terms of “problematic” and “non-problematic” measures needs to be more nuanced, for instance distinguishing some differentiating management techniques from filtering or blocking.

Many stakeholders make reference to the ongoing BEREC work on QoS, with some of them indicating that a broader scope for this discussion would be preferable.

Lastly, it is to be noted that many stakeholders used the terms “reasonable/non-reasonable” or “acceptable/non-acceptable” themselves when describing certain traffic management practices.

*NOTE: The comments on this topic relate also to the contents of Chapter III.*

### **2.2.7 Different types of networks and technologies**

There was general support for the guidelines’ text on this topic. The respondents agreed that the same general principles should apply for fixed and mobile networks and services, although the characteristics of mobile networks are different and these differences should also be taken into account when implementing the details of the transparency policies.

### **2.2.8 The role of common references (see also below point 2.4.5)**

Some comments received stressed the difficulty of defining any common terms of reference and terminology. Other comments made by some stakeholders pointed to the necessary role of the NRAs/BEREC in the development of common frames of reference, avoiding a unilateral approach by ISPs.

The importance of standardised formats and detailed descriptions of indicators in order to achieve comparability was highlighted by some stakeholders. However, others pointed to the risk of standardisation, because it could lead to over-simplification of the offers available, in detriment to competition and consumer choice.

## **2.3 Chapter III – Contents of a net neutrality transparency policy**

### **2.3.1 Problematic vs. non-problematic traffic management practices**

*N.B. This issue also relates to the contents of Chapter III (specific limitations), but to avoid repetitions, consultation contributions are summarized above in point 2.2.6.*

### **2.3.2 Internet vs. non Internet**

Several comments stressed the need for a clear distinction between unrestricted offers of access to Internet and “non-Internet” offers which only provide a limited use of applications or services, or which are otherwise restricted / limited. The respondents felt that such a distinction is very important to avoid user confusion and to ensure that users really get what they expect when buying “Internet access” – full and unrestricted access to all available and legal content, services and applications. These respondents also pointed out that any offers that only contain restricted access to the Internet (e.g. walled gardens, managed services) should be clearly labelled as such by ISPs and should never be labelled or sold to the consumers as Internet access.

A few respondents also expressed concerns of a “dirt road” effect on the Internet, where the balance between the bandwidth reserved for managed services and unrestricted Internet access would tip so far in favour of managed services, that the quality of access to Internet access would get poor, while becoming overpriced and thus a privilege only for the few.

### **2.3.3 Quality of Service (QoS)**

Several respondents pointed out that the overall quality (end-to-end QoS) the user experiences when using a certain service/application via the Internet is affected by factors outside the scope and control of an ISP, which they claim should be taken into account when assessing transparency obligations. They pointed at factors controlled by the users themselves (e.g. equipment, software, modes of usage, in-home network setup), other market players (e.g. application and content providers, CDNs) and also objective circumstances (e.g. environmental influences, bottlenecks and competing traffic higher up the value chain).

Some respondents concluded that, because players through the whole value chain can influence the user experience, transparency obligations should extend to the whole value chain (see also above point 2.1.2)

### **2.3.4 Nature of provided information (general vs. detailed)**

The scope and nature of the transparency information to be provided was addressed in several comments to the consultation. These comments argued that the provided information should be kept basic and simple to avoid an overload of information. Specifically,

some stakeholders claimed that information that is too detailed and technical should be avoided, as such information was not relevant and/or comprehensible for an average end user and would only cause additional confusion.

Moreover some respondents claimed that the provision of unnecessarily detailed information might put an excessive burden on the operators without justifiable positive results for end users and would thus violate the principle of proportionality. They proposed that a detailed cost-benefit assessment should be carried out before imposing any additional transparency obligations.

Other respondents pointed out that the scope of transparency obligations should not be limited solely on the basis of the economic interests of the ISP and that a reference to the undefined term of proportionality might cause divergences in implementation of transparency obligations in different Member States.

## **2.4 Chapter IV – Ensuring transparency**

### ***2.4.1 Information intermediaries (ISPs, NRAs, third parties)***

Some comments pointed out that the direct approach - which obliges directly the electronic communications services and networks operators to provide information to users in a transparent manner - is already mandated by the EU Regulatory Framework for electronic communications and that providers should continue to be the primary or only providers of transparency-related information. The respondents claimed that ISPs themselves are the most appropriate providers of relevant information as they have the necessary knowledge and understanding of the services they are providing and of the needs of their customers.

With regard to the indirect approach to disseminating information examined in the draft guidelines, a few respondents mentioned that operators should only have to provide information to NRAs, who will then pass it on to certified third party bodies or organisations. Other respondents felt that the most effective method of informing end users is the provision of the required information through independent specialised websites, also preferably implemented by the NRAs, and various respondents gave examples of successful sites, which publish information and were established, are run or have been certified by the NRAs. On the other hand, some comments recommended limiting the role of NRAs to monitoring self-regulatory approaches of the operators or limiting their role to identifying the set of information to be disclosed and the standardised format of information provision. A few comments also expressed doubts on the roles that different NRAs are willing or able to assume when it comes to gathering information and disseminating it to the end users and the public. Others pointed out that NRAs should be the only relevant third parties for information gathering and dissemination and questioned the merits of delegating those tasks to other third parties.

Various respondents raised doubts about the introduction of third parties into the information dissemination process or mentioned that any indirect approach involving third parties should not be obligatory or mandated by regulation. Other comments stated concerns about any obligatory provision of specific information (or information in a specified format) by ISPs to third parties. They also expressed doubts whether such obligations would be proportionate in regard to the additional costs they would entail and also doubts in relation to confidentiality of provided information and its further use by third parties. Some respondents were also worried about the independence, objectivity and trustworthiness of third parties and pointed out that in any obligatory system they would have to be regulated, certified and monitored, which would additionally burden also the NRAs. They therefore suggested that only a direct

approach should be mandated and any indirect measures involving third parties should be stimulated by the NRAs only on an informal basis and that information available to third parties should be limited to what is already in the public domain. On the other hand, there were respondents who felt that an indirect approach with mandatory disclosure of information to third parties (independent consumer organisations, comparison websites etc.) would contribute to transparency in the market and should be encouraged.

#### **2.4.2 Visual representation of the services' features**

The idea of visual representation of the services and available features was generally not well-received by the respondents to the consultation. Many comments raised concerns about the “traffic lights approach”, some of them stating that it might legitimise practices of the operators that they find unacceptable (blocking, throttling etc.).

Other respondents claimed that the visual representations (traffic lights) might additionally confuse users and cause unnecessary and counterproductive prejudice towards certain services. Comments pointed out that the visual representation system, especially in the forms of traffic lights, would make unjustified and arbitrary judgements by the NRAs on behalf of users, who have very divergent needs and wishes in regard to services they wish to enjoy (some might be better suited to more limited and low-cost packages but might be put off them by the use of judgemental visual representations, and thus prevented from making a relevant choice).

Some respondents warned that any obligatory use of standardised visual symbols would not be able to keep up with the development of the market and would quickly become obsolete and thus serve only to stifle innovation; before the imposition of any obligations in that regard, further analysis was therefore needed.

#### **2.4.3 Tiered approach**

Several comments were in strong support of the tiered/multi layered approach to information dissemination, stating that providing information in various tiers/layers (general/technical, basic/detailed etc.) would help to deliver relevant information to those users who want or need it. On the other hand, a few respondents questioned the usefulness of such an approach in relation to its burden on the operators and claim that only a basic set of information should be provided.

#### **2.4.4 Real-time information tools**

Several respondents were doubtful of the usefulness of real-time information tools for end users and pointed out that the results of such tools may depend significantly also on factors that are outside of the control of the ISP. Some comments stated that the information gained from the use of such tools might only cause further overload and confusion of users because the data can easily be misinterpreted.

Several respondents also pointed to the burden that the development and obligatory provision of real-time information tools would put on the operators; they were of the opinion instead that the provision of such tools should not be a mandatory transparency obligation but should remain a voluntary service of the operator.

Other respondents saw merit in the use of real-time information tools, while some limited their support for the use of such tools only to cases where they would be developed by or under the guidance of the NRAs. Several comments stated that further analysis is needed before any obligatory imposition of the use of real-time information tools by the NRAs as a part of transparency obligations.

#### **2.4.5 Improving comparability through building on common references**

various respondents stressed the need for common references and terminology as the only way to ensure that end users are able to identify, comprehend and compare relevant information, provided to them by operators and third parties. While some comments pointed to existing standards (e.g. ETSI etc.), others stated that NRAs should be the ones to develop such common references and terminology, while several were of the opinion that this task can only be done collectively by industry players in the form of a self-regulatory system.

Some respondents did not agree that it is necessary to develop and mandate the use of common terms of reference and terminology, stating that identifying and agreeing on such terms would be an overly onerous task both for the industry players and the NRAs, and that the effect might be oversimplifications or misrepresentations of services and products.

#### **2.4.6 Regulatory / self-regulatory approach**

Some comments on this section also relate to issues covered in 2.5.1.

The majority of respondents who commented on the regulatory approach felt that operators/ISPs should be encouraged to develop and commit to a consistent and comparable set of information in the form of a self-regulatory or co-regulatory code of practice. Some comments stated that only this approach is appropriate for such a fast-paced industry; that only the industry players themselves have the necessary understanding and knowledge of their products; and they are therefore the only ones who can determine how to present that information to the users effectively. Some respondents also offered examples of existing self-regulatory systems (codes of practice) and pointed to their successful use in practice.

Other respondents insisted that it would be very important to also involve consumer groups and organisations in the development of such initiatives.

Some comments pointed out that a self-regulatory approach should be framed nationally, while others mentioned that NRAs/BEREC should foster self-regulation at the EU level.

On the other hand, there were comments which expressed doubts about the effectiveness of a purely self-regulatory approach and stressed the need for the involvement of regulators if the self-regulatory approach fails or pointed to the need for an early, active and effective monitoring and enforcement by the NRAs/BEREC.

A few comments also stated that formal regulatory transparency obligations will be the only way to achieve an effective respect of transparency rules by all market players.

### **2.5 Chapter V - Practical examples, outlooks and conclusions**

#### **2.5.1 NRA's possible approaches for transparency policies in the scope of net neutrality**

A notable amount of feedback on this topic was received. At a general level, one consideration made by several stakeholders is the need of a phased or graduated approach, first waiting for the transposition of the Framework, and then adopting further regulations if needed (from less to more intrusive). Many stakeholders referred also to the convenience of waiting for the results of the current ongoing work on net neutrality, closely linked to these guidelines. In particular, they mentioned Ofcom's consultation on net neutrality and BEREC's work on QoS, competition issues and investigation into traffic management practices.

Regarding the opinions on the possible approaches, the stakeholders showed basically four different views:

1. Regulation should focus on wholesale broadband competition. One view expressed by some of these respondents requires to take into account the existing legislation, and issue further regulations only if there is demonstrable failure by the market.
2. Self-regulation processes should have a primary role but BEREC/NRAs should monitor these processes and the practices of ISPs. Among other aspects, it was proposed that NRAs/BEREC should define the overall framework of information to be provided and that ISPs are the ones to define how they convey this information. Seemingly, options (b) and (c) proposed in the guidelines seem the most appropriate to several stakeholders<sup>1</sup>. Also, the convenience of a constructive dialogue with BEREC, whereas regulators have to ensure that players respect the agreed rules on transparency, were aspects pointed out by some parties. The UK Broadband Stakeholders Group voluntary industry code of practice was given as an example of traffic management transparency by some respondents.
3. Co-regulation between all players under the auspices of NRAs is a good solution. NRAs and national competition authorities should frame discussions between stakeholders.
4. NRAs should lead regulatory initiatives. Under this point of view, one proposal was that NRAs should define (in consultation with parties) the transparency rules, and which should be applied to all operators simultaneously. Also, there is a role for BEREC to define what is “Internet access”, or “unlimited access”, or to support co-regulation to reach this goal. A central body would be needed for setting consistent parameters across the industry and coordinating the transparency policy, to ensure that users have an accessible point of contact or receive impartial advice. It was said by some organisations and individuals that BEREC should have more powers to enforce policies, and BEREC should monitor and publish how transparency policies are implemented in Member States.

Finally, and although this issue goes beyond the scope of these guidelines, it is worth mentioning that some respondents were in favour of imposing sanctions upon infringements on net neutrality obligations. It is however difficult to foresee at this moment how infringement procedures on net neutrality will take place.

### **2.5.2 Case studies in electronic communications (Annex A)**

Several suggestions on additional international references to be included in the guidelines were made by different stakeholders:

- Portugal: Work made by ANACOM
- Hungary: Traffic management information is presented in a standardized format
- Italy: AGCOM has specified the set of minimum information to be delivered by ISPs about characteristics and limitations of their offers
- Spain: KPIs published by the Ministry of Industry, Tourism and Trade
- USA: BITAG initiative.
- UK: BSG voluntary code of practice

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<sup>1</sup> Options b) and c) proposed in the guidelines were: “b) NRAs could provide guidance to industry as to what good looks like in terms of transparency, and let industry (maybe in consultation with consumer stakeholders) work out the details; in parallel, they may also support means for the development of indirect transparency; c) NRAs could set out how information is to be made transparent and transmitted, in consultation with industry and consumer groups. They could also include expectations on comparability and verifiability of information provided and guidance on how best to achieve this;”

- Denmark: The “Teleguide” established by the Danish regulator to compare offers in terms of both price and quality of service (BEUC)
- Norway: Norwegian NRA runs a price comparison service.

### **2.5.3 Case studies in other sectors (*Annex B*)**

Not many observations were received on this section. One stakeholder commented that the section was interesting but limited, and that no comparable sectors have embarked on very prescriptive requirements. Another one considered that any entity presenting the information covered by the guidelines should be doing so under the Public Service Information Directive (PSID)<sup>2</sup>.

One respondent pointed to two examples (namely, draft recommendations published by ERGEG on September 2010, and the E.ON issue in 2008, which blamed regulators for failing to impose better practices on them), which in its opinion showed that BEREC’s finding (on page 10), that consumer choice and information on the differences between offers “help end users obtain the services that they want” is frequently incorrect.

### **2.5.4 Learnings for BEREC**

One opinion was received supporting the findings in this section in general, but showing doubts about the need for a high-level set of norms.

### **2.5.5 Understandability and comparability: recommendations on common language (see also above point 2.4.5)**

On the one hand, some stakeholders pointed out that flexibility is important to allow competitive differentiation and experimentation in the way operators communicate to their customers. By contrast, in the view of others, developing (with an industry-driven process) a common frame of reference on terminology will be beneficial to achieving true comparability.

Another aspect that was commented on was that two of the three actions suggested for understandability were surely useful (common terms and simplification methods), but the availability of real-time tools may not be. Some stakeholders were of the opinion that these tools can be burdensome and should not be mandated (see also above point 2.4.4). In their opinion it is better to provide clear and understandable information than to rely on such tools. Also, a better context for analysing these kinds of tools could be BEREC’s QoS work.

Lastly, the dual approach has its merits for some respondents: flexibility for direct transparency, and collection of comparable information for indirect publication.

### **2.5.6 Role of end users**

Some stakeholders remarked that it is vital that industry engages at an early stage with representatives of consumer groups when developing initiatives.

Similarly, third parties (including NRAs) are expected to include inputs from other relevant stakeholders. One remark was that end users are increasingly acting as content providers.

On the other hand, as already indicated in section 2.2.3, there is a perception of lack of understanding and knowledge among most consumers about the characteristics and limitations of their services. Therefore, educating end users is very important because they may not be able to understand the impact of limitations.

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<sup>2</sup> [http://ec.europa.eu/information\\_society/policy/psi/index\\_en.htm](http://ec.europa.eu/information_society/policy/psi/index_en.htm)

### **2.5.7 Role of BEREC: the national and European levels**

The comments received from respondents in this area could be grouped around four general positions:

1. It is clearly preferable to define the Framework at a national level, in order to: take into account different practices, concerns or end user expectations and thereby develop specific approaches; additional rules at the European or international level are not needed. Some stakeholders said that BEREC guidelines should remain as high-level guidance, leaving practical implementation to NRAs.
2. There should be leeway for different approaches to be taken in different Member States that ensure the same level of results.
3. BEREC should call for pan-European standards / common definitions, for the following reasons: there are no valid arguments to organize this on a country-by-country analysis; the third-party market is rendered more viable if comparison across Europe is possible; and a common frame of reference at the European level is more efficient than engaging in 27 negotiations. The outcome of a co-regulatory platform could be used as a basis for a Recommendation to Member States which would avoid the adoption of excessive national measures. More generally, it was also said that the European Union (EU) should undertake further regulatory action and BEREC must be more ambitious, both with regards to the interpretation of key provisions of the revised Framework and the gathering of evidence on net neutrality interferences.
4. Other measures, such as recommendations, could be adopted at the European level by BEREC or the Commission, regarding information presentation methods. Also, a more systematic and Europe-wide assessment of network performance would be a good complement to transparency proposals. More generally, any possible regulatory approach on net neutrality should be analysed at the EU level first.

### **2.5.8 Role of NRAs with respect to third parties (see also above point 2.4.1)**

The observations received were divided around the two main general positions:

1. Measures must be taken to ensure the credibility of third parties. The accuracy and credibility of third parties could be underwritten by NRA's accreditation schemes and certification. Standards and controlling instruments at a multinational level must be satisfied and implemented by NRAs or other organizations (independent from ISPs).
2. NRAs are better placed than third parties. The NRA is the relevant third party for most purposes, and merits for delegating to self-appointed organizations (to be in turn monitored by NRAs) are unclear. Requested information should only be provided by ISPs to NRAs, in order to avoid the risks linked to uncontrolled third parties (certified measurement systems should be able to measure only the actual performances of ISP network and not the performance of the whole international public Internet as the tools provided by non-certified websites generally do).

## **2.6 Other remarks received**

The stakeholders made also many extensive comments on several aspects linked to net neutrality in a broader, more general sense, which are considered out of the scope of these transparency guidelines (e.g. general principles of Internet openness and net neutrality, certain aspects of traffic management and quality of service, comments on the focus of the guidelines being only on "consumer type" of transparency, etc.).

Since the received general comments on net neutrality were very numerous and extensive, it was decided in particular to change the title of the document to “BEREC Guidelines on Transparency in the scope of Net Neutrality: Best practices and recommended approaches”, to better reflect the intended scope of the guidelines and avoid any further confusion in this respect. Some insights into the organization of other BEREC work streams was also added.