



Associazione Italiana Internet Provider

26 October 2011

AIIP contribution on Net Neutrality and transparency

Dear Sirs,

the Associazione Italiana Internet Provider (“AIIP”) is an association of Italian communications operators established on 1995, with the aim to represent its associates before any public administration, independent authority, or any other public body, domestic or supranational, such as the European Commission.

AIIP represents more than 50 associated companies which offer to the public electronic communications services (Internet access, traditional voice, housing, hosting and, relevant for this case, also IP based services such as VoIP, IPTV, video communications, videoconferences, etc.).

AIIP associates together have a total turnover of around 2,5 billion Euro, including induced activities, and have made total investments for more than 1.3 billion Euros in the last five years, with a noteworthy effect in terms of employment opportunities for specialized workers.

1. Introduction

AIIP agrees with BEREC that transparency is one of the keys to ensure Net-Neutrality (NN). However, as expressly recognized by BEREC, transparency alone is not sufficient to achieve NN.

According to AIIP competition on the relevant markets is pivotal to achieve NN, especially where vertically integrated operators have market power in an upstream or downstream or related markets.

Especially as to Internet, due to its “*two sided market*” feature, network neutrality should be ensured primarily by preventing discriminatory¹ and exclusionary conducts² by vertically integrated *gatekeepers*, active on one of the two sides (e.g., *over the top* services or content distribution, rather than by transparency, as they might take advantage of the economic structure of the “*two sided*” market in order to favour their own divisions (or commercial partners) to the detriment of competitors and consumers.

¹ Any traffic management practices should not be prohibited as such, so long as: (i) it is necessary to ensure network integrity; (ii) users are adequately informed in advance of such practices, and (iii) these practices are applied to all data packets irrespectively of their source, destination and content.

² Both of technological and economical nature (as also suggested by Ofcom 2010): as a matter of fact price discrimination practices between on-net and off-net traffic would foreclose the network neutrality (even if it is formally ensured under a technical point of view).

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In addition, according to AIP also interoperability (of both services and equipments³, as well as of Content Delivery Networks, including payment and DRM platforms) should be ensured, in order to achieve NN and to maximize the positive network effects. In this regard, therefore, transparency obligation should be extended not only to any traffic management practices but also to any limit to interoperability of the services.

AIP therefore invites BEREC to also submit, as soon as possible, a wider public consultation on general regulatory obligations which, in the present regulatory environment, might be considered for achieving NN in electronic communications.

2. Principles that should guide any transparency obligation and comments to BEREC Guidelines:

According to AIP the following principles should always apply to any regulation aimed at ensuring NN through transparency obligation.

In particular, transparency obligations should:

- (i) vest independently from the access platform used by the clients, in application of the technologically neutral principle of regulation.

Therefore, any transparency obligation should apply equally and symmetrically to both fixed and mobile⁴ networks and services providers.

AIP strongly agrees with BEREC statement that “*BEREC does not believe that there is strong evidence to support a view that the approach of transparency should be different for mobile and for fixed networks*” (ch. II, par. 3, let. c).

- (ii) apply to any kind of IP traffic and/or services.

³ In this regard AIP shares and supports BEREC comments as to the “*crucial role in the mobile context*” of the mobile devices. In this regards, BEREC outlines that due to the “*very high control on applications running on the [mobile] device ... [t]his specificity of mobile offers should be considered when designing a transparency policy, in particular in the section aiming at ensuring transparency*”, thus stressing the need of event stronger transparency obligations in the mobile sector (ch. II, par. 4, let. d)

⁴ In the mobile sector, net neutrality is affected if mobile operators block third party’s VOIP traffic (they would be incentivized to such an approach in order to protect revenue streams from traditional voice). Potentially, blocking could be used to affect any kind of services and content provided by parties competing with the mobile platform (ringtones, music, videos etc). In this regard, AIP points out that Vodafone, since end November 2009 introduced certain Traffic Management Practices in Italy and:

- a) has prevented the use of mobile VoIP applications to several fee options, both for *business* and *consumer* users and
- b) has introduced in all its (business and consumer) offers, specific limits to *peer-to-peer* e *file sharing* applications, by limiting the bandwidth during peak hours (i.e., from 7.00 to 22.00).

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Therefore, any transparency obligation should not be limited only to Internet access, but should extend as to include also voice (on IP packets) and data.

In this respect, AIP strongly agrees with BEREC statement that “*Transparency needs to be achieved for all products and services*” (ch. II, par. 3).

AIP deems necessary that any bundle offers (ch. II, par. 3, let. b) should not be used as a tool to disguise any transparency obligation.

- (iii) apply to retail offers as well as to wholesale offers⁵.

AIP stresses that so long as regulated *bitstream* access services will be the used by Operators to provide services to their final customers, it would be necessary for them to have in advance any necessary information as to whether the incumbent applies any traffic management practice on its own network⁶.

As a matter of fact if the regulator wishes that transparency is ensured towards the final clients, since the level of transparency at retail level depends directly from the information provided at wholesale level, such regular should ensure that the necessary wholesale transparency conditions are applied to the operators relying on wholesale services offered by the regulated incumbent.

In this regard, BEREC seems not to have analysed adequately the need for transparency also at wholesale level. Therefore, AIP suggests that the above issues be adequately considered by BEREC in any proposal for regulation.

- (iv) be proportionate and limited to the extent as it is necessary to give adequate, harmonized (by NRAs) and easy to be understood information.

Proportionality of any transparency obligation is necessary to avoid that Operators bear an excessive burden to provide information., which would turn into an externality increasing their administrative costs and would then necessarily be reverted onto consumers.

Therefore, AIP suggests that an analysis of costs and benefits be carried out before the adoption of any transparency obligations.

3. Conclusions:

⁵ A legal ground for imposing such an obligation a wholesale level may be found in Directive 2009/140/EC which, *inter alia*, ha amended sect. 9, para. 1, of Dir. 2002/19/EC on access obligations.

⁶ According to the non discrimination principle the incumbent should provide wholesale services to competing operators on the same network used to provide services to its own commercial division and to final customers.



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According to AIP the electronic communications operators should be the principal “transparency-makers” in their relationship with the public (before closing the deal) and with their clients (once the contract is closed).

Any transparency obligation imposed by the NRAs should be proportionate and reasonable, and cost -effective.

AIP highlights that in Italy certain transparency obligations apply to ISPs (e.g., to provide info on maximum and minimum speed) and an external body (Fondazione Bordini) is in charge of measuring typical performances of Internet access provided by different ISPs.

However, AIP complains that such obligations only vest upon fixed operators and no such control is carried out over mobile services, although similar information as to the service features and its availability might be very important for final users when choosing a (data or voice) mobile service provider and in order to check whether promises were kept by its mobile services supplier.

Kindest regards

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