

Response

BEREC Draft Guidelines on “Net Neutrality and Transparency”

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The Federal Association for Information Technology, Telecommunications and New Media (BITKOM) represents more than 1,350 companies in Germany. Its 1,000 direct members generate a sales volume of 135 billion Euros annually and employ 700,000 people. They include providers of software and IT services, telecommunications and Internet services, manufacturers of hardware and consumer electronics, and digital media businesses. BITKOM campaigns in particular for a modernization of the education system, for an economic policy oriented to innovation and a modern Internet policy.

BITKOM welcomes BEREC’s public consultation on its draft Guidelines on “Net Neutrality and Transparency”. This topic is important not only because we need to ensure that European citizens continue to enjoy everything the internet has to offer but because we also need to understand the sort of new commercial relationships that will be required as the internet continues to expand and evolve. In Europe, we increasingly face two particular challenges. The first is the continued rapid growth in internet traffic, the demands this is placing on existing network infrastructure, and the need for ongoing investment to meet European citizens’ and businesses’ demands and assure the EU’s competitiveness in a globalized marketplace. The second is the emergence of powerful, vertically integrated internet players who, whilst they do not control network access, are in a position to determine how European citizens will be able to use the internet.

To overcome these challenges we will need to make sure that we safeguard the ‘net freedoms’ of European citizens where required whilst continuing to allow the same restless innovation – in technology, services and in business models – that has been driving the internet forward for the past twenty years. BITKOM is well aware of the concerns of some policymakers about an inappropriate use of traffic management techniques. Therefore the use of these techniques has to be accompanied by a high level of transparency and the application of consistent, objective engineering criteria to the treatment of applications or customers.

BEREC considers it to be necessary to specify the contents of transparency policies and therefore argues for defining a set of criteria and factors on which operators will have to provide certain information. BITKOM welcomes a dialogue between operators to define such a set of criteria. Network operators are committed to providing choice and quality for all customers. Non-discriminating and transparent offers of differentiated products and services to all players in the internet value chain increases variety and strengthens competition.

BITKOM is convinced that transparency can address most of the concerns about openness and competition in the internet and will empower consumers and business-

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es to make rational choices reflecting their individual preferences. The users should have a wide variety of choices, some of which are 'best efforts' and some of which are better than that. Transparency is then the essential means by which customers can navigate the market to obtain the services which best meet their need. BITKOM believes that operators have strong incentives to address transparency issues because without effective communication of the benefits of different services it will be difficult for operators to persuade customers to pay a price premium for them. Transparency and 'willingness to pay' go hand in hand.

Consumers will be provided with a clear and understandable explanation of the quality of the end user experience and how their connection will be managed to deal with congestion. Furthermore consumers will be informed about the treatment of any specific services which may be limited or managed in a certain way in line with the provisions agreed in a contract with the customer.

This information will be provided in the terms and conditions of the contract signed between customer and operator. Additionally, before a contract is signed operators will align to use a kind of common template for the description of services to enhance the accessibility of information in order to make it easier for consumers to compare competitive offerings. The information on key criteria and factors will then also be included in consumer facing materials like operator's websites and tariff brochures etc.

With regards to customers that are not consumers (e.g. High-End Customers), BEREC should consider that these purchase telecommunications services in a completely different way than consumers. The first key difference is contractual in nature. High-end business services present various specificities that differentiate them from mass-market services, especially the significant higher level of complexity of the provided telecom services. Additionally, fewer customers with a sophisticated knowledge of the technology and economic implications of telecommunications services individually negotiate extensive bi-lateral and tailored contracts and use the provided services in a professional manner.

Independently of the proposed areas of consumer regulation BEREC should take into account the nature of the European business services market, and the high level of competition in Europe that gives the large business customer the possibility of negotiating the business deal it desires in a way not generally available to consumers of mass-market Internet access services.

It is important to provide consumers with the relevant information which allow them to really understand the characteristics of the service they can expect to receive and the terms on which they can do so. Many of the characteristics which engineers use to define services – data rates in MB/s or concepts such as latency or jitter- are not well understood by consumers today but have a very clear meaning for Business Customers defining their own standards. Providing consumers with the required information is an even greater challenge in wireless environments where it is impossible to 'guarantee' or even predict a particular level of network performance when this will depend on variables such as the location of the user and the nature of the device they are using, the behavior of other users on the cell, or the local climate.

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High-end businesses generally negotiate to get the service that best meets their needs with the levels of assurance that they may demand and also have an opportunity to ask any questions they may have during the negotiation, thus minimizing the needs for standardized disclosures. Considering these specificities of business service providers, the Net Neutrality provisions make little sense in this context and create the substantial risk of disproportionately impacting innovation and investment if applied to business service providers. Business users, operating in the higher end of the business market, can exercise buying power.

For all these reasons, we believe that Net Neutrality guidelines should maintain a wide variety of choices for consumer and not apply to high-end business services and products.

With regard to specific tools to monitor and identify any limitations to the access services BITKOM reminds that such measurement tools are not standardised yet and the results of such tools may depend significantly the methodology and parameters chosen. It has to be considered as well that there are many aspects which may affect the results of such monitoring processes but are not under control of the operator. This being said BITKOM advocates a careful approach as it has to be avoided that non-standardised approaches lead to misleading information which are confusing for the customers and detrimental to operator's reputation.

Due to the fact that the quality of service in the internet - as one of the factors customers want and will be informed about - depends on various aspects which are influenced on different levels transparency is required at all points in the value chain, and not only in relation to the provision of network access services. Many of these aspects e.g. transit routes and content servers as well as environmental influences are beyond the control of the access network operators. In order to fully reach the transparency required the contents of a net neutrality transparency policy should also address operations beyond the access network operators.