BSG response to:

BEREC Guidelines on Net Neutrality and Transparency: Best practices and recommended approaches

November 2011

The Broadband Stakeholder Group (BSG) welcomes the opportunity to respond to this BEREC document. Delivering on transparency is an essential and first-order issue in the wider debate relating to net neutrality and open internet issues. Accordingly it is useful to see BEREC's considerations on this issue.

Given the BSG's role in both helping to develop a voluntary code of practice on traffic management transparency in the UK and co-ordinating industry discussion on wider open internet issues we hope this response is a useful contribution to debate at a Europe-wide level.

The work on transparency undertaken in the UK is largely consistent with the aspirations for transparency set out in this BEREC document. The voluntary code of practice referenced at page 49 of this document and appended to this response, does we believe, meet many of the points raised in this discussion document:

- It is designed to build upon statutory legal obligations contained within the Framework and now transposed into UK law as well as other initiatives undertaken in the UK such as the voluntary code of practice on broadband speeds
- The code of practice makes a commitment to the following good practice principles to inform the way in which traffic management information is communicated: "understandable, appropriate, accessible, current, comparable, and verifiable". These are very much in the spirit of the characteristics of a viable transparency policy articulated in this document and other comments made regarding effective monitoring of traffic management information.
- The code of practice supports the provision of information both directly by Internet Service Providers (ISPs) and indirectly by other third parties, for example price comparison sites utilising the information published by ISPs in their Key Facts Indicator tables (KFIs).
- The rationale for publishing KFIs ensures the delivery of consistent information, using consistent terminology and showcasing a consistent level of information across ISPs, and providing one approach for all technologies, crossing both mobile and fixed products.
- The scope of information covered within the KFI contains both information on specific limitations on a service, to more general information on traffic management used to manage congestion at busy times and busy places, as well as information on download and data cap limits and any use of traffic management as a consequence of exceeding these.
- The KFI also has a specific question regarding the provision of managed services and if so, any impact this would have on other traffic.
- The principle based approach allows ISPs to communicate directly with current and future consumers, putting traffic management information into a broader context, yet backed up by the consistent KFI.

This voluntary code was developed by founding signatory ISPs and facilitated by the BSG. However as the text of the code makes explicit, the approach is a piloted one with input being welcomed and actively sought from other stakeholders such as content, services and application providers, consumer groups, price comparison sites as well as government and the regulator.

It is welcome to see the role of self-regulation welcomed in this BEREC document and we believe that a collaborative and iterative approach to delivering traffic management transparency is fruitful and appropriate and should be encouraged by regulators at a national and European level.

Whilst the importance of transparency is widely accepted, the actual process of effectively delivering it is not yet fully understood. Accordingly, the voluntary code of practice supports a common sense approach on the basis of collective initial understanding of what information will work for consumers, and this is now being tested out.

We believe this iterative approach is sensible and ultimately consumers will be the most valid source of what information is working or not as they become more familiar with the concept of traffic management practices and their impact on services they use or may wish to purchase.

The pilot period is still ongoing on this code of practice in the UK and the intention is to conduct a review in early 2012. We hope to have a fuller appreciation of delivering transparency and of any amendments required to build on the code at that point.

However our view from facilitating this work to date is that it would be dangerous and unhelpful to prescribe models to deliver transparency without evidence and understanding of what will work in practice.

The research and case studies cited in this BEREC document are interesting. Ofcom is yet to make public this research and when this is available we shall certainly welcome it as an input to the review process. However we would caution against using market research alone to inform a model for the precise ways in which traffic management information should be presented.

We believe the most effective role that BEREC and national regulatory authorities (NRAs) can play is to set out expectations of what they hope the outcomes of effective transparency should be and facilitate a collaborative approach to inform how this is delivered in practice.

As such given that work is ongoing in the UK to do this, we believe it may be premature for BEREC to develop further detailed guidance on the precise nature of transparency delivery at this stage. Furthermore it seems a little illogical to progress such work in advance of other BEREC work, for example the forthcoming Quality of Service report, where it would also seem more relevant to tackle the issue of what traffic management practices may be described as problematic or non-problematic.

The BSG awaits publication of Ofcom's imminent document on these issues in the UK and is also happy to update BEREC on progress in rolling out a self-regulatory approach to traffic management transparency in the UK.