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betreft BTG reaction to consultation 2011 BEREC draft Guidelines on Net Neutrality and Transparency

Summary

Transparency will not solve the net neutrality issue. End users have difficulty comparing even relatively simple devices like washing machines. And EU regulations are in place to compare very simple energy labels of the simple washing machine. Telecoms products have been made incredibly complicated in spite of the underlying simple cost structure and functionality. Comparing mobile internet access will be beyond consumers capabilities. That is equally true for business users.

We expect lengthy and complicated offers describing the limitations in the way BEREC requires in this consultation. Considering the current transparency level for mobile calling plans and tariffs, we can safely predict a very disappointing result for transparency of internet access. Requiring consumers to read through dozens of lengthy, technically worded and possibly confusing offers is unrealistic, to put it mildly.

We therefore recommend that NRAs do not spend time and effort on this exercise, as their resources can be used in many more useful ways. Reliance on third parties to make sense of all this is wishful thinking: it hardly happens at the present time.

Finally, BEREC missed the opportunity to call for pan-European standards for transparency. There are no valid arguments to organize this on a country-by-country basis.

Role of Transparency

‘Transparency is important in relation to net neutrality because transparency is the primary approach chosen by the revised European Directives.’ Unfortunately this is only a statement, no proof is given that transparency indeed leads to the desired result: consumers making an informed choice.

Attempts have been made in the past to apply transparency to mobile call plans. That attempt has failed miserably; an astounding number of call plans per operator are still in place with varying and difficult-to-find tariffs per plan. The situation is no different for the business user: the invoice can contain 50 items of which many are unclear as to what they mean.

Transparency is only possible if the product is sufficiently simple to understand for the average consumer. Washing machines are simple, specifications are small and limited and they all look alike. On top of that, the energy consumption is, by law, reduced to a letter A, B or C.



Rocket science cannot be simplified. Communication services are simple but the communications products have been made extremely complicated for marketing reasons and are difficult to compare. Internet access, although simple, will be offered in many slightly different products with varying limitations. Each product will choose which of the thousands of existing (and future) software applications it will allow and at what speed and priority. Transparency means an exhaustive list of acceptable applications (or a list of barred applications?). No two offers will be comparable, unless both are net neutral, no limitations at all. Competition will not result in offers that will satisfy the consumer, in the same way that competition has not resulted in acceptable roaming tariffs.

Major requirements for a net neutrality transparency policy

Accessibility, comprehensibility, meaningfulness, comparability and accuracy are all open to debate. You cannot give assign rules to any of them. Clearly, if the NRA is the judge for this (not at all clear from this consultation document), it will mean lengthy and time-consuming discussions with the operator, particularly as products are constantly changing. If the NRA chooses not to check the requirements above or the information itself, or has no means or intention to enforce the rules, the net effect will be zero. We have not yet noticed any activity on the part of OPTA with regard to transparency in other aspects of communication services, i.e. mobile call plans.

A rather surprising role has been emphasized for third parties, probably because NRAs are not terribly keen to take up this role of ensuring transparency. Clearly, everyone is free to compare offers, and this consultation document confirms the obvious. BEREC is very optimistic to think this will solve the problem. Comparison sites have to make a living too, their resources are also limited, and they depend on operators and other advertisers for income. Not a guarantee for objectivity and accurateness, and a considerable risk for an NRA cooperating with these third parties.

Contents of a net neutrality transparency policy

The consultation document describes the extensive content of transparency policy. The enumeration of subjects is already impressive, so we can expect an extensive document for each offer from the operator. It will not only be extensive because the NRA requires it but also to 1) be on the safe side (understandable from the operator's point of view), and 2) to drown essential information in a sea of words. Ten pages of fine print to describe an offer would not be excessive (listing all services allowed or barred could occupy a considerable number of pages).

We do not think any benefit is to be derived from this process. Consumers will not read the descriptions of the offers (they do not even read the contracts) and the NRA will spend an inordinate amount of time with no practical result.

Ensuring transparency

See our views above.

Pan-European transparency

We think BEREC missed an opportunity to require pan-European regulation for transparency. Referring to national markets is a very weak argument in this case: markets may be different but the best way to achieve transparency is fairly similar in



each market. An added benefit would be that third parties might be more interested if comparison were possible across Europe, instead of in a country-by-country basis. This is particularly true for third-party websites for smaller countries that would not otherwise be commercially viable.

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