GSMA Europe Response to the BEREC Public Consultation on Draft Guidelines for Transparency and Net Neutrality

02 November 2011

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Register ID Number: 38516182135-93

About the GSMA

The GSMA represents the interests of mobile operators worldwide. Spanning 219 countries, the GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organisations. The GSMA also produces industry-leading events such as the Mobile World Congress and Mobile Asia Congress.

For more information, please visit Mobile World Live, the online portal for the mobile communications industry, at www.mobileworldlive.com or the GSMA corporate website at www.gsmworld.com.

In the European Union the GSMA represents over 100 operators providing more than 600 million subscriber connections across the region.

www.gsmworld.com/gsma_europe

Introduction

The GSMA welcomes the opportunity to respond to BEREC's consultation on its "*Draft Guidelines for Transparency and Net Neutrality*".

The GSMA supports an open and transparent internet that enables consumers and business customers to access the content, applications and services of their choice, in ways that provide them with the best possible experiences and services. Competition is the key to ensuring that consumers and business customers have as much choice as possible. In the highly competitive mobile services market consumers are able to choose what suits them best from a wide range of providers and internet access options. It is consumers that dictate the success of any given service or product. That is why mobile operators are committed to giving consumers access to any legal applications, content and services that are available. Transparency is the key to consumers being able to exercise informed choice. Mobile operators are committed to providing consumers with clear explanations of how their mobile internet connection is managed in order to deal with congestion, the efficient operation of services, and the quality of the end user experience. Any limitations, restrictions or conditions will also be clearly and proactively communicated.

In this response we focus on two key aspects: the type of transparency consumers need to receive in terms of meaningfulness, and appropriate tools to deliver and monitor transparency. Given upcoming work from BEREC on Quality of Service this response will focus only on information provided to customers and will not discuss the merits of certain traffic management techniques or business models.

GSMA Europe recognises that the regulatory framework lays out new provisions on transparency and new competencies for the National Regulatory Authorities (NRAs). GSMA Europe considers that to ensure transparency, operators together with other relevant stakeholders appear best suited to define adequate and proportionate information to the end users that will reflect differing national situations. Such process could be achieved under NRA and National Competition Authority (NCA) supervision in order to ensure notably trust and legitimacy of the debate and implementation of agreed rules by all players.

Consumers Transparency Needs

We agree that BEREC has correctly identified the key elements when considering transparency:
- Accessibility
- Understandability
- Meaningfulness
- Comparability
- Accuracy

The mobile industry plays an important role as an enabler and creator of digital applications, content and services that run across the internet. The continued emergence of new business models will preserve consumer choice and safeguard the internet as a rich source of innovation. This requires operators to manage services on their networks, in order to deal

with dynamic traffic flows and congestion, and to tailor delivery to specific individual service requirements, within the limits of finite capacity and network resources. Operators strive to fulfil diverse customer expectations in a very dynamic and innovative market, which cannot be achieved through one-size-fits-all solutions. Services in the future will be ever more sophisticated. In order to deliver the right customer experience, the 'intelligence' of the network will be essential.

The mobile industry agrees that the complexity of tasks necessary to achieve the best customer experience also necessitates a high degree of meaningful transparency to consumers regarding their ability to access or use internet services, applications and content.

BEREC has rightly pointed out that a balance needs to be struck between information of relevance to consumers who want to use certain services, and information that concerns network management practices, but without direct relevance to the consumers. GSMA-Europe deems this differentiation important. At the same time, GSMA Europe would like to stress that differentiated offers are beneficial to customers. Operators may choose to provide packages that included certain applications and services and others that do not. Ultimately it is the consumer that decides which tariff or package best suits his or her requirements. It is therefore highly desirable to find neutral terms when describing the differences between such offers. For instance, a service limitation that allows a consumer to use a limited amount of services at lower cost is not necessarily "problematic", just as an unlimited offer may be cost-prohibitive and therefore not "unproblematic" for another user.

In general we believe that terms such as 'problematic or unproblematic' provide an unnecessarily negative frame of reference within which to consider customer information on traffic management practices. Consumers use their data connections for a wide variety of services and this range of different uses can only increase in the future. One customer may think, for example, that the use of a certain traffic management principle on P2P traffic may be problematic whilst a VoIP user may see the same traffic management principle as positive.

GSMA feels that providing unbiased information for increasingly technology savvy consumers is the best way to ensure transparency, empowering their decisions instead of telling them what is "good" or" bad".

In this regard GSMA-Europe welcomes the opportunity to engage in the future work planned by BEREC in this area, and we hope that a constructive dialogue between industry and regulators can develop.

Appropriate Monitoring Tools for Network Transparency

BEREC also raises the question of what could be considered appropriate tools for delivering and monitoring transparency. GSMA Europe members support efforts to develop communication tools that help customers to understand the services they buy, including any

relevant limitations and conditions. Our members are already undertaking strong efforts in this regard, with the revised Universal Service Directive providing further concrete parameters. It is important to emphasise that communication to consumers needs to take account of their different needs. Operators may choose to provide packages that include certain applications and services, and others that do not. Some consumers may prefer low-cost offers for core services over unlimited, but more expensive services that go beyond their needs, whilst others are willing to pay for an unlimited offer. Limitations of service offers are usually combined with lower costs. Symbols such as a red traffic light for limited (but low-cost) offers are therefore not necessarily conducive to informing the customer in a way that he or she can make an informed choice according to his or her specific needs.

Communication must help consumers to make a choice whilst maintaining sufficient flexibility for network operators to provide differentiated offers and to highlight their advantages as well as their limitations.. As demand for mobile internet continues to grow at an exponential rate, mobile operators need to manage the traffic on their networks in order to deliver an optimum consumer experience. Many more devices are being equipped with mobile connectivity, such as laptops, smart meters, environmental sensors, health monitors, and navigation systems. However, the traffic that can be carried at any one time on mobile networks is limited by the finite amount of spectrum available. Devices accessing the internet via a mobile base station have to share the available spectrum with other devices in the same area. Mobile operators also have to balance different types of traffic to give priority to, for example, emergency services. Operators do not support an unmanaged approach, where all services have to be provided on a best-effort only basis.

GSMA-Europe believes that a thorough evaluation, with industry participation, of monitoring tools is required, and that it must consider the diversity of end-users and their respective interests when it comes to the ratio between the services they seek, the cost they are prepared to pay for such services, and the competitive element between network operators' offers with regard to these end-user groups. Transparency needs to help consumers make a choice – but it must remain neutral as regards the value of the different choices at the customer's disposal.

Comparability of the information is then critical to ensure fair information to end users and avoid any competition distortion. In that sense, the NRA, and NCA, may have a role to play in particular in framing discussions, ensuring trust in the process, and making sure that every ISP participate into the working group and commit to apply the agreed rules.

GSMA Europe also believes that it is important to look at transparency across the entire internet value chain. As the development of online services continues to grow at a rapid rate it is important that all services offered to end-users are transparent and open about the way in which the services are offered. This will ensure that the trust and confidence needed from consumers to use online services is maintained, helping to contribute towards the goals of the Digital Agenda.

Credibility in third party applications or sources of information is also key. GSMA Europe believes that any providers of information should also meet certain criteria to ensure fairness

and transparency as regards the data they have collected and the way their assessments are conducted.

Conclusion

GSMA Europe is committed to working with NRAs and other relevant stakeholders to identify robust and appropriate solutions to the provisions laid out in the revised Universal Service Directive. We feel this is best achieved by constructive engagement on a national level to take better account of the needs of consumers in each market.

We feel that operators as well as NRAs have an obligation to create a market environment which encourages the take up of new products and services, as spelt out in the Digital Agenda's ambitious goals. With this in mind we believe that it is important not to create a representation of these services which may be perceived as negative. Instead, there should be consideration of how the information can most constructively and effectively inform consumers on the choices they have.

Self-regulatory initiatives should allow the industry sufficient flexibility to deliver consumer transparency, while at the same time relying on NRA oversight to make sure the information provided matches the five criteria identified by BEREC and is delivered on a comparable basis by all actors.