

Body of European Regulators for Electronic Communications
BEREC Office
Z. A. Meierovica Bulv. 14, 2nd Floor
Riga LV-1050, LATVIA

Email: berec@ec.europa.eu

BoR (11) 44

Vienna, October 28th, 2011

ISPA CONTRIBUTION REGARDING PUBLIC CONSULTATION ON DRAFT GUIDELINES ON NET NEUTRALITY AND TRANSPARENCY

ISPA (Internet Service Providers Austria) is pleased that BEREC has issued this public consultation on draft Guidelines on Net Neutrality and Transparency.¹

As highlighted in the Draft BEREC Guidelines, transparency is one key pre-condition of the end users' ability to make informed choices. However, as stated correctly, transparency alone is by no means sufficient as other factors such as effective competition in the market and the reduction of barriers to switching between providers are also of greatest importance. Thus, we particularly welcome BEREC's announcement to also analyse, in a separate project, "Competition issues related to Net Neutrality"², and the arguments laid out on page 9 of the Draft BEREC Guidelines.

First, transparency without a sufficient degree of effective competition cannot bring the expected benefits to end users and to all market players in general, since only competition offers end users the possibility to choose from a wide range of services or providers which best fit their needs.

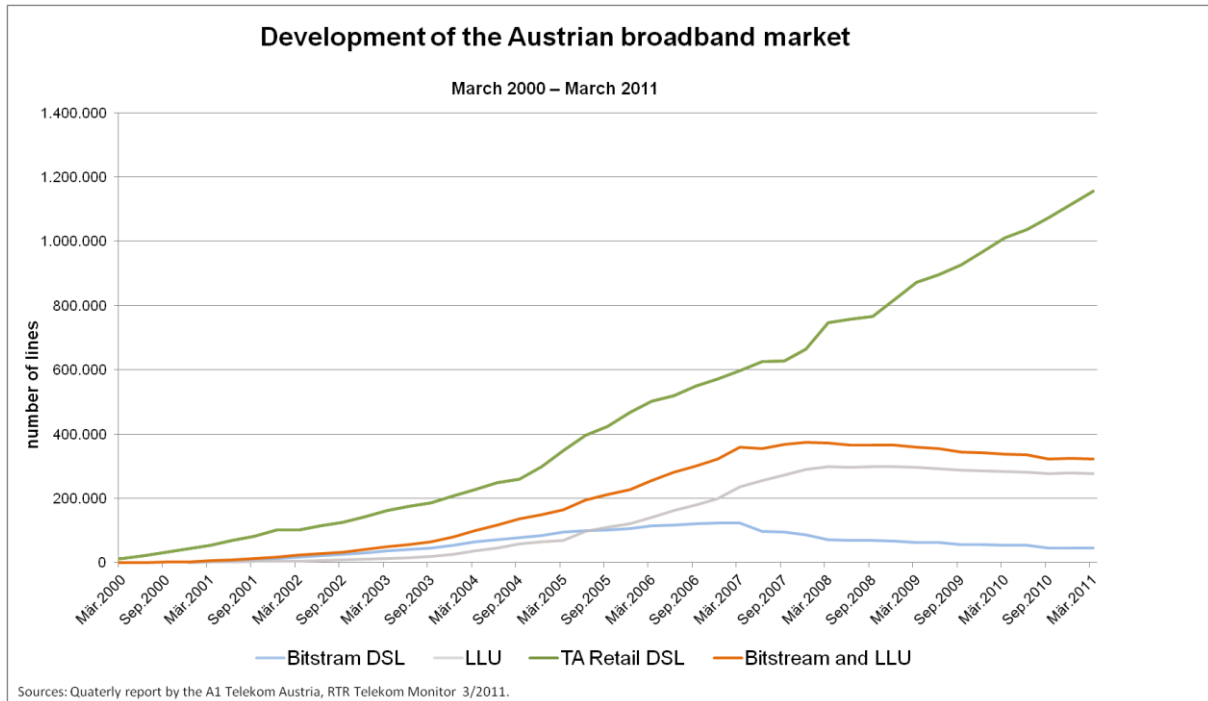
For this reason, ISPA would like to raise the issue of the situation of the Austrian fixed line Internet market which is seemingly heading towards re-monopolisation: The Austrian incumbent steadily gains market share (please see graphic next page) while the number of Bitstream and unbundled lines of alternative providers steadily decreases³. In such an environment, transparency will by no means be sufficient to guarantee consumers' choice since effective competition does not yet exist.

Hence, ISPA would like to point out the following learning from the Austrian case: It seems that competition is a *prerequisite* for transparency to have an effect in relation to Net Neutrality rather than a mere *complement* to transparency as suggested in the BEREC Guidelines and as such *all regulatory efforts must first be targeted at reaching effective competition prior to enforcing transparency rules*.

¹ ISPA would like to point BEREC's attention to its contribution to the public consultation by the European Commission on the open internet and net neutrality in Europe in which ISPA has stressed the importance of competition and transparency, <http://www.ispa.at/netzneutralitaet2010>.

² Draft BEREC Guidelines on Net Neutrality and Transparency, 7.

³ The official explanation of the Austrian RA is that this is due to the strong competition on the Austrian mobile market – however it is not clear, why this would only account for the decrease of lines of alternative providers while the incumbent's lines prosper.



This is also what we see as primary role of the NRA: Ensure competition first, then foster a transparency regime such as listed under a) on page 56 in which NRA will leave the design of transparency solutions to ISPs and only step in if the self-regulatory approach is not delivering transparency.

For further information or any questions please do not hesitate to contact us.

Sincerely,

ISPA Internet Service Providers Austria

Dr. Andreas Wildberger
Secretary General

About ISPA: ISPA is the Austrian association of Internet Service Providers, representing approximately 200 ISPs. ISPA is a major voice of the Austrian Internet industry. Our goal is to shape the economic and legal framework supporting optimal growth of the Internet and Internet services. We regard the use of the Internet as an important cultural skill and acknowledge the resulting socio-political responsibilities.