



**Response by AT&T, Cable&Wireless Worldwide and Verizon to BEREC's Draft Report for Public Consultation, *An Assessment of IP Interconnection in the Context of Net Neutrality*, (BoR(12)33)**

This response to BEREC's Draft Report for Public Consultation *An Assessment of IP Interconnection in the Context of Net Neutrality* ("the Draft Report"), is submitted on behalf of the following companies: AT&T, Cable & Wireless Worldwide (C&WW) and Verizon. All our companies are engaged in the provision of pan-European and global services to large enterprise customers, and have business activities in several EU Member States.

While we believe that the Draft Report provides a reasonable, high-level description of how Internet traffic arrangements have evolved and are currently organised, we are not submitting answers to BEREC's specific questions or making comments on specific details of the Draft Report. However, we do wish to make the following observations.

**The IP interconnection market is highly competitive**

We believe that BEREC's Draft Report clearly demonstrates that:

- Internet traffic arrangements are negotiated in highly competitive markets,
- prices for transit services are continually declining,
- ISPs and content providers have many options for exchanging traffic, and
- no Internet backbone provider has market power.

By any measure, Internet interconnection markets are highly competitive and constantly evolving, with many options for ISPs and content providers to exchange traffic, and continual reductions in prices ensuring that application and content providers can reach users quickly and reliably. Larger IP networks compete vigorously for the transit business of smaller ones, which has resulted in a dramatic reduction in transit prices



from approximately \$1200/Mbps in 1998 to approximately \$5/Mbps in 2010.<sup>1</sup> ISPs and content providers now have many options for avoiding Internet backbone transit costs, including secondary peering arrangements between ISPs and paid peering arrangements between ISPs and content providers.

The option of peering helps to maintain the competitiveness of the transit market. If transit prices increased above competitive levels, providers could respond by peering more extensively. Both markets are complimentary to one another because peering and transit are substantially interchangeable.

### **There is no case for regulatory intervention**

The Internet, has delivered unprecedented societal and economic benefits in a short time, largely because of the highly competitive and distributed model of the Internet, and because policy-makers have exercised restraint from unnecessary regulation. To date, the Internet has been immune to the terminating monopoly problem. Networks have enjoyed the benefits of a robust transit market backed up by bilateral peering arrangements only in those circumstances where both parties find such arrangements beneficial. Absent a regulatory mandate to act differently, there is no basis or right for one network to force the other to compensate it outside of the bounds of commercially-determined value.

We therefore welcome the Draft Report's indication that regulation of IP interconnection may not be justified because the Internet ecosystem has consistently demonstrated an ability to adapt to address needs and developments. Specifically, we agree with Draft Report's (p. 50) key conclusion that "[t]he market has developed very well so far without any significant regulatory intervention."

To date, no European regulatory authority has identified any market failure, or applied regulation to Internet wholesale arrangements. In its response to the European Commission's 2010 Questionnaire on Net Neutrality, BEREC supported the absence of regulatory intervention on the basis of market competitiveness: "[Peering and transit

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<sup>1</sup> DrPeering International, *Internet Transit Prices - Historical and Projected* (Aug. 2010), <http://drpeering.net/white-papers/Internet-Transit-Pricing-Historical-And-Projected.php>.



interconnection] agreements have been largely outside the scope of activity of National Regulatory Authorities (NRAs). This appeared justified in particular due to the competitiveness of the transit market on IP backbones.”<sup>2</sup>

BEREC’s Draft Report further notes (p.50) that disruptions of interconnection at the wholesale level, leading to a situation where end-users cannot reach all destinations on the Internet have been few and have to date been solved in a relatively short time without regulatory intervention – also due to competitive pressure of end-users at the retail level.

We therefore assert that their highly competitive nature means that EU Internet interconnection markets cannot satisfy the “three criteria” test for *ex ante* regulation – high and non-transitory entry barriers, the structure of the market must not tend towards effective competition, and the application of competition law alone must not be able to adequately address the market failure concerned.<sup>3</sup>

The Draft Report appropriately questions (p. 46) whether “any specific form of interconnection obligations” may be applied to Internet interconnection arrangements under Article 5 of the Access Directive.<sup>4</sup> In our view, the large number of indirect interconnection alternatives gives all networks strong incentives to reach efficient interconnection arrangements and thus ensures continued end-to-end connectivity. Consequently, no regulation of these arrangements is necessary.

### **There is no justification for data gathering**

There is no reason for any regulator to require the regular reporting of information concerning IP peering or transit arrangements, unless a particular market failure or other systemic problem in Internet interconnection markets is suspected. The Draft Report properly notes (p. 50) that “most [regulators] do not consider [data gathering exercises] appropriate unless concrete problems or requests occur.”

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<sup>2</sup> BEREC’s Response to the Commission Questionnaire on Net Neutrality (BEREC(10)42);

<sup>3</sup> See Commission Recommendation of 17 December 2007 on Relevant Product and Service Markets, Art. 2, 2007/879/EC.

<sup>4</sup> Directive 2002/19/EC of the European Parliament and of the Council, Mar. 7, 2002, Art. 5.



Regulators can obtain a wealth of information regarding the Internet interconnection marketplace and Internet traffic arrangements by using publicly available data and reports, or by commissioning studies from competent third parties, rather than by requiring the reporting of data concerning commercially sensitive agreements in a competitive sector. The mere possibility of a future dispute occurring also does not justify imposing a requirement to report information, as any data gathering required for this purpose may be conducted in a more targeted, precise and less burdensome manner when a specific dispute arises.

The Draft Report rightly emphasises (*id.*) that “[a]ny measure could be potentially harmful, so that it should be carefully considered.” Data reporting requirements impose unnecessary costs on Internet providers, and even apparently innocuous measures may encourage more onerous regulation of Internet interconnection arrangements. Regulators therefore should avoid establishing such potential harmful precedents.

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