

M. Philippe Distler, Directeur général
Autorité de régulation des communications électroniques et des postes (ARCEP)
7, square Max Hymans
75 730 Paris Cedex 15
FRANCE

Date: 17th February 2012
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Dear M. Distler,

I am writing on behalf of the London Internet Exchange (LINX) in response to “la consultation publique sur la mise en place d’une collecte trimestrielle d’information sur les conditions techniques et tarifaires d’interconnexion et d’acheminement de données”.

About LINX

LINX is a mutually owned membership association for operators of Internet Protocol networks. We provide a neutral interconnection facility and peering platform, known as an Internet Exchange Point (IXP), and represent the interests of our members on matters of public policy.

Established in the United Kingdom, LINX is by any measure one of the largest IXPs in the world. We have about 400 members, all of whom are operators of autonomous networks, and who are themselves established in more than 50 different countries. Our members include operators of access and transit networks, content delivery networks, hosting providers and providers of content services that operate their own networks. At the time of writing our public exchange platform is carrying over 1.2Tbps peak traffic, and about half as much again on our private interconnect platform.

LINX has given official positions on selected matters of public policy of interest since our foundation in 1994, when authorised to do so by our members. Since 2006, representing our members’ interests in matters of public policy was established as one of the primary purposes of the association.

LINX is governed by a Board of Directors elected from our membership on a one-member one-vote basis. We hold the principles of mutuality and neutrality between our members’ competitive business interests as our core founding values, and aim to promote the “Good of the Internet” and the collective interest of community of network operators that comprise our membership.

Background

ARCEP’s proposal to collect information on peering agreements was recently brought to my attention by members concerned about the impact on their business, and the possible impact on the efficiency of Internet interconnection with French networks more generally. I have since been instructed by our Board to write to you with the following official position.

The promotion of interconnection and peering between Internet protocol networks is an underlying precept behind LINX’s core mission. Increasing the degree of interconnectedness of networks, where it

London Internet Exchange Ltd

Head Office: Trinity Court Trinity Street Peterborough PE1 1DA United Kingdom • Tel: +44 (0)1733 207700
London Office: 21-27 St Thomas Street London SE1 9RY United Kingdom • Tel: +44 (0)20 7645 3500
Email/SIP: info@linx.net Web: www.linx.net Fax: +44 (0)20 7536 0720

makes economic sense to do so, drives down costs, improves network performance and increases overall network resilience. With the global economy and society increasingly dependent on Internet networking and the services it enables, these goals have never been more important. Conversely, public authorities should avoid measures that would have the effect of reducing the propensity of network operators to interconnect, unless such measures can be clearly shown to be both necessary and proportionate.

ARCEP questionnaire on peering agreements

LINX acknowledges the requirement of a regulator, such as ARCEP, to obtain accurate information to support regulatory policy-making and the adjudication of complaints and disputes. We are, however, concerned that the particular proposal in question is too extensive and imposes an unjustified burden on network operators outside the French jurisdiction.

Our comments relate to two key elements of the proposal with which we have concerns:

- The proposal purports to impose a reporting requirement on network operators established outside France, and in relation to interconnection and peering conducted outside France
- The proposal would impose a reporting requirement in respect of peering agreements, many of which may be made without formalities, and not previously reduced to writing.

Jurisdiction

As an IXP with a highly international membership, LINX is very conscious that the Internet is operates in a truly global environment. It is extremely difficult for operators established in one country to satisfy the requirements of authorities in countries where they are neither established nor operate. There being so many countries in the world, were operators' responsibilities to be extended to the authorities of all the countries that were affected by their operations, including those affected only indirectly and tangentially, they would bear an unsupportable burden and the conflict of laws would be impossible to resolve. We therefore take the view that operators should only have to meet the requirements of authorities within whose jurisdiction they lie.

In the present instance, we regard ARCEP's proposed reporting requirement as constituting an extra-territorial obligation that ought not to be applied to operators who are neither established in France nor directly providing services within France, merely by virtue of their interconnecting with a network that does operate in France.

Similar considerations apply, *mutatis mutandis*, to the application of a reporting requirement to the providers of content services established and operating outside France. We do not consider the provision of content in the French language to be sufficient, by itself, to place the content provider within ARCEP's jurisdiction.

We consider this lack of jurisdiction to be sufficient reason for ARCEP to withdraw categories (b) and (d) from the scope of persons enumerated in Article 1 of the Draft Decision.

Formality and transaction costs

Separately, it is relevant that most peering agreements are conducted without formality:

“Of the total analyzed agreements, 698 (0.49%) were formalized in written contracts. The remaining 141,512 (99.51%) were “handshake” agreements in which the parties agreed to informal or commonly understood terms without creating a written document”

Source: *Survey of Characteristics of Internet Carrier Interconnection Agreements*, Woodcock & Adhikari (2011)

<http://www.pch.net/resources/papers/peering-survey/PCH-Peering-Survey-2011.pdf>

In order to answer ARCEP’s questionnaire, most operators would need to audit their peering relationships to discover and collate the terms of the agreements. This would represent a significant one-time administrative cost. In order to ensure these costs not be incurred every reporting period, operators would need to introduce a new level of formality into the process of agreeing interconnection, with additional recording keeping and compliance assurance processes. One could plausibly anticipate that operators might respond to such new costs and procedural requirements with further behavioural changes.

We fear that the overall effect of this reporting requirement, if honoured by network operators, would be to tend to reduce the propensity of network operators to interconnect with French networks, to the detriment of France and the Internet as a whole. We therefore respectfully suggest that ARCEP reconsider the Draft Decision, and investigate alternative means to satisfy its requirement for market information.

If you have any questions regarding the above position, please do not hesitate to contact me at the address below.

Yours sincerely,

Malcolm Huty
Head of Public Affairs.

E-mail: malcolm@linx.net

Tel: +44 207 645 3523