Net neutrality – A regulator's vision

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Joëlle Toledano

Net neutrality in Europe: the first milestones

▶ **The Telecom Package provides new powers and tools [2009]**

- ▪ **New regulatory principles for NRAs**
- ▪ **Provisions for increased transparency and quality of service**
- ▪ **Larger scope for access, interoperability and dispute resolution**

▶ **Regulators and Member States have adopted different approaches**

- ▪ **At Commission's level: taking time for cautious in-depth assessment**

  The European Commission's communication [2011]:

  ▪**Transparency to be effectively implemented;**

  ▪**Easy switching and traffic management measures remain under close scrutiny;**

  ▪**Postpones possible measures, which may be taken depending on the outcome of BEREC's investigations.**

- ▪ **At national level: transposition of the Telecom Package and various initiatives**

  ▪**Proactive implementation of the Package (Latvia, Italy, Greece)**

  ▪**Additional legislations (Netherlands)**

  ▪**Soft law and dialogue with stakeholders…**

  In France: ARCEP's ten "proposals and recommendations" [2010]

ARCEP
www.arcep.fr
Autorité de régulation des communications électroniques et des postes

Consensus on principles, but the devil's in the details

▶ **More transparency and competition are warmly greeted, but…**

▶ **Internet service providers highlight an investment burden for them**
  - Exponential growth of traffic = need for new revenues = charge contents & differentiate users
  - Yes, but…
    not-so-exponential growth, cost of equipment sharply declining, competition doesn't freeze prices
  - To what extent is there an issue with costs?

▶ **Big content and application providers (CAPs) trust in negotiation**
  - Market power helps them to maintain satisfying interconnections and implement CDNs
  - What about smaller ones?

  ▶ **Unsolved questions**
  - Unwise/careless traffic management remains a challenge: possibly a threat for fragile players?
  - Will "competition + transparency + switching" be sufficient to guarantee end user's rights?

  ▶ **Diverging views on**
  - The split of value and profits
  - The respective role of States, NRAs, industry, civil society to ensure transparency

Making the framework come to life

▶ **BEREC is building up a common understanding of the main challenges and some methodology**

Transparency [Art 21 USD]
- Guidelines to be published *Dec 2011*
70+ responses to the public consultation
  - *Understandability*: broad support to develop at **European level common frames of reference** (terminology, basic parameters) for access to Internet
  - *Comparability*: requires direct & indirect approaches, **users empowerment**, test tools and monitoring

Traffic management
- Acceptability of traffic management: a theoretical approach *Q1 2012*
- Investigation questionnaire to operators and civil society (coming soon, in coordination with EC), results expected to be published next year *Q1 2012*

Quality of service [Art 22 USD]
- Framework to be published *Dec 2011*
  - QoS/QoE/network performance, triggers
- Guidelines, for consultation *Q3 2012*

Interconnection
- Open discussion in different fora (BEREC, OECD)
- Outputs to be decided

Fighting darkness, sharing knowledge: ARCEP's initiatives

▸ **ARCEP has issued recommendations and identified needs for monitoring**

▸ **3rd package transposition has resulted in a new regulatory objective in national law :**
"*absence of anti-competitive discrimination between ISPs and CAPs as regards the conveying of traffic*"

▸ **Monitoring: a challenging, thorough work – little information available, new expertise to build up**

Transparency

•*Principles:* Should include: scope, quality, limitations, traffic management practices

•*Work:* ISPs have been consulted; framework in preparation with all stakeholders *2012*

Quality of service

•*Principles:* continuous monitoring of ISPs' quality of service

•*Work:* an observatory in cooperation with stakeholders (today in Paris) Public consultation to be launched, specifications to be adopted *2012*

Traffic management

•*Principles:* limited exceptions, i.e. must be relevant, proportionate, efficient, non-discriminatory and transparent

•ARCEP's new power to solve disputes between ISPs and CAPs significantly reduces player's concerns

•*Work:* A questionnaire has helped identifying practices; further recommendations to be published *S1 2012*

Interconnection

•*Principles:* Should be objective and non-discriminatory on both sides

•*Work:* Mandatory, continuous data collection being prepared *Dec 2011*

Taking up the challenge

▶ **EU institutions have taken stance in the debate**

- The European Parliament has reaffirmed its strong commitment to key principles (Resolution adopted on November 17, 2011)

  "Serious risks of departing from net neutrality (….) will be detrimental to businesses, consumers and democratic society as a whole"

- The Council of the European Union is getting more involved in the debate

  Forthcoming conclusions should highlight its commitment to net neutrality

▶ **In depth assessment is needed for policy-makers to decide on next steps**

- More in-depth technical assessment, practical experience at national level
- A better view of markets' situation (Commission-BEREC fact-finding)

▶ **Unknown factors**

- New economic models and strategies
- Acceptability by end users
- Possibility and will of different stakeholders to get involved quickly (self-regulation…)

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*Being proactive,
without being unnecessarily intrusive*

Thank you!