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Net neutrality in Europe

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

Address at the ARCEP Conference (L'Autorité de Régulation des Communications Electroniques et des Postes)

Paris, 13th April 2010

Ladies and gentlemen,

Net neutrality is a subject that stirs emotions. Everyone has an opinion and, so far, this has not led to an agreement on what net neutrality actually means.

Issues

As such, I think it is worth revisiting briefly some of the fears, demands and choices that exist in this debate.

The **fears** are numerous, and are not limited to technical issues. They range from 'Big Brother' concerns about government censorship through to broad questions about who should govern the internet as it becomes ever more complex. Some worry that an increasingly commercial internet, and increasingly congested networks, will afford no space the next time demonstrators for democracy in countries such as Iran try to use digital technology to communicate their efforts and sacrifices to the world.

On the other hand, with user needs multiplying and traffic growing, every telecoms operator I meet has a **demand**. Many want to have the possibility to charge a form of rent to content providers for what they see as extensive use of their networks. And they want to be able to offer differentiated levels of service to their customers – as we already see in many markets with different classes and routes of travel such as planes and trains.

All parties are passionate in their view. This does not mean there are clear answers, but it suggests that each party knows that the internet is not an inherently neutral platform; that there are choices to be made.

Choices like:

1. Should internet providers be allowed to prioritise one kind of internet usage of another? (for instance delaying peer-to-peer applications). And should they be able to charge for that?
2. Are transparency rules on traffic management sufficient to solve possible issues?
3. Would the bottlenecks and other problems disappear if we manage to foster investment in new and open networks?
4. Would regulation promoting more infrastructure competition be reason enough to bring a lighter touch to net neutrality?

You can see it is a complex set of choices. What is more, some of the choices are closely related to issues like the delivery and regulation of new very-fast internet and efficient spectrum management.

The **consequences** of such choices are by no means yet clear. But with the internet transforming every part of life, the consequences of our choices will be significant. High speed access, quality, affordability, innovation, competition, more generally our democracy – these may all be affected by how this debate progresses.

This debate is still at an early stage in Europe. This is probably because our regulatory framework and the competitive investments that it fostered meant that we have not been so immediately confronted with these tough choices as in some other jurisdictions. Of course, we need to anticipate potential problems. However, as we do so, we must also avoid over-hasty regulatory intervention.

Reflecting on the more advanced debate in the United States might help us to make progress on our own debate. In 2005, the Federal Communication Commission (FCC) of the United States outlined four principles to encourage broadband deployment and preserve the open and interconnected nature of the public internet. These were rights for consumers: to access lawful internet content of their choice; to run applications and services of their choice, to connect devices of their choice and to have competition.

I can fully subscribe to these principles.

Moreover, the FCC is now proposing two additional principles, concerning non-discrimination and transparency. While the importance of increased transparency is clear, the real meaning and consequences of the non-discrimination principle should be carefully considered.

In fact, some are interpreting the non-discrimination principle as essentially preventing telecom operators from seeking commercial payments or agreements with content providers which deliver their highly capacity-consuming services through broadband networks and require a certain level of service for their transmission to be effective. That prospect raises a number of delicate and complex issues. These issues must be very carefully assessed before the EU gives any possible regulatory response.

Europe's new regulatory framework

Turning now to the EU's new regulatory framework adopted in 2009, it is useful to underline a couple of points which are relevant for our debate.

First, under the new framework, National Regulatory Authorities are required to promote *“the ability of end-users to access and distribute information or run applications and services of their choice”*. This sets a very important principle for net neutrality, as it recognises and safeguards the basic freedoms of internet users.

Secondly, our new framework explicitly foresees the possibility for National Regulatory Authorities, after consulting the Commission, to set minimum quality of service requirements if there is a problem. This should ensure that traffic management and possible prioritisation does not lead to degradation of content and services provided by non-commercial actors or by new entrants. In that respect, I would also like to underline that we are developing a strong broadband policy to promote, in particular, investment in new generation networks which will allow the provision of very high quality services. Furthermore we have launched a public consultation on universal service which addresses the question of whether universal service has a role in advancing broadband coverage.

Thirdly, our new framework provides strong transparency measures to ensure consumers understand and get what they pay for. I think too many consumers currently feel cheated, for example when they get internet speeds far lower than advertised. Transparency is therefore essential. For instance, consumers should be clearly informed of the traffic management systems that are in place and should be able to choose their providers taking this into account.

These are not issues up for discussion, but clear rules already agreed and adopted. I will be vigilant to ensure that they are correctly transposed and implemented by the EU's Member States.

Next steps

The EU's revised telecoms rules will be complemented by our forthcoming NGA Recommendation and Spectrum Policy, both of which will foster investment in efficient and open networks.

Together this provides a good framework to deal with net neutrality issues. Therefore, in my opinion, any further regulatory intervention should be duly justified by the need to tackle specific problems which could possibly emerge.

To this end, the Commission is carefully monitoring the impact of market and technological developments on net neutrality and will report to the European Parliament and the Council by the end of the year.

The Commission will hear all interested stakeholders and **I can announce my intention to launch a public consultation before the summer, in order to progress Europe's net neutrality debate.** In that context, I am encouraged by the fact the BEREC already has a project team working on these issues and I look forward to that useful input.

Principles I bring to the table

Let me now explain the principles I myself will use to examine the technical and political issues raised in this debate.

My first general principle is not to make assumptions. I do not make the assumption that one side or another should prevail in this debate, or even that further Commission intervention is required.

I think that we should avoid giving rushed answers before having carefully examined the potential problems, if any, and the more appropriate and proportionate solutions. In particular, I think that we should avoid taking unnecessary measures which may hinder new efficient business models from emerging.

Given that so much of this debate is about different forms of traffic management, let me use a road traffic analogy. There are many ways to manage traffic: by improving infrastructure, adding tolls, creating junctions or roundabouts to improve bottlenecks. But creating new rules and crowding the street with signs does not automatically help the traffic to flow. Indeed, putting a police officer at a busy corner can often deliver the slowest traffic of all.

So, I will not be someone who comes up with a solution first and then looks for a problem to attach it to. I am not a police officer in search of a busy corner.

More specifically I will respect the following principles:

1. Freedom of expression is fundamental

I will not support any outcome that puts into danger freedom of expression.

2. Transparency is non-negotiable

This is already addressed in the new regulatory framework, but the principle is worth re-stating: in a complex system like the internet, it must be crystal clear what the practices of operators controlling the network mean for all users, including consumers.

3. We need investment in efficient and open networks

We have to adopt clear regulatory measures to foster investment in new efficient and open networks. Deploying such networks and promoting infrastructure competition may be the best way to avoid bottlenecks and monopolistic gatekeepers, thereby ensuring net neutrality.

4. Fair competition

Every player on the value chain should be free to fairly position themselves to offer the best possible service to their customers or end users. Any commercial or traffic management practice that does not follow objective and even-handed criteria, applicable to all comparable services, is potentially discriminatory in character. Discrimination against undesired competitors (for instance, those providing Voice over the Internet services) should not be allowed.

5. Support for innovation

There must be opportunities for new efficient business models and innovative businesses. And over time, we should continue to monitor whether traffic management is a spur to future network investment, and not a means of exploiting current network constraints.

Conclusions

It may sound obvious, but my primary concern is to strike the right balance between the parties concerned.

First and foremost, users should be able to access and distribute the content, services and applications they want. While content providers and network operators should have the right incentives and opportunities to keep investing, competing and innovating. And everyone deserves certainty about how this world will take shape.

On that note, I wish you well for the rest of your discussions here today and look forward to your constructive input.