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Cable&Wireless

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NEUTRALITÉ DE L'INTERNET ET DES RÉSEAUX

Madame, Monsieur,

Nous vous prions de bien vouloir trouver en annexe le contribution de Cable & Wireless S.A.S. au consultation publique sur la neutralité de l'internet et des réseaux. Nous allons envoyer une version française dans les dix jours prochains.

Nous restons à votre disposition pour toute information complémentaire

Dr. Jutta Merkt
Directrice de service Regulation

Cable & Wireless SAS is a longstanding operator of electronic communications networks and provider of international telecommunications services in France. The operations in France are part of the network and service portfolio that is specifically designed to meet the requirements of business critical communications services for multinational enterprises, Internet Service Providers, CDN operators, application providers and other telecommunications carriers. The international activities are consolidated under Cable & Wireless Worldwide plc (in the following C&W Worldwide) with registered office in the UK. The focus of C&W Worldwide operations is to ensure efficient cross-border telecommunications services to the customer. In this environment, a wide array of Quality of Service (QoS) parameters that are individually agreed with the customer, periodical service reports, all being backed by contractual penalty clauses, are constitutional to the contractual relationship between the operator as the service provider and the customer.

Cable & Wireless SAS welcomes the opportunity to contribute to the consultation held by ARCEP on the matter of net neutrality.¹ With the particular focus of the C&W Worldwide operations on international networks serving business customers the participation may come at a surprise. However, we do believe that it can contribute important aspects to the discussion of net neutrality in France and in Europe and we ask for its consideration by the authority.

NETWORK NEUTRALITY REFRESHES INTERNET AND BROADBAND FOR ALL DISCUSSION

Network neutrality is a concept being so broad that it's different aspects demand for differentiated consideration in individual contexts. The ARCEP consultation document delivers an excellent overview of different aspects of network neutrality and points on a vast array of possible policy directions.

¹ "Discussion points and initial policy directions on Internet and net neutrality", ARCEP, May 2010
[http://www.arcep.fr/index.php?id=8571&tx_gsactualite_pi1\[uid\]=1279&tx_gsactualite_pi1\[annee\]=&tx_gsactualite_pi1\[theme\]=&tx_gsactualite_pi1\[motscle\]=&tx_gsactualite_pi1\[backID\]=26&chash=bda3405ef4](http://www.arcep.fr/index.php?id=8571&tx_gsactualite_pi1[uid]=1279&tx_gsactualite_pi1[annee]=&tx_gsactualite_pi1[theme]=&tx_gsactualite_pi1[motscle]=&tx_gsactualite_pi1[backID]=26&chash=bda3405ef4)

Given the broadness of the subject matter, we believe that conclusions on particular remedies are too early to be made. We propose to consider additional focused consultations, i.e. on the delineation between Internet and online service (managed services), network neutrality in mobile versus fixed markets, policy objectives for consumer markets apart from business markets, transparency measures, Quality of Service matters and non-discrimination standards.

CLARITY IN FOCUS REQUIRED WHEN IT COMES TO REMEDIES

The broadness of the network neutrality debate is a helpful way to foster the discussion on broadband as a social and political goal and possible consumer's rights in regards to open Internet.

From this end, network neutrality is primarily a consumer-focused concept. Any policy conclusions drawn should ensure, that in fact they do focus on consumer service. Where this is the case, we suggest to use differentiated terminology as to avoid that consumer markets standards impose potential harm on telecommunications services for business customers, areas, where services and network designs are individually designed and fixed in specific contracts.

CAPACITY AND SERVICE AT CORE

Network neutrality particularly should be aligned with the fundamental economics of today's broadband networks, where trade-off decisions have to be made to make efficient use of scarce resources.

From an operators' point of view network neutrality considerations hit the trade-off between bandwidth limitations on one-hand and QoS requirements of telecommunications users on the other. Where networks reach limits, for example in peak hours, the question arises whether operators should upgrade the networks, to remove the peak capacity limits, or should they rather manage traffic streams, i.e. by throttling and blocking of certain applications. Operators take decisions on this trade off by applying traffic management measures to ensure QoS class levels reflecting different needs for services such as video (assured rate), voice (real time), business data (assured rate) and consumer data (best effort). On top of this, network neutrality considerations hit the contractual obligations that are typical for business customers'

telecommunications contracts, where the operator is contractually committed to deliver individually determined service levels. Quality of Service Levels come as a commitment to ensure predefined traffic classes that are specified in regards to throughput, maximum packet loss, maximum latency, and maximum Jitter. Given the bandwidth limitations particularly on today's access networks, the operators' discretion to manage traffic at various network levels and applications is central to meet customers' telecommunications requirements.

Questions

NO. 1) DEFINITIONS

In regards to the definition of "End user"

As the needs of consumers are very different from the communication needs of large corporate users, C&W Worldwide proposes to clearly differentiate between consumers on one-hand and **business users** on the other. The latter could be broadly viewed as users of communications services with individually negotiated terms of their communications contracts, particularly but not limited to QoS parameters.

NO. 2) BACKGROUND AND ISSUES

ARCEP's presentation of the background and issues that tend to be put into network neutrality context is a very helpful set-up for the upcoming discussion. As pointed out above, the issues mentioned should be read in a different context when it comes to the operation of backbone networks and particularly in regards to business customer communications services. Here, the definition and assurance of certain Quality of Service parameters is core for the business customer's (end-user) choice among the communications providers. Transparency or asymmetry of information is therefore not an issue in these types of markets. In addition, given the vital competition among operators for

serving these customer groups, C&W Worldwide is convinced that for wholesale and for business users, no regulatory intervention is necessary in regards to network neutrality.

C&W Worldwide would welcome if ARCEP could acknowledge these differences from potential risks in the consumer area and embed this in their concept of network neutrality.

NO 3) TERMS & CONDITIONS GOVERNING INTERNET ACCESS

As pointed out above, special terms & conditions governing Internet access could bring more disadvantages to the special market of business communications. The main reason is that network management is vital for the assurance of the individual service parameters agreed with the customer. In addition, there are no expected gains as it comes to transparency and assurance of QoS levels as this is subject to a dedicated process of demand and offer between the customer and the applying operators in the market. Concepts of consumer protection and transparency improvement tend to be very different from – if not contradictory - the rules governing the procurement of business communications services.

NO 4) PROPOSED DIRECTION

In regards to the 6th direction (1st element)

This direction sets out a potential remedy to oblige ISPs to make transparent relevant information on services and applications in a comparable manner. It also suggests making mandatory a periodic publication of QoS indicators.

As detailed above, for wholesale markets and business communications services, the mentioned information on services and applications is subject to detailed upfront negotiations between the customer (user) and the operators. Throughout a process including typical phases of Request for Information (RFI),

Request for Proposal, Request for second, third and final proposal, the business customer (end user) is ensuring the highest level of possible information to be gained from the operators in the market. The agreed QoS levels are then fixed in a contract and backed by regular service reporting and contractual penalty clauses.

Asymmetry of information problems as potentially prevailing in the consumer market does not apply to the business users markets. Therefore, C&W Worldwide proposes to specify the above direction to “consumers” as being different from “business users” (see definitions).

NO 5) OTHER DIMENSIONS

In regards to “Implementing specific provisions” (page 43)

This section discusses deviations from the principle of network neutrality that come with obligations being imposed on operators to intervene into traffic conveyance, i.e. web blocking, for law enforcement purposes. It raises the question of whether operators’ technical ability in combination with an obligation to lawfully conduct this analysis in specific circumstances comes with additional risks of infringements of users privacy rights. The document specifically mentions DPI as being one of the technologies for traffic analysis being under scrutiny.

The operations of communications networks and services are framed by very detailed and strong regulations around privacy. Operators do operate in an area where the generation and retention of data is only allowed in certain and very specific circumstances. The principles of privacy of communications and freedom of expression are concepts that are fundamental to today’s operations of telecommunications networks. For the moment, C&W Worldwide has no indication that technologies such as DPI would mean any changes in the quality of network operations. We would appreciate if ARCEP would provide more evidence on it’s concerns around this before considering changes in security compliance.

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