

To: European Commission  
Directorate-General for Information Society and Media  
Audiovisual and Media Policies Unit

Date : October 12, 2006  
Subject : Public Consultation on Content Online in the Single Market  
Ref. nr. : 06120

Dear Sir, Ms., Mrs.,

Regarding the *public consultation on ways to stimulate the growth of a true EU single market for online digital content*, we like to bring the matter of mobile content issues to the attention of the European Commission.

The Open Mobile Internet initiative (OMI) is a Dutch initiative from major content providers in the Dutch market. As chairman of this initiative, I raise our concerns regarding the “walled gardens” (like i-mode of KPN and Vodafone Live) that mobile telecom operators have implemented and persist on. This has impact of the current regime on consumer welfare and free consumer choice. The aim of this letter is to draw attention to consumers'- and content providers' concerns and seek your help in clarifying applicability of competition rules.

We comment below on a range of current cases where there may be scope for tougher enforcement of competition policy in sectors of mobile internet by creating a better balance between the conflicting principles of competition and innovation protection.

Across Europe, our country is most successful in penetration of fixed broadband (67%) and access to internet (80%). Whilst penetration of mobile phones is above 100 %, meaning more mobile phones than inhabitants, mobile internet in The Netherlands is not popular. Content providers noted a significant difference between regular fixed internet, generally accepted and massively used, versus mobile internet: mobile internet lacks the open character, the accessibility and the transparency of the traditional internet.

We strongly believe that the “walled garden” model, which to varying degrees all mobile network operators follow, is the main cause for the disappointing uptake of mobile internet by consumers. Mobile operators set their own standards and conditions and they distinguish between on-net (inside the walled garden) and off-net public domains. Two examples additionally illustrate the lack of openness:

- Mobile access to sites outside the operator's portal is often invoiced at a higher rate than access to sites within that portal.
- To invoice their customers, content providers are forced to use payment services offered by the respective operator.

### Objective and main points

Content providers agree that open access is fundamental to the success of the regular internet. In the early days of traditional internet quite a number of ISP's believed consumers did not need e-mail and worldwide web access beyond the ISP domain. ISP's quickly recognised they were wrong. Today we feel mobile internet is blocked by similar principles.

Consequently, our Dutch OMI initiative strives towards an *open* mobile internet and advocates elimination of whatever restricts open access to Internet over mobile phones. This will unleash the innovation power of Internet, will spur usage of mobile internet and ultimately will reap significant benefits for all parties in the value chain. Ultimately, this will lead to economic and job growth of the European high tech sector as a whole.

Based on this objective content providers formulated the following main points:

1. Mobile internet should equal the regular internet in terms of openness, accessibility and transparency. Current differences should be eliminated.
2. The value chain of mobile internet should follow the model of the regular internet. Parties should not be restricted in services they wish to provide in the value chain.
3. Content providers must be free in their choice of service provider and should not be bound to exclusive partnerships with mobile network operators. This freedom should apply to e.g. user identification, payment methods and location based services.
4. To consumers the costs of mobile internet should be self-evident, transparent and predictable. Price differentiation between on-net and off-net domains is quite unacceptable.
5. Operators must state the criteria upon which they limit consumer access to specific content or services (e.g. voice over IP, instant messaging, third party billing, etc). Any limitation in usage of mobile internet outside these criteria must be eliminated.
6. Services, such as identification, location based services and payment services need to be available both on-net and off-net.
7. In order to further access to and usage of mobile internet, content providers will create and offer univocal mobile internet experiences

Content providers work together, and with mobile network operators, to resolve above issues which they deem to be critical for the development of a mature mobile internet market in The Netherlands.

### Conclusion

Content providers are disappointed in the development of the mobile internet market and therefore join forces to further its growth. The key opportunity is the transformation of the current offerings into an OPEN mobile internet comparable to regular internet in terms of openness, access and transparency. Jointly, content providers wish to create the conditions to make mobile internet successful. Thereto they have put forward there arguments which they seek to discuss with all relevant parties in the value chain.

We would be grateful if the Commission could clarify the extent to which competition rules apply to the walled gardens.

Should you have any questions regarding the issues raised in this letter, please do not hesitate to contact me.

Yours sincerely,

**Paul Brackel**

Chairman Open Mobile Internet initiative  
Paul.Brackel@ECP.NL  
+31-653-174816

OMI is facilitated by ECP.NL, platform for e-Netherlands ([www.ecp.nl](http://www.ecp.nl))