



ARCEP proposals on net neutrality

A proactive approach based on the revised telecom framework

European Parliament and European Commission joint summit

November 11th 2010

Joelle Toledano



Changing environment ; improved framework ; preventive approach



- ▶ Special importance of Internet for European economy and society:
 - Commission declaration, French Constitutional Court, Council of Europe
 - **Net neutrality as a policy objective**

- ▶ Markets complex trends addressed by the regulatory framework:
 - E.g. growing asymmetry of data streams, exclusive arrangements across the value chain
 - **Competition** is the first gatekeeper: strong broadband asymmetric regulation in EU (vs. USA) ; new/improved symmetric tools (transparency, switching...) in the TP*
 - **Access to content** (TP objective) must be a concern for regulators (dispute resolution, QoS)

- ▶ ARCEP's three-step approach
 - **Identify** the objectives to conciliate:
 - User's freedom of choice ; proper functioning of the networks ; long-term innovation and investment at the core & the edge
 - **Propose** a global vision of good practices and accountability:
 - Wide-ranging principles intended for case-by-case assessment
 - Tools to monitor markets
 - **Implement**, through co-regulation at first, ready to be more prescriptive if necessary

ARCEP's Proposals on net neutrality



- ▶ Recommended features of ISP's offers of access to Internet:
 - 1 Freedom of use and sufficient quality
 - 2 Non-discrimination between traffic streams
 - 3 Limited exceptions to the 2 first principles – 5 criteria to supervise traffic management
 - 4 Unrestricted managed services as long as Internet access not degraded below acceptable level

- ▶ Making the recommended features transparent:
 - 5 Increased end-user transparency:
 - ✓ Define appropriate information on accessible applications limitations, QoS...
 - ✓ Empowering the users

- ▶ The follow-up in practice:
 - 6 Monitoring traffic management practices
 - 7 Monitoring the quality of the Internet access service
 - 8 Monitoring the data interconnection market – importance of non-discrimination for Internet

- ▶ Neutrality also depends from other parts of the value chain: proposals 9 and 10 consider issues on the side of content providers and terminal equipment providers.

Key findings and next steps

- ▶ The Framework for Electronic Communications provides appropriate powers and tools to address most of net neutrality related concerns (cf. BEREC response)
- ▶ Distinction between best-effort Internet and managed services:
 - Structural difference regarding traffic management principles
 - Efficient transparency on how the user's connectivity is shared
 - **A win-win coexistence is desirable and realistic**
- ▶ Net neutrality and mobile Internet:
 - A new and growing market, crucial for tomorrow
 - Neutrality is not (yet?) the general rule in the mobile environment... but it should be.
 - ✓ **The same principles should apply for all technologies**
 - ✓ Their implementation possibly needs to take the specific features of each type of network into account
- ▶ Proposals welcomed by national stakeholders... but the hard work only starts now, since **“the devil lies in the details”**
 - ✓ ARCEP is committed to continue discussion & investigation at both national and EU level
 - ✓ Establish suitable indicators
 - ✓ Evaluate deviations from principles... and the need to improve these





Thank You !



Annex – Useful references in the telecom package

<p>Article 8(4)(g) Framework Directive <u>Regulatory principles</u></p>	<p>Article 20 & 21 Universal Service <u>Transparency</u></p>	<p>Article 20 Framework Directive <u>Dispute resolution</u></p>	<p>Article 22(3) Universal Service <u>Quality of service</u></p>
<p>The NRAs shall ... by inter alia: (g) promoting the ability of end-users to access and distribute information or run <u>applications and services</u> of their choice;</p>	<ul style="list-style-type: none"> - information on any other conditions limiting access to and/or use of <u>services and applications</u>... - the <u>minimum service quality levels</u> offered... - information on any procedures put in place by the undertaking to <u>measure and shape traffic</u>... - any restrictions imposed by the provider on the use of <u>terminal equipment</u> supplied; 	<p>In the event of a dispute arising [...] between undertakings providing electronic communications networks [...] and <u>other undertakings in the Member State benefiting from obligations of access and/or interconnection</u> arising under this Directive or the Specific Directives, [...]</p>	<p>In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that NRAs are able to set <u>minimum quality of service requirements</u>...</p>

Annex - ARCEP Proposals (1/4): recommended features of ISP's offers

1/ Freedom and quality of Internet access

ARCEP recommends that, in accordance with the legislative provisions that are in effect, ISPs marketing Internet access be required to provide end users with:

- the ability to send and receive the content of their choice;
- the ability to use the services and run the applications of their choice;
- connect the hardware and use the programmes of their choice, provided they do not harm the network ;
- a sufficiently high and transparent quality of service.

There may be exceptions to this principle, provided they comply with the guidelines set out in proposed recommendation no. 3.

2/ Non-discrimination between Internet traffic streams

For Internet access, ARCEP recommends that, as a general rule, no differentiation be made between the way in which each individual data stream is treated, whether according to the type of content, the service, application, device or the address of the stream's origin or destination. This applies to all points along the network, including interconnection points.

There may be exceptions to this principle, provided they comply with the guidelines set out in proposed recommendation no. 3.

3/ Supervising Internet traffic management mechanisms

Marking exceptions to the principles stated in proposals nos. 1 and 2, and to limit any possible deviations from these, ARCEP recommends that when ISPs do employ traffic management mechanisms for ensuring access to the Internet, they comply with the general principles of relevance, proportionality, efficiency, non discrimination between parties and transparency.

4/ Managed services

To maintain all of the players' capacity to innovate, all electronic communications operators must be able to market "managed services" alongside Internet access, to both end users and information society service vendors (ISV), provided that the managed service does not degrade the quality of Internet access below a certain satisfactory level, and that vendors act in accordance with existing competition laws and sector-specific regulation.

Annex - ARCEP Proposals (2/4): making the key features transparent

5/ Increased transparency with respect to end users

ISPs must provide end users – in both their sales material and the contractual terms and conditions for their electronic communications services, and in the information that is available to the customers of these offers for the duration of their service contract – with **clear, precise and relevant information** on:

- the services and applications that can be accessed through these data services,
- **their quality of service,**
- **their possible limitations,**
- **and any traffic management practices** that might affect them.

To this end, ARCEP recommends in particular that:

- any restriction of a data transmission service marking a departure from the principles of freedom of use and non discrimination between the streams, stated in proposals nos. 1 and 2, be stipulated explicitly in the ISP's sales material and contractual clauses, in a clear and understandable fashion;
- **the term “Internet”** cannot be used to qualify these services if certain of these restrictions do not comply with the demands of proposal no. 3;
- **the term “unlimited”** cannot be used to describe service offerings that include “fair use” type limitations that result in access being cut off temporarily or extra billing for the services, or an excessive degradation of access speeds or the quality of the service.

The Authority will initially request that **ISPs and consumer association representatives work together** to define common systems for providing end users with information on the limitations of the offers and their traffic management practices, and to submit their proposals on the matter to ARCEP by the end of Q1 2011.

Subsequently, should it prove necessary, the Authority could work in tandem with the General directorate for fair trade, consumer affairs and fraud control (“DGCCRF”) to complete these proposals.

Annex - ARCEP Proposals (3/4): the follow-up in practice

6/ Monitoring traffic management practices

ARCEP will ask ISPs and their representative associations, ISVs and their representative associations, as well as consumer associations to **work together to identify and qualify the different types of traffic management practices**, including “fair use” limitations associated with so-called “unlimited” offers, and to submit proposals on the matter to ARCEP by end of Q1 2011. In the meantime, the Authority will monitor the evolution of the traffic management practices that operators are employing, in particular to evaluate whether they are complying with the criteria of relevance, proportionality, efficiency, non discrimination between parties and transparency.

Subsequently, should it prove necessary, the Authority could work in tandem with the DGCCRF to complete these proposals.

7/ Monitoring the quality of the Internet access service

To ensure that quality of the Internet access service is both sufficiently high and transparent, ARCEP will be devoting efforts:

- to **define the main Internet access quality of service parameters and establish suitable indicators**;
- to **require ISPs to publish these QoS indicators** for their retail data transmission services periodically, particularly for Internet access on both fixed and mobile networks.

This work will be performed in tandem with the DGCCRF, operators and their representative associations, ISVs and their representative associations, as well as consumer associations.

8/ Monitoring the data interconnection market

ARCEP recommends:

- that parties providing end users with access to the Internet **grant, in an objective and non-discriminatory fashion, all reasonable interconnection requests** whose purpose is to provide users with Internet services or applications;
 - that parties providing ISVs with access to the Internet grant, in an objective and non-discriminatory fashion, all reasonable requests for interconnection whose purpose is to make these vendors' services or applications accessible to Internet users.
- To eradicate the opacity that currently exists in data interconnection markets, and to obtain information that will be useful to exercising its powers, **the Authority will soon adopt a decision on the periodical collection of information on these markets**, before the end of Q1 2011. Based in part on this information, the Authority will later assess whether it is necessary to implement more prescriptive regulatory measures in these markets.

Annex - ARCEP Proposals (4/4): other dimensions of neutrality

9/ Taking account of the ISV's role in Net neutrality

ARCEP underscores the fact that users' actual ability to exercise their freedom to choose between offers (services/applications/content) made available by ISVs over the Internet implies that these vendors comply with:

- a principle of **non-discrimination towards the different operators** ability to access these offers;
- principles of **objectivity and transparency with respect to users**, in terms of the rules employed, in cases where the ISV selects and/or ranks content coming from third parties, which is notably the case with search engines.

The Authority invites the private and public parties concerned to take these issues into full consideration.

10/ Increasing the neutrality of devices

As part of the upcoming review of the R&TTE Directive, ARCEP recommends that the opportunity to complete this directive be examined, to **take better account of developments in the devices market, particularly the growing importance of the software** layers and interactions with ISVs.

The Authority invites the private and public parties concerned to take these issues into full consideration.

➤ Regulation of content

- existing rules and balance of rights ; new perspectives

➤ International dimension

- Internet governance