

NET NEUTRALITY IN EUROPE NEEDS TO BE SAFEGUARDED

Letter sent to Ms Neelie Kroes,
Vice-President of the European Commission

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Dear Vice-President,

I write on behalf of the European Consumers' Organisation (BEUC) to urge you to **safeguard net neutrality as a fundamental regulatory principle**. Net neutrality is one of the fundamental principles of the Internet that has significantly enhanced citizens' participation in society and access to knowledge and diversity, while promoting innovation, economic growth and democratic participation.

Nevertheless, the neutral architecture of the internet is currently being challenged by various parties, such as network operators providing end-users' connections. The **recent developments in Norway**, where the biggest telecom operator has announced its intention to charge for content providers for prioritized transmission with the aim of promoting its content and that of its partners, raises serious concerns from the consumers' point of view. At the same time, Norway's second largest mobile services provider is publishing schemes to disallow VOIP on their networks. Developments towards that direction are extremely worrying, when considering that Norway has been among the first countries to adopt guidelines on net neutrality. However, **this soft approach has proven to be ineffective in protecting consumers' from discriminatory practices."**

BEUC is also concerned that the recently adopted new Telecom rules, which rely on transparency and consumer information, are not the inappropriate instrument to prevent unfair and discriminatory traffic management practices.

First, the new rules establish as a **default rule the possibility for network providers to adopt traffic management practices** on the only condition that these are disclosed to consumers. Although we recognise traffic management may be necessary in specific cases, such as when the security of the internet is threatened or in cases of extraordinary traffic congestion, we strongly believe that network operators should bear the burden of proof that there is conclusive evidence justifying traffic management practices. Similar claims should be carefully scrutinised by regulatory authorities in accordance with the principles of transparency, proportionality and non-discrimination.

Secondly, although we welcome the increased transparency requirements of the new Telecom rules, **transparency should not be the sole remedy**. The limitations of this approach are clearly demonstrated by state of affairs in Sweden; following the decision of the national regulator to establish transparency as the only safeguard, both leading mobile operators introduced restrictions on users' ability to use VoIP.

Thirdly, for transparency to be effective, **fair and open competition** needs to be in place. Nevertheless, competition law allows for *ex post* intervention only on a case-by-case basis, while it pre-supposes a significant market power. In the complex and fast evolving ICT market, not only is such power hard to be established, but it is also difficult to define the appropriate market.

Fourthly, switching between operators is not often easy, either because of the significant costs involved or due to contractual restrictions as in the case of bundled services. Switching costs include contract cancellation fees, costs related to setting up the new network and installation costs, as well as the ones related to informing third parties of the new contact information. Switching also requires the consumer to have the capacity to make an informed judgement as to whether the problem lies with the application or service or whether it is due to the traffic management practices of their operator.

Fifthly, there is the risk that EU Member States will implement the provisions of the Telecom Package in a divergent manner. The diametrically different approaches followed by the French (ARCEP) and UK (Ofcom) regulatory authorities provide a clear *avant-goût* of the risks involved.

Unless the European Commission adopts specific rules that will clarify and complement the transparency provisions of the Telecom Package, Europe might end up with 27 different regimes for net neutrality. This will run contrary to the nature of the internet as a borderless environment and will jeopardise the rights of consumers, as well as innovation and Europe's competitiveness.

We therefore urge you, as Vice-President of the European Commission to **take a strong stance against discriminatory practices by telecom operators that jeopardise the right of consumers to have access to information and content of their choice. Specific rules are needed to ensure that net neutrality is safeguarded.**

I would be happy to further discuss this issue at your best convenience.

Yours sincerely,

Monique Goyens
Director General

C/c: Mrs. Lorena Boix Alonso, Deputy Head of Cabinet of Vice-President Kroes;
Mr Robert Madelin, Director General of DG Information Society;
Mr Giuseppe Abbamonte, Head of Unit B1, DG Information Society.