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Citizens' Rights Directive – EP amendment threatens network management

At a time when the Council and the European Parliament are close to reaching an agreement on the review of the Telecoms Package, we would like to bring to your attention an urgent matter relating to the network management issue on which Council and Parliament texts still diverge. We are very concerned that a new amendment adopted in the Parliament's responsible committee would, if adopted, have considerable negative consequences on the level of choice and the value of the Internet experience for consumers and on the ability to innovate for all actors in the Internet value chain.

While most of the compromise amendments adopted in the EP IMCO Committee are acceptable, the proposed text for Recital 26 to the Citizens' Rights Directive could lead to a world-wide unprecedented restriction of quality of service differentiation. Indeed, it attempts to define in an exhaustive manner what traffic management procedures can be put in place in the future and to prohibit any differentiation in the treatment of internet-based services, even if based on commercial agreement. As a result, Europe, which has the world's most competitive broadband markets, would enact a second tier of regulation for the internet even before a proper debate on the opportunities and necessity of network management has been carried out.

Against this background, the signatories of this letter, representing the overwhelming part of the EU telecoms sector, call upon the Members of Council to defend the reasonable approach underlying the current Council text which provides for increased transparency for consumers and a new legal basis for NRAs to act in case of restrictions or degradation of service quality, but does not restrict network management per se (Recital 26 of the Council text). This will allow the development of targeted best practices by NRAs in dealing with quality of service differentiation in new networks to the benefit of EU citizens and businesses.

Europe with its particularly competitive environment for broadband access services should not become the testing ground for new strict regulation of the delivery of services and applications over networks.

Network Management – what is at stake

Contrary to recent claims made in the debate that network management is a societal issue and directly linked to overriding principles such as the freedom of speech or even the survival of the internet itself, network management is first and foremost about allowing the effective and timely delivery of network traffic that requires priority or whose flow cannot be interrupted at any given time (e.g. emergency services, HD videoconferencing, remote health monitoring etc.) and ensuring fair service treatment to all users and preventing unwanted traffic from reaching final users (e.g. spam and malware).



Network management has been used ever since the birth of the Internet to safeguard and enhance the end user experience. Through prioritisation, it can ensure efficient and reliable performance of individual services as well as address congestion problems. As the technical enabler of quality of services, it will be key to face the future challenges of the European Union. For example, high quality service to fight climate change (e.g: energy consumption monitoring) or to develop healthcare solutions for elderly people (homecare/Telecare) will need network management to ensure resilience and robustness of these crucial services for the European citizen.

It is clear therefore, that network management is not just about enabling the Internet to continue to handle the vast quantities of increasing traffic, but also about allowing the Internet to evolve and adapt, so as to foster increasingly sophisticated services and applications of tomorrow.

Promoting transparency, competition and quality of services

Recital 26 as adopted in the Parliamentary committee would impose rigid limitations on the ability of operators to manage their networks in a reasonable way and severely impair the providers' ability to give customers high-quality, tailored services.

The EP text intends to limit network management to addressing congestion only. Yet any attempt to define what purposes network management can serve will not be future-proof due to its multiple tasks and the rapid evolution of technological innovation and applications. Moreover, to prohibit a differentiated treatment of services, e.g. in the context of commercial agreements, as contained in the EP text would amount to preventing quality of service-based business models of network operators altogether. Finally, the burden of proof for intervention in network management should be in line with general administrative and competition law principles. The current EP text would:

- Reduce user choice and limit innovation in the network;
- Reduce the overall quality of the Internet experience;
- Weaken incentives for business to invest in the Internet of the future - especially NGNs;
- Risk eliminating quality of service guarantees if differentiation would only be allowed to address congestion problems as foreseen in the Parliament text.

We understand that traffic management can raise legitimate questions on the way it works and on safeguards that it cannot be used improperly, and we believe that the Telecoms Package provides an opportunity for supporting best practices and increasing transparency. In particular we fully support the introduction of greater transparency rights and obligations to empower consumers to make an informed choice, without undermining the other consumer benefit of quality of services.

Thus, with the same concern for transparency and sound decision-making, we call on Council to fend off this attempt, based on contrived fears, to change the current rules on network management, which have allowed the Internet to thrive, Internet-related markets to boom and consumers to choose according to their individual needs.