

SOURCE: ARCEP

TITLE: Ten proposals for Net Neutrality

### 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

On the matter of 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 principles, ARCEP recommends that when ISPs do employ traffic management mechanisms for ensuring access to the Internet, that 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.

### 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" (*Direction générale de la concurrence, de la consommation et de la répression des fraudes*), to complete these proposals.

## 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 their proposals on the matter to ARCEP by the 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 the 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;
- 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 requests for interconnection whose purpose is to provide these users with access to 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 adopting 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.

## 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 RTTE 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.