

From: [REDACTED]@ericsson.com]
Sent: Friday, June 19, 2015 12:18 PM
To: [REDACTED] (CNECT)
Cc: [REDACTED]@cisco.com; [REDACTED]@alcatel-lucent.com); [REDACTED]
Subject: new EP text on NN

Dear [REDACTED],

We as telecom vendors would like to express our concerns with the latest EP text which has come out a few days ago in preparation of the upcoming Trilogue on 29 June.

Although we fully support an open Internet, we see much of the EPs key language as very detrimental to the good functioning of networks and to future innovation, so we offer initial comments below.

We hope the European Commission and Council agree that this new EP language would be unacceptable.

We would be very keen to meet you and the team on this very important topic to explain our concerns.

Best,

[REDACTED]

Traffic management:

- Deletion of “subject to this paragraph” in art 3(3). This wording is essential. When politically it is now accepted that the Regulation should permit reasonable traffic management this wording is needed to ensure legal clarity and to ‘square the circle’ arising from the fact that the principle all data should be treated equally crosses an important technical line and tries to apply something that might sound like a good idea in the control plane in the data plane where it does not belong. Ideally, wording corresponding to ‘subject to’ should also be included in the first sentence of recital 8.
- The wording also in recital 8 explaining that non-discriminatory does not preclude operators from giving different treatment to different types of traffic on the basis of their technical requirements has been changed in a way that could undermine the purpose of the sentence. Instead of saying that ‘the requirement for traffic management to be non-discriminatory does not preclude operators from...’ it now says that ‘the requirement for traffic management does not preclude providers ... to implement ... traffic management measures...’ but that these measures should be non-discriminatory. This is one of the key recitals to clarify that technically based differentiation giving equal treatment to equivalent types of traffic is ok.

Specialised services:

- Additional wording on specialised services that this can only be for services, application and content where it is indispensable to have specific level of quality (in both recital and art. 3(5). It should be a commercial decision driven by demand of

businesses and consumers which services are to be delivered to a specified level of quality/service – IPTV e.g. not indispensable, you can watch house of cards or orange is the new black by simple stream, you might just not get as high definition, reliability etc.

- Additional wording that specialised services can be delivered *only if* there is sufficient capacity to provide them *in addition to IAS* as well as deletion of ‘other end users’ as regards the impact on general availability and quality. This essentially says that we have to build a 6-lane motorway in each direction even if we only need two of the lanes most of the time and the rest of the time the other lanes should be kept ‘dormant’ (not a perfect analogy but works I think on the high level). Also with the deletion of ‘there end users’ what you are effectively saying is that if someone in your household is watching IPTV this mustn’t impact in any way other members of the household.
- The wording “Such services shall not be usable or offered as a replacement for internet access services ...” brings back text which creates a technical requirement based on capability of implementations. It precludes specialized services from evolving to use new innovative material that is available on the internet. Technically it requires separate routing tables which are most practically achieved by assigning Private IP addresses to client devices. Many devices, especially mobile phones, cannot also have a second IP address assigned for ordinary internet service at the same time. Consequently this reduces consumer choice since the value of internet access must be forgone by those who take a specialized service.

Also, as traffic management that goes beyond reasonable traffic management now cover both measures against specific services and specific categories it would be helpful to add to the recital a clarification of what ‘slow down’ means to ensure inclusion of specific categories does not undercut the distinction between reasonable traffic management and more restrictive traffic management. Our suggestion below for such wording:

- Rules against ‘slowing down’ specific content, applications or services in situations when such measures are applied to a specific category refer to the overall rate as opposed to the behaviour of the individual packets and therefore do not preclude providers of internet access services from managing types of traffic in accordance with their technical requirements, such as sensitivity to delay, as part of reasonable traffic management and which would otherwise be transparent, proportionate to the purpose of overall quality transmission optimisation and would not constitute anti-competitive behaviour.

Finally, we think there are also some false premises underlying the new recital 7a, 8b and not least the new wording in recital 9a on congestion's link to capacity.



Ericsson