

Net neutrality in The Netherlands

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Introduction

- The Netherlands is (probably) the first European country that has a statutory requirement regarding net neutrality.
- How did this happen?
- What is the content of the proposed net neutrality legislation?
- What are the possible effects of this national approach?

Starting point

- October 2010: Coalition government agreement:
“The government supports a free and open internet”
- November 2010: Bill implementing the amended European Regulatory Framework:
 - Regulatory principle in Article 8(4)g FD
 - Transparency requirements regarding restrictions on access and usage and traffic management
 - Minimum quality requirements in order to prevent degradation service and the hindering or slowing down of traffic over networks.

Market situation in The Netherlands

- Fixed internet access:
 - highest penetration in EU, high level of (infrastructure-based) competition between DSL, Cable and Fibre operators.
 - Only one “net neutrality incident”: temporarily (experimental) throttling of P2P by cable operator.
 - Was stopped when OPTA launched investigation.
- Mobile internet access:
 - penetration below EU average, moderate level of competition, mainly between 3 MNOs.
 - Scattered picture on Voip blocking and charging.
 - No other “net neutrality incidents”

What made it happen?

- Summer 2011: Mobile operator KPN announced the introduction of a “chat charge” for users of IP messaging applications such as WhatsApp.
- KPN wanted to reduce the impact substitution of traditional SMS by IP messaging applications on its turnover.
- In addition, KPN revealed that it used DPI in order to monitor the usage of certain applications on its mobile network.
- In reaction, Vodafone NL also admitted using DPI.

Political Reactions

- Outrage on the use of DPI. OPTA and Dutch Data Protection Authority were asked to investigate this matter – is still pending.
- Dutch Parliament voted for a motion asking the government to prohibit differentiation based on usage of specific applications.
- The Dutch government reacted willingly to introduce such a provision in the law.
- A majority in Dutch Parliament voted for a (different) amendment, proposing to introduce a net neutrality requirement in the law.
- Bill is still pending in Dutch Senate.

Motivation for the proposed legislation

- “End users should be able to decide what content they want to send and receive, and which services, applications, hardware and software they want to use for such purposes.”
- “The European Framework cannot adequately ensure this, because it allows providers to restrict access to websites or services.”
- “The amendment aims to maximize choice and freedom of expression on the Internet for end users.”

Contents of the proposed legislation

- Providers of internet access services shall not block or delay applications on the internet, unless the measures by which applications are blocked or delayed are necessary:
 - a) to reduce the effects of congestion, where equal forms of traffic are treated equally,
 - b) for the integrity and safety of the network
 - c) to reduce the transmission of unsolicited communications (such as Spam), and
 - d) to execute a legal requirement or a court order.
- Providers of internet access services shall not make the price of the rates for internet access services dependent on the services and applications which are offered or used via these services.

Interpretation of no blocking or delaying rule

- Rules only apply to internet access,
- “Managed services” not delivered over the internet → out of scope.
- Offering separate services over the internet (e.g. voip-only subscription) is allowed.
- Offering internet access where access to particular sites or application is restricted not allowed → “all or nothing”
- Congestion can only temporarily be a justification → Need to invest in sufficient capacity.

Interpretation of tariff-differentiation rule

- Pricing of internet access service does not depend on the usage of particular applications or services.
- Pricing of internet access based on other service attributes (capacity, usage, overbooking, SLA etc.) is allowed.
- Offering filtering services (e.g. parental control, religious filtering) is allowed as long as quality and price does not depend on whether filtering is included or not.

Possible impact and open questions

- Charging for Voip or IP messaging is no longer possible, but also free use of certain applications is affected (e.g. free music-streaming, traffic customer service).
- Increased need for rebalancing of pricing: Voice → Data
- Impact of separate service exception is unclear. Is there a market demand? Possibility of circumvention?
- Access for over-the-top services guaranteed at best-effort quality.
- Impact on the scope for innovative two-sided business models?
- What about delivery of differentiated quality at a differentiated price without affecting best effort quality?
- Impact of Dutch “Alleingang” on Internal Market?

Questions?

Thank you for your attention!

