

President Obama's net neutrality rhetoric overshadows the (more?) important detailed European developments

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Speed read

In Telco Regulation, the devil is often in the detail. Net neutrality is a great example of this. On its own, President Obama's broad net neutrality statement raises some questions around the detail but skirts around them.

Net Neutrality: President Obama's Plan for a Free and Open Internet



But the Europeans have taken a critical "*detail*" step as to net neutrality by producing guidelines on how to reliably monitor net neutrality, provide transparency to consumers and regulators, and monitor the quality of services offered by ISPs, fixed and mobile. In the real world the European's approach may prove to be the most significant in the medium to long term.

All that is important for New Zealand which, despite suggestions to the contrary, faces net neutrality issues.

Plus New Zealand has a key need to enable reliable comparison of services such as between copper, fibre, and mobile. TCF agreed to develop relevant comparisons, to obviate regulation. Get this wrong, and there can be distorted outcomes (and stakeholders have incentives to distort the monitoring mechanisms for their own ends).

The Detail

President Obama's contribution to the US stoush over net neutrality is briefly stated and raises a number of questions. For example, read literally, he seems to say that an ISP's customer gets only one-size-fits-all speeds. But, if a consumer wants to buy a faster service, paying more money for that, that normally is a good thing as the consumer gets choice (just as customers on a plane get the choice of biz class or economy). It's economically efficient normally for a consumer to have a choice of levels of service. It is one thing to provide a different higher quality service based on a content provider's additional payments to the ISP; that raises efficiency concerns. It's another thing to preclude a customer paying the ISP more to get a better service generally.

That's the sort of detail that needs to be considered, and is skipped over in the President's statement. And what of related issues such as zero rating of certain types of content. For that raises issues of a net neutrality nature, as US commentators have pointed out. So do steps by Chorus such as seeking to charge more for VDSL services.

Significantly, NZ is not at all immune from net neutrality and related issues here in New Zealand. Indeed they are more likely here, but in a different form than in say the US or Australia (given for example we don't have wide spread cable services). It is naïve to think otherwise, especially as content becomes increasingly significant in dealing with market failure issues in NZ. See our series of articles on this leading up to [Knee-jerk reactions to FCC on net neutrality?](#)¹

What the Europeans have done

Given the devil is in the detail, transparency and monitoring are very important in dealing with net neutrality. And they are very important for the closely related second objective of transparently providing reliable comparative information on the quality of competing services over competing platforms including fibre copper and mobile.

Given the NZ Government's objective of having reliable comparative information as between fibre and copper services – seemingly to encourage migration to UFB - and TCF having agreed to develop a monitoring regime, this

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is already important here in NZ. (Net neutrality monitoring is important too but not quite so obviously yet).

Those two objectives are the focus of the end result of a consultation by the European Telco Regulators body called BEREC (the Body of European Regulators for Electronic Communications). BEREC has just produced a detailed report, [Monitoring quality of Internet access services in the context of net neutrality BEREC report](#).²

The methodologies being suggested are significantly more developed than what is currently available and used in NZ. And far more reliable, taking into account carefully proposed testing multiple times of day, testing of end to end communications (not just the last mile), testing from multiple perspectives including end user experience, etc.

Get these monitoring and transparency regimes wrong, and there can be a substantial distortionary effect on the markets. And stakeholders have incentives to distort the approach, and lobby for monitoring that favours their interests. The BEREC material is valuable in providing carefully thought out solutions.

This is not just about information for regulators. It is also about providing reliable and transparent information for users of the services whether wholesale or retail.

And on net neutrality, transparently informing end users – for example as to how prioritising certain content such as the ISP's own content degrades other services to the end user - may of itself be powerful with less need to regulatory intervention.

All this can be done by TCF – if sufficiently robust – or by the Commerce Commission under its statutory monitoring powers.

1. <http://www.wigleylaw.com/assets/Uploads/Knee-jerk-reactions-to-FCC-on-net-neutrality.pdf>

2. http://berec.europa.eu/eng/document_register/subject_matter/berec/reports/4602-monitoring-quality-of-internet-access-services-in-the-context-of-net-neutrality-berec-report

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