

2018-2019 Annual Report on Net Neutrality

1 Three years of European net neutrality rules

On April 30, 2016, the net neutrality regulation came into effect¹. Each year, ACM publishes a report regarding its enforcement of this regulation, and its findings. This is the third annual report on net neutrality², and covers the period from May 1, 2018 through April 30, 2019. In addition, ACM looks ahead at next year's key priorities.

In accordance with the European net neutrality regulation, ACM has two tasks. It is to monitor closely and ensure compliance with Articles 3 and 4 of the net neutrality regulation. In addition, it is to promote the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology.

2 Looking back on 2018

In the past year, ACM devoted a tremendous amount of attention to net neutrality. For example, ACM monitored the compliance with its policy rules with regard to the transparency of internet download speeds, it defended its decision in the 'Data-free Music' case of T-Mobile before the court, and it launched a study to identify the traffic management measures that Dutch internet providers apply. In addition, ACM plays an active role within BEREC, the Body of European Regulators for Electronic Communications. For example, it helped create a method for a measurement tool to measure internet download speeds, which has been developed at the request of BEREC.³ Furthermore, ACM actively helps clarify the BEREC Guidelines for net neutrality, which BEREC has published in order to help national regulators, such as ACM, apply the net neutrality regulation in a consistent manner. In addition, ACM published a paper about regulation and the regulator's role with regard to 5G, and it organized the workshop '5G and regulation'. In this workshop, ACM sat down with stakeholders and talked about the relationship between 5G and net neutrality. In the sections below, we will explain our activities in each category.

2.1 Free choice of terminal equipment, and network termination points

The net neutrality regulation stipulates that end-users have a free choice of terminal equipment. Providers of internet access services cannot impose any restrictions on the use of the terminal equipment connecting to the network.⁴ Terminal equipment is connected to a network termination point. At such termination points, the provider's network ends, and the end-user's network begins.

¹ Regulation (EU) 2015/2120.

² Previous annual reports can be found on www.acm.nl

³ https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/7296-net-neutrality-measurement-tool-specification.

⁴ Providers of internet access services should not impose restrictions on the use of terminal equipment connecting to the network in addition to those imposed by manufacturers or distributors of terminal equipment in accordance with Union law.

ACM actively helps implement the BEREC Guidelines with regard to network termination points in order to guarantee free choice of terminal equipment in the Netherlands as well.

2.2 Zero-rating by T-Mobile

Following a request for enforcement filed by Dutch digital-rights organization Bits of Freedom, ACM carried out an investigation into T-Mobile's Data-free Music service. T-Mobile launched its Data-free Music service in October 2016. With this service, T-Mobile customers can stream music that does not count against their data plans. This is called zero-rating. The outcome of this investigation was that the service did not violate European rules on net neutrality: the service was offered in a non-discriminatory manner.

Appeal against ACM's decision

Bits of Freedom filed an appeal against the rejection of its request for enforcement. In its decision on appeal, too, ACM upheld its opinion that the Data-free Music service was allowed under the net neutrality regulation. Bits of Freedom filed an appeal against this decision with the District Court of Rotterdam. On 24 January 2019, the court handed down its ruling. The court agreed with ACM that it has not been established that T-Mobile acted in violation of the net neutrality regulation, and thus ruled that it was justified that ACM had turned down the request for enforcement.

Bits of Freedom did not file an appeal with a higher court.

2.3 5G and ACM

On December 12, 2018, ACM published a paper on 5G, the next generation of mobile networks, entitled '5G and the Netherlands Authority for Consumers and Markets.' In this paper, ACM explains where 5G overlaps with its duties. With regard to net neutrality, ACM came to the conclusion that the net neutrality regulation leaves much room for service differentiation within the context of 5G. However, the regulation does set out criteria for service differentiation. These criteria are meant to protect the quality of internet access services, and to prevent the disruption of the level playing field for competitors on the internet. With these criteria, the regulation seeks to do justice to the balance between 1) offering room to innovations within the context of 5G, and 2) protecting the open internet. With this paper, ACM wishes to start a dialog with market participants to see if they have any concrete examples of uses of 5G technologies that would not be allowed under the net neutrality regulation.

In that context, ACM in February 2019 organized a workshop on 5G and regulation. In the workshop, ACM sat down with telecom operators, telecom hardware suppliers, consumer rights organizations, and representatives of the Ministry of Economic Affairs and Climate Policy (EZK) and the Radiocommunications Agency Netherlands (AT). ACM will use the input it received at the workshop in the development of guidelines ('guidance') regarding the application of regulations concerning 5G for businesses in the telecom sector.

European collaborations

In addition, ACM is active in BEREC's open internet working group, where it helps BEREC form an opinion on 5G and net neutrality, and where it shares knowledge with other regulators within BEREC.

2.4 Preliminary study into traffic management measures

With traffic management measures, providers are able to prioritize certain traffic over other traffic. The net neutrality regulation describes when this is allowed, and when it is not. ACM has studied the traffic management measures that Dutch telecom providers use. As part of that study, discussions have been held, and information has been demanded.

The study into traffic management measures looked into both the measures implemented in real life, as well as into the internal processes that providers have in order to ensure that traffic management only takes place in a manner that is in line with the net neutrality regulation. Following this study, various providers adjusted their general terms and conditions in order to comply with the requirements laid down in the net neutrality regulation.

2.5 Enforcement of policy rule concerning internet speeds

In 2017, ACM published the policy rule on the provision of information concerning internet speeds.⁵ This policy rule has led to providers having a better understanding of the requirements laid down in the net neutrality regulation. In the consultation phase, ACM held discussions with various telecom providers about the provision of information concerning internet speeds in contracts. ACM has also talked to telecom providers that use the internet for hybrid technologies (so-called fixed-wireless access). When offering such services, telecom providers must comply with the requirements regarding transparency that apply to fixed services. In addition, ACM used social media to point out to consumers the information that telecom providers must include in their contracts, concerning internet speeds.

These efforts of ACM have led to various providers adjusting their contracts to comply with the net neutrality regulation.

⁵ Dutch Government Gazette 2017, 68591.

3 Key priorities for May 1, 2019 – April 30, 2020

For the next twelve months, net neutrality is once again a key priority for ACM. ACM will deal with the following topics.

Further study into traffic management measures in the Netherlands

As a follow-up to the study that was conducted over the past few years, ACM also wishes to identify what traffic management measures Dutch providers are planning to take. In that context, ACM will primarily look into how providers assess in advance whether or not network congestion may arise, and whether that may necessitate any traffic management measures.

Follow-up to 5G, specialized services, and net neutrality

Following the workshop '5G and regulation,' ACM will continue, through discussions and requests for information, to gain more insight into how providers estimate the impact of new services on their networks, and the quality of their services. This allows ACM to determine whether requests for information can be used in the future in order to gain insight into the impact of a specialized service on the availability and general quality of internet access services for end-users.

Preparatory activities for and implementation of BEREC measurement tool

As BEREC's measurement tool will soon be released, ACM will ensure an optimal implementation and roll-out of the measurement tool in the Netherlands next year. In addition, ACM will sit down with providers to prepare for this new measurement system, so that the roll-out will take place as smoothly as possible.

Enforcement of transparency requirements

Enforcement of the policy rule concerning internet speeds has revealed that, in some cases, there is uncertainty over the transparency requirement that providers need to comply with. ACM will therefore, for example, look into so-called hybrid technologies, such as fixed-wireless access, where an internet service is offered partially over a fixed network, and partially over a mobile network.

Update of BEREC Guidelines

In 2019, the BEREC Guidelines regarding the net neutrality regulation will be revised. In that process, the different regulatory authorities within Europe will look at the past few years with regard to the implementation of the net neutrality regulation. Based on their first-hand experiences, BEREC will release a revised version of the Guidelines, complete with updates and changes where necessary. ACM is closely involved in the BEREC Guidelines' revision process.

Do you have any indications?

Over the next twelve months, ACM obviously welcomes any new indications about how the net neutrality rules are implemented. Anyone can submit to ACM indications, including about net neutrality, either by phone, social media or in writing (signalen.TVP@acm.nl). ACM will take action where needed.