

**Speech of Chris Fonteijn at the Dinner debate of the European Internet
Foundation and of MEP Harbour,
Brussels, 29 November 2011**

Introduction

First of all I would like to thank Cristina Monti and Malcolm Harbour for inviting me to this dinner debate. I believe it is a perfect opportunity for me, as Chair of BEREC 2011, to tell you that, in the coming month, BEREC will publish some very relevant reports and guidelines on broadband, on net-neutrality and on transparency. I will come back to that shortly.

Besides my role as BEREC Chair, I am also the Chair of the Dutch telecoms regulator and the competition authority, which are in a merging process with the consumer authority. This unique position enables me to elaborate more on the different powers of regulators. As Ed Richards says, we need to build on our combined powers. We need to develop a combined approach to ensure an environment on the internet, in which citizens can profit optimally from the internet in a safe way.

BEREC

In its annual work programme BEREC identified as its priorities the promotion of broadband and net-neutrality. BEREC will meet in Bucharest next week and decide on products related to these subjects.

BEREC has welcomed the broadband coverage objectives of the European Digital Agenda. In 2011 BEREC has been working on an analysis of the different tools and mechanisms currently used to promote broadband. As announced in the BEREC work programme, these include state aid, universal service and tax reliefs. The Florence School of Regulation has performed a study in which they look at the socio-economic drivers of broadband adoption and public policies to stimulate broadband development. In general one can say that public policies are effective. However, it is important first to stimulate the supply-side and then to follow with demand-side policies. The Florence study shows the shift from a market approach to a mixed approach. It should help

policymakers to maximise the positive impact of public intervention on broadband promotion. In fact, BEREC used the Florence study for its own report on broadband promotion, which provides policy-makers with concrete suggestions. This BEREC report will be subject to consultation.

We have seen this month's resolution of the European Parliament on the open internet and net neutrality in Europe. The Parliament encourages the Commission to ensure freedom on the Internet, freedom of expression and freedom of access. But you, the Members of Parliament, should know that you cannot expect the Commission, as a single entity, to provide freedom for Internet consumers. BEREC regards this resolution as an encouragement to continue our work on this topic. As you may know, BEREC's draft guidelines for transparency were subject to a consultation round in October. We received a record high number of responses. Most responses are in general supportive of BEREC's approach. We are working hard to finalise the BEREC guidelines for improved transparency measures in December. My OFCOM colleague refers to a collaborative approach, and this is precisely what BEREC strives to achieve on the transparency issue. These guidelines will make an essential contribution to an open internet.

Combined competition and regulatory approach

What we see in general is that end users become increasingly important. For example, without a demand for broadband services it is hard to invest in infrastructures. The complexity of converged services requires even more transparency towards end users. The classical approach of telecoms regulators used to be "as long as there is competition, the end user can optimally choose and benefit". I personally believe that this is an approach that we cannot uphold any longer. Competition in itself is not enough. Yet, over-regulation will stifle competition. I agree with Ed Richards, that what we need is to move towards a collaborative, multi-stakeholder approach, in which

different regulatory and competition tools are combined. We need to stimulate competitive innovations which allow consumers to benefit optimally from the internet.

ACM

When I look at the three different agencies in my own country that are currently merging, I see the following related areas of enforcement when it comes to the internet.

- On the one hand, the telecoms regulator, OPTA, imposes ex ante regulation to promote infrastructure competition on the one hand. On the other hand, this same regulator tries to make the internet more secure by fighting spam and other bad practices such as malware, and spyware.
- The competition authority, the NMa, has ex ante powers when it comes to assessing mergers. An example is the 2008 KPN Reggefiber case. This case concerned a joint venture by 2 Dutch companies to roll out fibreglass networks for the consumer market throughout the Netherlands. In this case, the remedies that were accepted in the merger were assessed, to measure what the impact would be: a regulatory framework was developed in order to ensure that access would be feasible.
- The NMa also has a role when it comes to the competition rules on online shopping. The Commission's guidelines (on vertical restraints) and recent European case-law make a total ban on internet sales by distributors difficult to impose. Distributors will not be permitted to use Internet to restrict intra-brand competition in this way.
- One of the issues on the agenda at the Consumer Authority is price transparency in various types of internet sales, especially in the travel branch. Prior to adopting this issue as an agenda priority, our Chief economists' office made an assessment of the extent of the problem and the likely impact of intervention. The initial cautious estimates suggested a benefit in the tens of millions for the consumers.

These different approaches of different regulators all have the same objective: make the internet safe in order to empower citizens to benefit from all the possibilities on the internet.

I therefore find it only logical that these three regulators will be merged by the beginning of 2013 in the Authority for Consumers and Markets (ACM). ACM will be able to use the full ranges of instruments currently available separately to each of these agencies, in a custom-made way. This will broaden the palette of enforcement tools and thereby enhance choices and chances for citizens, also on the internet.

So what does the role of regulator entail in the exciting world of Internet? Being Dutch, I find the analogy of the windmill a useful illustration. Regulating the Internet, whose very power lies in its unregulated stream of information, is like regulating the wind's power by turning a windmill, so that it catches the right amount of wind. Too much wind and the sails will break. So, when the wind gets too strong, we lower the sails on the windmill. In this way, by directing the sails of the Internet, regulators harness the energy of the information highway to the benefit of the consumer.