ARCEP proposals on net neutrality

A proactive approach based on the revised telecom framework

ANACOM Conference – October 6th 2010

A changing environment… requests dynamic regulation

- ▸ <u>The markets show complex trends</u>
  - It's not just about data volumes... (asymmetry, IP interconnection)
  - It's not just about vertical integration... (exclusive agreements across value chain)
  - It's not just about formal complains... (high consequences if market fails)

- ▸ <u>The regulatory framework adapts</u>
  - Today: strong broadband asymmetric regulation in EU (vs. USA)
    - Telecom package 2009: new/improved **symmetric tools**
  - Today: NRA's responsibilities = pure "transport" focus
    - Telecom package 2009: **"access to content"** concerns
  - CION declaration: special importance of internet, **net neutrality** as a policy objective
  - In France: Constitutional Court 2009 decision: **internet** and fundamental rights

- ➢ **NRAs should use symmetric tools regarding access to content, in order to promote net neutrality on the internet.**

ARCEP
www.arcep.fr
Autorité de régulation
des communications
électroniques et des postes

ARCEP's preventive approach and key findings
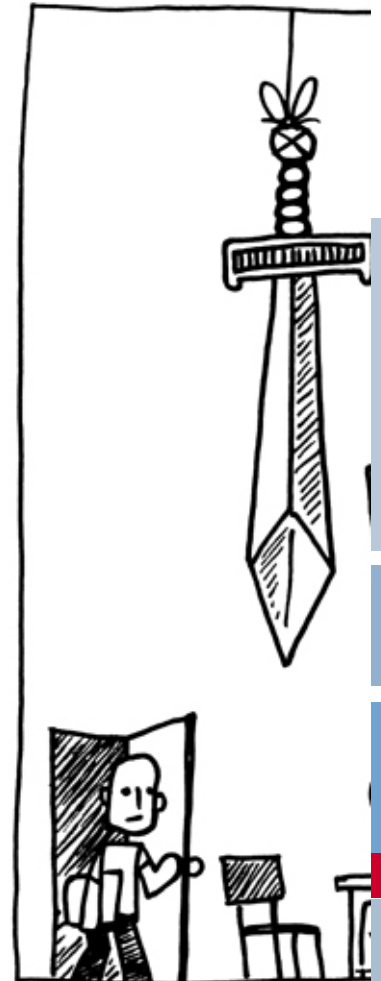
1. Identify:

- regulatory objectives to conciliate:
  - user's freedom of choice
  - proper functioning of the networks
  - long-term innovation at the core & the edge
- scope of work: include and distinguish the "two lanes"
  - best-effort internet and managed services

2. Propose:

- a global vision of good practices
  - same principles should apply for all technologies
  - Case-by-case assessment
- tools to monitor relevant markets

3. Implement:

- co-regulation in the short term
- prescriptive if necessary

ARCEP Proposals (1/3): recommended features of ISP's offers

1/ Freedom and quality of Internet access
→ the ability for ISP customers to use content/applications/devices... of their choice
→ a sufficiently high and transparent quality of service.

2/ Non-discrimination between Internet traffic streams
As a general rule, no differentiation between individual data streams, at all points along the network.

3/ Supervising Internet traffic management mechanisms
Limited exceptions to P1 and P2 must comply with the general principles of relevance, proportionality, efficiency, non discrimination between parties and transparency.

4/ Managed services
Operators must be able to market "managed services"... provided that these do not degrade the quality of Internet access below a satisfactory level.

ARCEP
www.arcep.fr
Autorité de régulation
des communications
électroniques et des postes

ARCEP Proposals (2/3): making the key features transparent

5/ Increased transparency with respect to end users
→ Provide end users with clear, precise and relevant information on accessible applications, quality of service, possible limitations, any traffic management practices
→ Restrictions on the usage of the terms "Internet" and "unlimited"
→ ISPs and consumer association representatives work together to define common information systems by end Q1 2011... To be completed by ARCEP if necessary

ARCEP
www.arcep.fr
Autorité de régulation
des communications
électroniques et des postes

ARCEP Proposals (3/3): the follow-up in practice

6/ Monitoring traffic management practices
Stakeholders together to identify, qualify, and submit proposals on traffic management practices by end of Q1 2011 (could be completed by ARCEP).
ARCEP will monitor deviations from principles... and evaluate the need to improve these.

7/ Monitoring the quality of the Internet access service
→ Define the main Internet access quality of service parameters and establish suitable indicators
→ ISPs (in tandem with consumer associations etc.) to publish these QoS indicators for their retail data transmission services periodically

8/ Monitoring the data interconnection market
→ISP should grant, in an objective and non-discriminatory fashion, all reasonable interconnection requests for internet.
To obtain information on data interconnection markets, the Authority will adopt a decision on the periodical collection of information before the end of S1 2011 (and later assess whether it is necessary to implement regulatory measure).

ARCEP
www.arcep.fr
Autorité de régulation
des communications
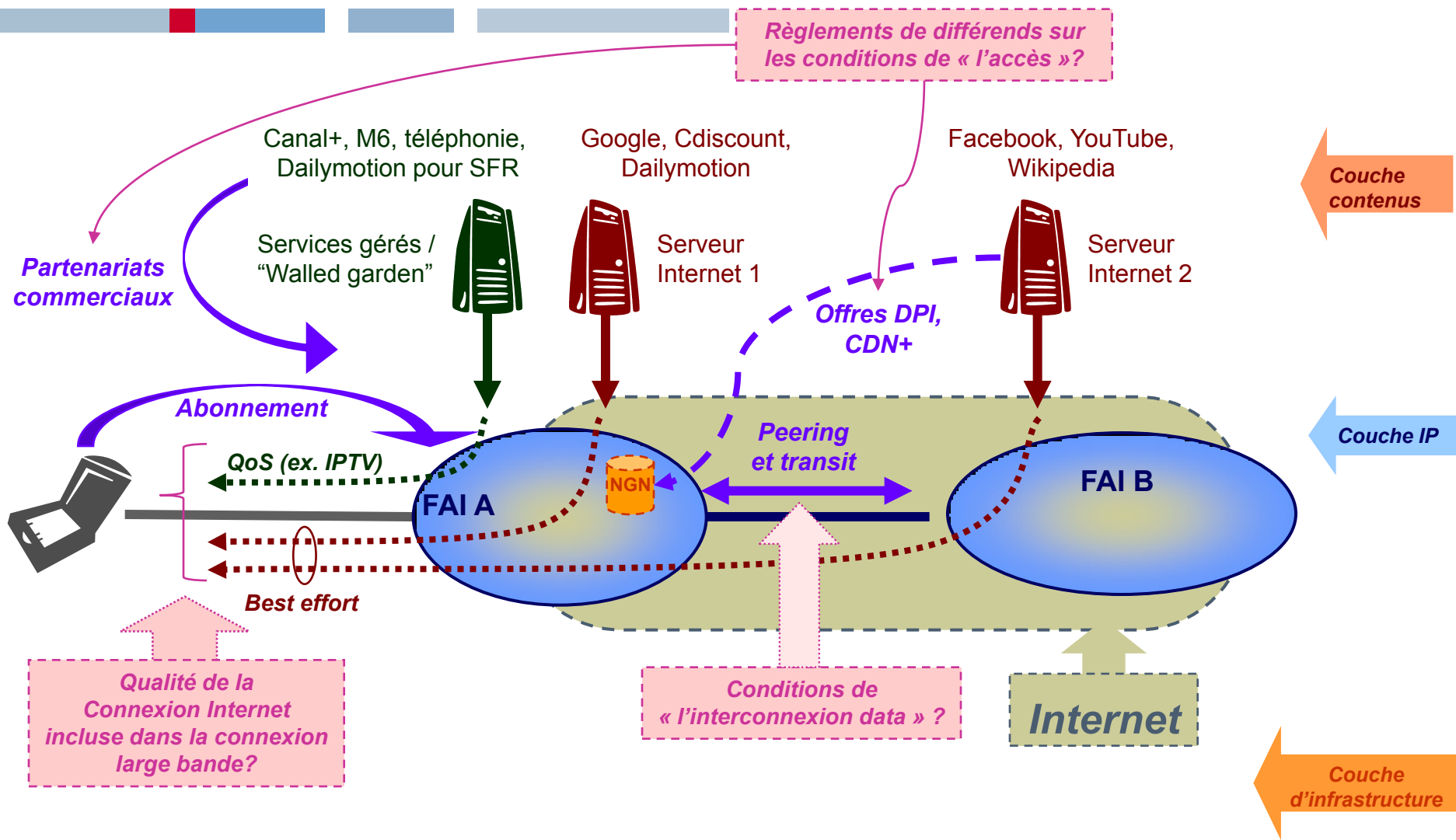électroniques et des postes

To conclude… and continue

- **Neutrality also depends from other parts of the value chain**: proposals 9 and 10 consider issues on the side of content providers and terminal equipment providers.

- **Investigations continue at EU level**: Commission consultation ; BEREC project team

- **ARCEP proposals welcomed by national stakeholders**... but the hard work only starts know, since "the devil lies in the details"

Annexes

Thank You !

Annex - Telecom Package – NN Cross ref.

Article 8(4)(g) Framework Directive Regulatory principles	Article 20(1)(b) Universal Service Contracts	Article 21(3)(c)(d) Universal Service Transparency	Article 22(3) Universal Service Quality of service
The NRAs shall … by inter alia: (g) promoting the ability of end-users to access and distribute information or run applications and services of their choice;	- information on any other conditions limiting access to and/or use of services and applications…	(c) inform subscribers of any change to conditions limiting access to and/or use of services and applications…	
	- the minimum service quality levels offered…		In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that NRAs are able to set minimum quality of service requirements…
	- information on any procedures put in place by the undertaking to measure and shape traffic…	(d) provide information on any procedures put in place by the provider to measure and shape traffic so as to avoid filling or overfilling a network link…	
	- any restrictions imposed by the provider on the use of terminal equipment supplied;		

Annex: issues and tools along the value Chain

Règlements de différends sur les conditions de « l'accès »?

Canal+, M6, téléphonie, Dailymotion pour SFR

Google, Cdiscount, Dailymotion

Facebook, YouTube, Wikipedia

Couche contenus

Services gérés / "Walled garden"

Serveur Internet 1

Serveur Internet 2

Partenariats commerciaux

Offres DPI, CDN+

Abonnement

Peering et transit

Couche IP

QoS (ex. IPTV)

FAI A

NGN

FAI B

Best effort

Internet

Qualité de la Connexion Internet incluse dans la connexion large bande?

Conditions de « l'interconnexion data » ?

Couche d'infrastructure

1/ Freedom and quality of Internet access
ARCEP recommends that, in accordance with the legislative provisions that are in effect, ISPs marketing Internet access be required to provide end users with:
- the ability to send and receive the content of their choice;
- the ability to use the services and run the applications of their choice;
- connect the hardware and use the programmes of their choice, provided they do not harm the network ;
- a sufficiently high and transparent quality of service.
There may be exceptions to this principle, provided they comply with the guidelines set out in proposed recommendation no. 3.

2/ Non-discrimination between Internet traffic streams
For Internet access, ARCEP recommends that, as a general rule, no differentiation be made between the way in which each individual data stream is treated, whether according to the type of content, the service, application, device or the address of the stream's origin or destination. This applies to all points along the network, including interconnection points.
There may be exceptions to this principle, provided they comply with the guidelines set out in proposed recommendation no. 3.

3/ Supervising Internet traffic management mechanisms
Marking exceptions to the principles stated in proposals nos. 1 and 2, and to limit any possible deviations from these, ARCEP recommends that when ISPs do employ traffic management mechanisms for ensuring access to the Internet, they comply with the general principles of relevance, proportionality, efficiency, non discrimination between parties and transparency.

4/ Managed services
To maintain all of the players' capacity to innovate, all electronic communications operators must be able to market "managed services" alongside Internet access, to both end users and information society service vendors (ISV), provided that the managed service does not degrade the quality of Internet access below a certain satisfactory level, and that vendors act in accordance with existing competition laws and sector-specific regulation.

5/ Increased transparency with respect to end users

ISPs must provide end users – in both their sales material and the contractual terms and conditions for their electronic communications services, and in the information that is available to the customers of these offers for the duration of their service contract – with clear, precise and relevant information on:

- the services and applications that can be accessed through these data services,
- their quality of service,
- their possible limitations,
- and any traffic management practices that might affect them.

To this end, ARCEP recommends in particular that:

- any restriction of a data transmission service marking a departure from the principles of freedom of use and non discrimination between the streams, stated in proposals nos. 1 and 2, be stipulated explicitly in the ISP's sales material and contractual clauses, in a clear and understandable fashion;
- the term "Internet" cannot be used to qualify these services if certain of these restrictions do not comply with the demands of proposal no. 3;
- the term "unlimited" cannot be used to describe service offerings that include "fair use" type limitations that result in access being cut off temporarily or extra billing for the services, or an excessive degradation of access speeds or the quality of the service.

The Authority will initially request that ISPs and consumer association representatives work together to define common systems for providing end users with information on the limitations of the offers and their traffic management practices, and to submit their proposals on the matter to ARCEP by the end of Q1 2011.

Subsequently, should it prove necessary, the Authority could work in tandem with the General directorate for fair trade, consumer affairs and fraud control ("DGCCRF") to complete these proposals.

Annex - ARCEP Proposals (3/3): the follow-up in practice

6/ Monitoring traffic management practices
ARCEP will ask ISPs and their representative associations, ISVs and their representative associations, as well as consumer associations to work together to identify and qualify the different types of traffic management practices, including "fair use" limitations associated with so-called "unlimited" offers, and to submit proposals on the matter to ARCEP by end of Q1 2011.
In the meantime, the Authority will monitor the evolution of the traffic management practices that operators are employing, in particular to evaluate whether they are complying with the criteria of relevance, proportionality, efficiency, non discrimination between parties and transparency.
Subsequently, should it prove necessary, the Authority could work in tandem with the DGCCRF to complete these proposals.

7/ Monitoring the quality of the Internet access service
To ensure that quality of the Internet access service is both sufficiently high and transparent, ARCEP will be devoting efforts:
- to define the main Internet access quality of service parameters and establish suitable indicators;
- to require ISPs to publish these QoS indicators for their retail data transmission services periodically, particularly for Internet access on both fixed and mobile networks.
This work will be performed in tandem with the DGCCRF, operators and their representative associations, ISVs and their representative associations, as well as consumer associations.

8/ Monitoring the data interconnection market
ARCEP recommends:
- that parties providing end users with access to the Internet grant, in an objective and non-discriminatory fashion, all reasonable interconnection requests whose purpose is to provide users with Internet services or applications;
- that parties providing ISVs with access to the Internet grant, in an objective and non-discriminatory fashion, all reasonable requests for interconnection whose purpose is to make these vendors' services or applications accessible to Internet users.
To eradicate the opacity that currently exists in data interconnection markets, and to obtain information that will be useful to exercising its powers, the Authority will soon adopt a decision on the periodical collection of information on these markets, before the end of Q1 2011. Based in part on this information, the Authority will later assess whether it is necessary to implement more prescriptive regulatory measures in these markets.