Network neutrality, motherhood and apple pie

Pierre Larouche
Professor of Competition Law,
Tilburg Law and Economics Center (TILEC)

TILBURG ◆ UNIVERSITY

Understanding Society

Outline

- What is in network neutrality?

- Why should or shouldn't we be concerned?

- What remedies are being put in place?

  - In the US

  - In the EU

- Recommendations

What is in network neutrality?

- Why is network neutrality an issue *now*?

  - ISPs moving away from best-effort network management model

  - Short-term view: network management issues

  - Longer-term view: differentiated QoS

- What is in network neutrality?

  - Blocking

  - Discrimination – Many meanings

  - Differentiated QoS

Why should or shouldn't we be concerned?

- Can competition do the trick?
  - Consumer side
  - Content provider side
  - Fundamental rights dimension
- Blocking and discrimination
  - Can be addressed via competition law
  - Need robust enforcement
  - Use sector-specific regulation if needed
- Differentiated QoS
  - No case against it (yet), therefore…
  - But internal market dimension: firms and Member States
    - Unsung benefits and unseen externalities

What remedies are being put in place?

- In the USA: *Open Internet Order* by FCC

    - Transparency, 'no blocking', 'no unreasonable discrimination'

    - Discrimination defined broadly

    - Specialized/managed services vs. best-effort Internet

    - In the end: no innovation unless *ex ante* allowable…

- In the EU: 2009 Review

    - Measures to enhance transparency

    - Minimum QoS as last resort

    - Member States starting to enact further-reaching legislation…

Recommendations

- Strenghten resources to police blocking and anti-competitive discrimination, via competition law or sector-specific regulation

  - Stick to European regulatory approach

  - Avoid US-inspired technological categories

- Keep the longer-term perspective open

  - Exploit potential for European leadership in innovation

- Monitor closely potential threats to the internal market

  - Watch out for scale

  - Keep Member States on the same line

  - Use standardization procedures if and when necessary