



AKOS

## **NET NEUTRALITY – Situation in SLOVENIA**

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Katja Kmet

# NET NEUTRALITY legislation (1)

Article 203

(net neutrality)

*(1) The Agency shall promote the preservation of the open and neutral character of the internet and the possibility of end-users making their own choices with regard to access, the dissemination of information or the use of applications and services.*

*(2) The Agency must pay special attention to the objectives referred to in the preceding paragraph when discharging the competencies referred to in points 3 and 4 of the second paragraph of Article 132 of this Act and in the third and fourth paragraphs of Article 133 of this Act, and the competencies relating to the implementation of point 2 of the first paragraph of Article 129 by network operators and internet service providers.*

*(3) Network operators and internet service providers shall make every effort to preserve the open and neutral character of the internet such that they do not hinder, withhold or slow down internet traffic at the level of individual services or applications, or take measures to degrade these services or applications, except in the event of:*

- 1. urgent technical measures to secure the undisturbed operation of networks and services (e.g. avoidance of network congestion);*
- 2. urgent measures to preserve the integrity and security of networks and services (e.g. removal of undue excessive load on a transmission medium/channel);*
- 3. urgent measures to restrict unsolicited communications under Article 158 of this Act;*
- 4. a court decision.*

*(4) The measures referred to in points 1, 2 and 3 of the preceding paragraph must be proportionate, non-discriminatory, subject to a time-limit and carried out to the extent necessary to achieve their objectives.*

*(5) Services provided by network operators and internet service providers may not be based on services or applications offered or used via internet access services.*

*(6) The Agency may issue a general act for implementation of the provisions of the third, fourth and fifth paragraphs of this Act.*

# NET NEUTRALITY legislation (2)

For understanding the whole aspect, scope of Net Neutrality Law in Slovenia we must necessarily refer also to Art. 3 for the Definition:

*Article 3*

*(meaning of terms)*

...

*37. 'Net neutrality' shall mean the principle by which all internet traffic on a public communications network is treated equally irrespective of content, application, service, equipment, source and purpose of communication.*

Agency and regulated operators understand the national net neutrality law differently. Operators understand that Net Neutrality as regulated in Slovenian law only refers ONLY to technical issues of providing Internet Traffic to End Users and has nothing to do with a Price Discrimination (e.g. Zero Rated Services). Their opinion is based on the fact, that price discrimination is not explicitly mentioned in the Law.

Agency disagrees with such explanation because of the definition, quoted above (Art. 3, p. 37). Internet service provider may not differentiate internet traffic based on a Service that is being used by End User in any way. Beside the technical means like *hindering, withholding or slowing down internet traffic* that concerns any other measure, that would degrade these Services or applications and that concerns also price discrimination/ differentiation.

# NET NEUTRALITY

## cases

Agency started four **SUPERVISION PROCEDURES** against 4 different Mobile Operators as Internet Service Providers in January 2015.

4 final Decisions have been issued. Decisions prohibited „zero-rating“ services.

Services that were offered to End users without charging for data transfer were:

- free music data traffic,
- free data transfer to operator's data storage,
- free TV on mobile devices,
- free access to certain applications (contacts book in cloud, application for )
- free access to operator's web page and news
- free access to application for merging different mails belonging to the same user, etc.

With the Decisions Agency prohibited unequal treatment of internet traffic:

*„all internet traffic on a public communications network has to be treated equally“*

Equally stands for **technical and economical** issues/perspective. That means that price or speed discrimination based on application/service/content is prohibited.

# NET NEUTRALITY cases

## **MINOR OFFENSES PROCEDURE**

In the ECA there is a fine of between EUR 20,000 and EUR 50,000 for a legal entity regarded under the act governing companies as a medium-sized or large undertaking if they commit the offence by failing to comply with the obligation referred to Article 203 (Net Neutrality).

Minor offence of **formal notice** has been issued to each of the operators for committing the presented offences.

## **NEW SUPERVISION PROCEDURES and NEW MINOR OFFENSES PROCEDURES**

In July 2015, we had to start new supervision procedures against same operators (all except one) prohibiting new different “zero-rating” services. The Decisions have been issued and minor offenses procedures started.

First two financial fines have been imposed and other will follow for all who do not respect our Decisions.

## **BLOCKING**

So far the Agency hasn't gotten any actual incidents/complaints related to the openness of the Internet (blocking, throttling).

As it appears there are some unclear technical and security issues regarding net neutrality and its general rule about blocking certain internet traffic. For these reason we started a survey that will hopefully result in better understanding of the technical exceptions set out in the ECA.

# NET NEUTRALITY in Slovenia *now and future*

Special tariffs (especially Zero Rating) have been a big issue in Slovenia from July 2014 and that is when the Agency started with Supervision procedures concerning this topic. There has been some debates on the topic concerning mainly the question whether it is covered with present legislation.

All Agency's Supervision and Minor offence Decisions are being challenged in the National Administrative Court and Misdemeanor Court. Operators are claiming that „zero rating“ is in Slovenian ECA not prohibited, because the law does not say anything explicitly about the issue. Agency's opinion is that any kind of inequality is by law prohibited and we do not need special ruling for “zero-rating” services. With zero rating the operators actually discriminate different traffic twice:

- First: they discriminate between different internet traffic with different pricing (for one service the traffic is free for the other end user has to pay)
- Second: different internet traffic have different speeds (when an end user reaches the prepaid limit in the selected bundle the speed of all the traffic slows down except for the traffic that is “zero-rated”)

Everybody is now waiting for the Court to decide. Until it is decided differently zero-rating in Slovenia is forbidden.

Future Slovenian Net neutrality law depends also on European legislation.

TSM will for sure need some good quality Guidelines for all NRAs and for Stakeholders if net neutrality is to be understood and handled at least similarly if not equally in all 28 Countries. The focus must be I think on **the traffic management measures** and to answer to the question **when or where the prioritization is allowed?**