

# **Measures aimed at promoting transparency for consumers and on measuring procedures**

## **- Key elements -**

As at: 10 May 2013

### **I. Introduction**

With the amendment to the Telecommunications Act in May 2012, the legislator created a broad range of instruments to enhance transparency in the telecommunications market. These include, for instance, broader provisions governing the content of contracts concluded with consumers (Section 43a of the Telecommunications Act) as well as the provisions governing general publication requirements (Section 45n of the Telecommunications Act). The aim of these measures is to facilitate objective decision-making for consumers in a competitive market.

Since the amended Telecommunications Act entered into force, the Bundesnetzagentur has examined in particular the level of information supplied by providers in relation to fixed and mobile broadband access. As such, the focus has been placed on the difference between contractually agreed data transmission rates and the data transmission rate actually provided.

To this end, the Bundesnetzagentur endeavoured to ascertain in the measurements study carried out on the service quality of broadband accesses, inter alia, how often and to what extent the actual data transmission rate diverges from the "up to" speeds given in customer contracts<sup>1</sup>. The survey showed that there is a clear discrepancy across all technologies, products and providers between the maximum speeds agreed in contracts and the actual speeds provided. At the same time, the study highlighted the fact that transparency in service provision has a major influence on customer satisfaction. In addition, the Bundesnetzagentur has given Internet users the opportunity to check via the website [www.initiative-netzqualitaet.de](http://www.initiative-netzqualitaet.de) until the end of June 2013 whether data traffic in peer-to-peer-applications is transported at different data transmission rates.

In parallel to the measurements study, the Bundesnetzagentur also analysed the contractual provisions on the speeds actually achieved both in the fixed network and mobile networks<sup>2</sup>. The analysis revealed, amongst other things, that providers supplied very little information or none at all on the speeds that can actually be reached. Consumers only have a vague idea of what performance they can actually expect. There are no standardised processes in place, that provide consumers with a clear picture of what the access can actually deliver - even after they have signed a contract and after the access has been activated.

When it published the above-mentioned studies on the "Telecommunications Consumer Protection" forum of the Federal Ministry of Economics and Technology/Bundesnetzagentur on 10 April 2013, the Bundesnetzagentur announced that it would be entering into a constructive

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<sup>1</sup> [www.bundesnetzagentur.de/qualitaetsstudie](http://www.bundesnetzagentur.de/qualitaetsstudie)

<sup>2</sup> Cf. [http://www.bundesnetzagentur.de/cln\\_1911/DE/Sachgebiete/Telekommunikation/Unternehmen\\_Institutionen/Anbieterpflichten/Kundenschutz/Vertragsinhalte/Vertragsinhalte.html?nn=267440](http://www.bundesnetzagentur.de/cln_1911/DE/Sachgebiete/Telekommunikation/Unternehmen_Institutionen/Anbieterpflichten/Kundenschutz/Vertragsinhalte/Vertragsinhalte.html?nn=267440)

dialogue with providers, industry associations and consumer interest groups. The aim is to develop reasonable solutions for the benefit of consumers as soon as possible.

These **key elements to promote transparency for consumers and on measuring procedures** are to provide a basis for the ensuing debate.

The proposed measures aimed at promoting transparency are based on the findings of the above-mentioned measurements study and on the analysis of the content of standard contracts and focus on the following:

#### **Data transmission rate**

- **Information provided when customers conclude contracts**
- **Checks carried out by the provider immediately after the access has been activated**
- **Technical checks carried out by the consumer during use (measuring procedure) and the possibility of obtaining technical data on the basic product performance before a contract is signed**

For topical reasons, it also needs to be examined whether and how consumers need to be able to monitor their usage patterns if there are a larger number of flat rates available for limited data volumes. It is therefore proposed that the following measures be carried out:

#### **Consumer price plans with limited data volume**

- **Provision of information on an ongoing basis about the data volume used**
- **Information on usage details to ensure consumers can switch providers**

In addition, complaints filed show that **consumer price plans for national mobile data usage** not subject to flat rates raise transparency issues as customer invoices tend to be very high.

Last but not least, the complaints the Bundesnetzagentur receives every day show that there is frequently a lack of clarity between consumers and providers as to when the contract begins and when exactly it ends. This creates follow-up problems that affect smooth switching to another provider which could be solved if **information on contract duration and terms of notice was provided at regular intervals**.

However, the proposed transparency measures will only have the desired positive effect for consumers if they are provided on an equally reliable basis by all market players. As such, the way in which the above-mentioned measures aimed at increasing transparency for consumers are implemented in order to ultimately **ensure consumers have a legally reliable framework** is of paramount importance.

Comments on the **key elements to promote transparency for consumers and on measuring procedures** can be e-mailed to the following address, indicating any confidential information as such:

**Bundesnetzagentur**

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**Deadline for the submission of comments: 2 September 2013**

The deadline for the submission of comments is intended to give market players the opportunity to submit a uniform implementation concept for the key elements, which is agreed by all market players.

If you have any queries, please do not hesitate to contact

re key elements 1 - 8, 21 - 32)

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## II. Transparency measures

### data transmission rate

#### - Information to be provided when customers conclude contracts -

1. Information about the minimum and maximum data transmission rate that can be achieved should be highlighted in the *contract* signed with consumers.
2. Information about the minimum and maximum data transmission rate that can be achieved should be highlighted in separate customer information factsheets when contracts are signed.
3. Fixed network: For consumers using fixed lines it should also be indicated in this information factsheet what the likelihood is of a minimum of [80%] of the maximum data transmission rate agreed being achieved in the billing period. This should be explained clearly to the consumer, if necessary using charts.
4. Mobile services: For consumers using mobile broadband accesses it should also be indicated in this customer information factsheet what the likelihood is of a minimum of [80%] of the maximum data transmission rate agreed being achieved in the billing period in the relevant radio cells in [two] locations to be determined by the consumer. This should be explained clearly to the consumer, if necessary using charts.

### Data transmission rate

#### - Checks carried out by the provider immediately after the access has been activated

5. Fixed network: After the consumer's *fixed line* has been activated, the provider should measure the maximum data transmission rate actually available at peak times.
6. Mobile services: When they sign a contract, consumers should be given the option of having the maximum data transmission rate actually available in the relevant radio cells measured by the provider in [two] locations to be determined by them at peak times after the *mobile* access has been activated.
7. The consumer should be notified of the result of the measurement in writing. In this context, consumers should be informed once again of the minimum and maximum data transmission rate agreed in the contract.

8. Consumers should also be informed about any compensation and reimbursement provisions and special rights of termination offered by the provider that take effect if the maximum data transmission rate agreed in the contract differs from the maximum data transmission rate provided.

### Data transmission rate

- **Technical checks *carried out by the consumer during use (measuring procedure) and the possibility of obtaining technical data on the basic product performance before a contract is signed***

9. When assessing the service quality, consumers should not just be informed in writing, they should also receive free technical support from a measuring concept. Measuring concepts comprise a measuring system and a measuring procedure. Measuring systems refer to the combination of equipment at test reference points and the counter test reference point, measuring procedures refer to the measuring process in technical terms.

### Requirements to be met by the measuring system

10. It is important to choose suitable measurement parameters that allow informative measurement results to be achieved on the quality of the Internet access service provided and on the quality of applications consumers can expect. These include the parameters upload and download data transmission rate, packet transfer time, packet loss rate and packet error rate. Where mobile access technologies are used, the strength of the signal should also be measured.

11. A uniform measuring system should be implemented on a common platform for the various providers and access technologies. It is important to ensure that the measuring concept is equally suitable for mobile and fixed Internet access services. It should also be possible to use it for all relevant terminal equipment (particularly surf sticks and smart phones) in respect of mobile access technologies.

12. It should be made transparent how the measuring system works by Open Source.

13. The measuring system should prevent the measurement results from being influenced by the counter test reference point. It should therefore be ensured that the equipment at the counter test reference points is provided with sufficient capacity. It should also be monitored that there is sufficient capacity available at peak times for consumers to carry out as many measurements as they wish. Overload management should also be implemented. Although the exact position of the counter test reference points should be located within the Internet infrastructure, it should certainly be outside the providers' IP systems.

14. The measuring procedure and measuring system should take account of influences from the consumer's infrastructure and prevent the measurement result from being influenced as far as possible.

15. The accuracy of measurements and suitability of the measuring procedure and measuring system should be checked at regular intervals and provision should be made for quality assurance.

### **Usability of measuring concepts for consumers**

16. Consumers should be able to use the measuring concept at any time and as frequently as they wish. However, depending on overload management, they will have no claim to assess or receive measuring results at any time.

17. The measuring concept for consumers should require minimum intervention in the end customer's infrastructure and consumers should be able to implement it without having any technical knowledge.

### **Presentation of the measurement results**

18. The results of the measurements should be presented to consumers in a comprehensible way. The way in which the measurement results are presented should enable consumers to assess the performance and usage possibilities of their individual access and inform consumers using mobile accesses about the quality of their Internet access service at any location of their choice.

19. Consumers should also be able to compare the measurement results of different providers and products in order to be able to make an informed decision on which product to choose and, if necessary, on switching provider. To this end, consumers should also have access to measurement results on the accesses of other providers. Georeferencing could also be used to present measurement results.

20. The data records of all measurements should be collected in a uniform, publicly accessible database. A general statistical evaluation of the service quality should be published as a report at regular intervals based on this database.

### **Consumer price plans with limited data volume**

#### **- Information about data volume used -**

21. Consumers should be given the opportunity in respect of contractually agreed data volumes to ascertain *during* use what data volume they have reached so far.

22. Consumers with contractually agreed data volumes should be given the opportunity to ascertain *retroactively* what data volumes they have reached as part of itemised billing.

23. Before a contractually agreed maximum data volume is reached, the consumer should receive an appropriate notification that they have reached a certain threshold.

## Consumer price plans with limited data volume

- Onlineverfahren  
E n t w u r f ohne Reinschrift -

### - Information on usage details to ensure consumers can switch providers

**24.** Providers selling access products in combination with certain data volumes should ensure that it is made transparent in the product marketing what services are included in the contractually agreed data volume and what services are not. Indicating this in the General Terms and Conditions or in the service specifications is not sufficient to ensure transparency.

**25.** Providers selling access products in combination with limited data volumes should ensure that the operators of online comparison portals are able to indicate special pricing features (limited data volumes or services not included in data volumes) in a transparent way.

## Consumer price plans for mobile data usage not subject to flat rates

### - Transparency and precautionary measures -

(Transferring the tools of the Regulation on roaming on public mobile communications networks within the Union to national mobile data services)

**26.** Unless flat rates for mobile data have been agreed with the consumer, providers should give consumers the opportunity to opt deliberately and free of charge for a facility which provides information on the accumulated consumption expressed in volume or in the currency in which the customer is billed and which guarantees that, without the customer's explicit consent, the accumulated expenditure for mobile data usage over a specified period of use, excluding MMS billed on a per-unit basis, does not exceed a specified financial limit.

To this end, providers should make available one or more maximum financial limits for specified periods of use. At least one of those limits (the default financial limit) should have a corresponding financial amount not exceeding EUR 50 (exclusive of VAT) of outstanding charges per monthly billing period.

As an alternative, providers could establish limits expressed in volume.

In addition, providers could offer to the consumer other limits with different, i.e. higher or lower, maximum monthly financial limits .

**27.** Unless flat rates for mobile data have been agreed with the consumer, all providers should ensure that an appropriate notification is sent to the consumer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the computer, when the volume of data services reaches 80% of the agreed financial or volume limit. Each consumer should have the right to require the provider to stop sending such notifications and should have the right, at any time and free of charge, to require the provider to provide the service again.

**28.** Unless flat rates for mobile data have been agreed with the consumer, a notification should be sent to the consumer's mobile device, when the financial or volume limit would otherwise be exceeded. That notification should indicate the procedure to be followed if the consumer wishes to continue provision of those services and the cost associated with each additional unit to be consumed. If the consumer does not respond as prompted in the notification received, the provider should immediately cease to provide and to charge the consumer for mobile data services, unless and until the consumer requests the continued or renewed provision of those services.

### Switching providers

#### - Information on contract duration and notice periods -

**29.** Fixed network: Providers should indicate the currently valid contract duration and the respective notice period in their monthly invoice.

**30.** Mobile services: Providers should indicate the currently valid contract duration and the respective notice period in their monthly invoice. *It should also be pointed out that customers can ask to retain their mobile telephone number when they switch providers even before the contract expires, and that this will not affect the existing contract with the service provider.*

**31.** Providers should provide information in their monthly invoice about the general process involved in switching providers which has been published on the Bundesnetzagentur's website.



### III. Legal implementation of the proposed transparency measures

**32.** The proposed transparency measures (key elements 1 - 8, 21 - 31) will only have the desired positive effect for all consumers if they are offered on an equally reliable and barrier-free basis by all market participants. In order to achieve this, the following options are available for legal implementation:

- Option 1 – Self-regulation, i.e. the transparency measures are implemented by means of binding consensus in the industry;
- Option 2 – Regulation, i.e. industry-wide, binding rules are imposed by the Bundesnetzagentur

The aim of the consultation is also to determine what depth of intervention is needed to solve transparency problems that have been identified within a reasonable timeframe.

If the industry manages to agree on a self-regulating option, the relevant declarations would need to be submitted before the deadline expires.

**33.** The proposals on having the actual data transmission rate monitored by *the consumer* during use (measuring procedure, key elements no 9 – 20) will only have the desired positive effect for all consumers if they are offered on an equally reliable and barrier-free basis by all market participants. In order to achieve this, the following options are available:

- Option 1 – Self-regulation, i.e. implementation of a uniform, industry-wide measuring procedure based on the above-mentioned general terms by means of binding consensus within the industry;
- Option 2 – Regulation, i.e. obligation to establish a uniform, industry-wide measuring concept based on binding rules imposed by the Bundesnetzagentur;
- Option 3 – Regulation, i.e. the Bundesnetzagentur develops and operates its own measuring concept.

The aim of the consultation is also to determine what depth of intervention is needed to solve transparency problems that have been identified with regard to the actual service quality within a reasonable timeframe.

If the industry manages to agree on a self-regulating option, the relevant declarations would need to be submitted along with an implementation concept for the above-mentioned terms before the deadline expires.