Dynamic Coalition on Net Neutrality (DCNN)

Internet Governance Forum 2017

Date: **19 December 2017, 10:40 - 11:40.**

Session Organizer and Chair: **Luca Belli** (Head of Internet Governance, Center for Technology and Society at FGV).

Rapporteur/Notetaker: **Giovanna Michelato** (Youth@IGF).

The session, moderated by **Luca Belli** (Head of Internet Governance, Center for Technology and Society at FGV) began with an introduction of the 2017 outcome of the UN IGF Dynamic Coalition on Network Neutrality, the *Zero Rating Map.* The moderator presented the *Zero Rating Map,* stressing that the primary goal of this tool is to gather information regarding the widest number of zero rating plans and net neutrality frameworks around the world. Belli explained that the Zero Rating Map is a crowdsourced initiative, which mapped almost 80 countries thanks to the information provided by different contributors, some of them amongst the panellists. The beta version of the Map is available at www.zerorating.info

Sébastien Soriano (President of ARCEP and Chairman of BEREC) opened the debate with some keynote remarks, stressing the need for a framework to guarantee non-discriminatory treatment of Internet traffic and make sure that the market moves in the right direction. Soriano stressed the importance to develop networks as a common good and, therefore, the importance to keep them as neutral as possible. He noted that, differently from the United States, the European Union adopted a legal framework to protect net neutrality and stressed that the EU Regulation must be implemented in a flexible manner, in order not to prevent innovation. Soriano stressed the importance to interpret the EU Regulation in accordance with the Net Neutrality Guidelines issued by BEREC.

Regarding zero-rating, Soriano highlighted that the EU framework requires a case-by-case analysis by the competent authority to understand if the specific offering is a violation of net neutrality. In addition, he highlighted the importance of neutrality of the devices, such as PCs and mobiles, announcing an upcoming investigation on the matter by ARCEP.

Belli presented the *Zero Rating Map* findings, observing that the zero rating is particularly widespread in countries that do not have Net Neutrality regulations. Furthermore, he pointed out that in the vast majority of countries, the most zero rated services are part of the Facebook group (Facebook, Messenger, WhatsApp). Analyzing Brazil, Belli stressed that the combination of reduced data caps and sponsored services turns the internet into a pre-defined purposed network. Belli also argued that, in Brazil, the combination of reduced data caps and zero rated services corroborates what he calls the "scramble for data", which means that all major operators and Internet companies are trying to develop strategies to let users utilize the predefined applications they provide, in order to mine all data they can on users. By offering subsidized applications, these companies can collect data that, as Belli stressed, is the most valuable resource.

Amba Uttara Kak (Tech Policy Fellow at Mozilla) stressed that while the rest of the world is still figuring out when differentiation is discrimination; in India all differentiation in data prices based on contentis considered discriminatory, per se. According to Kak, the regulator's bright line rule approach is defensible in the Indian context. While theoretically there may be zero rating that enhances consumer welfare, in practice the case by case approach means too much reliance on political will. For example, even in Europe where regulators are following the case by case approach, certain critical issues like the ease with which companies can apply to be zero rated, or the conditions they have to meet remain under-explored.

María Paz Canales (Executive Director of Derechos Digitales) pointed out that if there is not a regulation that explicitly forbids zero rating, leaving it open to interpretation, the authorities end up with limited resources to access the zero rated applications in the region. Canales noted that, in 2014, Chile recognised that zero rating and net neutrality were incompatible. However, sometime later, the assessment of the authority changed, deciding that the zero rating are a commercial issue.

Alfredo Velazco (Executive Director of Usuários Digitales) presented a summary of the cases of Ecuador. He stressed that there is no transparency with respect to the zero rating and the neutrality of the network by the government of Ecuador and showed cases of offers from the telephone companies in the country, where zero rating services are offered, as is the trend in many countries. one of the main measures that causes a direct impact on the neutrality of the network.

Maryann Fernández (Senior Policy Advisor of EDRi) stressed that there are many cases of zero rating offers in Europe, such as in Germany and The Netherlands. According to Fernández, several telecom

regulators have approved offers from Internet access providers of some form of zero rating that are dubious. This had led to several EDRi members to bring complaints before competent authorities. She stressed the importance of the regulatory authorities not to neglect the community effects of those offers and their impact on the Internet as an innovation ecosystem.

Fernández highlighted the need for a consistent framework, long-term rules on net neutrality, and more consistency regarding zero rating, showing a preference for a zero rating ban. Also, she defended that the implementation of net neutrality rules is not only about zero rating but it is also necessary to look at the independence of regulators, traffic management exceptions, transparency requirements, among others. EDRi and other organisations have built a website for users to flag net neutrality violations: https://respectmynet.eu .

The first open microphone comment concerned zero rating and innovation. A participant stressed that there are several examples in Latin America where operators provide sponsored data, where costumers do not pay for data, but the application provider is the sponsor.

The second comment stressed the importance of the right to co-create the Internet, and the need of net neutrality for doing so. In addition, the commentator addressed the necessity of address the matter of asymmetric bandwidth.

The third open microphone comment focused on the necessity of eliminating the discrimination regarding speed.

The following comment addressed the importance of making decisions analyzing the arguments provided by telecoms and by users and to base decision on evidence.

The last open microphone comment concerned the interconnection between the service providers and the content providers, which could be difficult to control. The commentator argued that the data caps were disappearing off the market. Other participants disagreed with this comment, emphasizing that data caps are a reality in most countries of the world.

To summarize, Fernández stated that zero rating should be banned. Kak highlighted that is more informed comparative work needs to be done on zero rating globally, particularly looking at which countries might be similarly placed to draw out lessons. Velazco stressed the importance of transparency in net neutrality, between the actors, in agreements and the law. Belli summarized the session and invited the audience to contribute to the Zero-Rating Map.