

## Smartphones, tablets, vocal assistants...

# Devices, the weak link in achieving an open internet

### The main proposals to ensure internet openness and users' freedom of choice

*Arcep Report « Devices, the weak link in achieving an open internet » : conclusion et annex» « Recap of the main proposals to ensure internet openness and users' freedom of choice"*

Through this process that could appear as widening the scope of its investigation to new topics, Arcep wanted to emphasise the degree to which the principle of internet openness – of which Arcep has been the full guardian since the adoption of European Regulation 2015/2120 and the Digital Republic Law of 7 October 2016 – is vital. The way in which this Regulation defines end-users' right to the freedom to choose their content, regardless of access conditions (hence regardless of the device they use) is an impetus to examine the entire chain of technical intermediaries in the internet access and, particularly, the restrictions they can impose.

The regulation situates the end-user as the one who is at the termination point of the network, be they customer or content provider, in keeping with the fundamental principle of the internet's architecture, whereby the network's intelligence is located at the extremities (and not in the intermediate steps). This has been Arcep's main angle of attack, taking utmost account of end-users, both consumers and content providers, when consulting with the sector's stakeholders. It is their perception of internet openness, in terms of the services which can be consumed and designed, that guides this report's analysis.

The process of drafting this report, and in particular the many interactions with stakeholders, enabled Arcep to map out a relatively large number of impediments to internet openness that stem from devices. They are multifarious in nature and do not necessarily testify to a deliberate move on the part of device manufacturers and operating system providers. This is especially true, for instance, of devices' inherent technical constraints. Regarding these impediments deriving from devices' inherent properties, there is reason to believe that users are aware of these limitations and that they naturally gravitate towards devices that meet their internet access needs.

Conclusions are more detailed when it comes to impediments resulting from wilful actions by device manufacturers or OS providers, such as those that derive from editorial policies or competition models between systems.

Some of these impediments have a positive counterpart for end users. For instance, Arcep ascertained that walled garden systems could be synonymous with increased guarantees in terms of security, privacy protection pledges or a more user-friendly experience for the less technically savvy users. By the same token, the pre-installation of apps, which creates the risk of skewing internet users' access to certain content, offers the advantage of allowing consumers to use a new device straight out of the box.

On the flipside, some restrictions that device manufacturers or OS providers have deliberately put into place harm the distribution of content or access to certain online services, with no proven positive counterpart and so, *a priori*, at end-users' expense. A case in point is when an app store refuses to index a service, without justification. This is also what happens when a user is made

anxious about installing an app from an alternative app store when, by all evidence, it is no less reliable.

All of these impediments could be resolved over time, spurred by players offering innovative services that have power to drive the emergence of new behaviours and challenge existing established positions.

However, given the uncertainties surrounding innovation cycles, which can be lengthy and unpredictable, and which could allow a handful of players to consolidate their hold on the market (due to strong scale and club effects, which in return could also be essential characteristics of future innovations, notably those based on the use of big data), public policymakers may need to take action.

Several levels of immediate action therefore seem advisable, beginning with a clarification of the fact that the principle of internet openness needs to apply to devices.

Data-driven regulation is required beforehand, to analyse the topic and ensure fully informed users: employing a range of tools (collecting information from device manufacturers and OS providers, end-user reporting, promoting comparison tools, obligation of transparency towards professional users), the aim would be, on the one hand, to enable the public authority to deepen its expertise and, on the other hand, to encourage virtuous behaviour by informing consumers about their choices and providing professional users with greater clarity.

Moreover, while not setting it up as a goal in and of itself, Arcep views competition as a paramount form of leverage for guaranteeing internet openness: by better empowering users, it could make internet openness a leading criterion for users in their choice of device. This is why Arcep welcomes the different public and private initiatives that will make it easier to switch devices. Arcep is thus calling for the available tools to be closely monitored and assessed.

Having ascertained that internet openness may already have been eroded by device manufacturers, Arcep thus considers it necessary to seek to remedy the situation immediately through targeted actions. It recommends measures both for limiting the bias that devices induce over the content consumed, such as the ability to delete pre-installed apps, and to maintain the internet's bounty, such as opening up access obligations for APIs.

Lastly, dispute settlement mechanisms such as those that are currently in place in the electronic communications sector, could guarantee the effectiveness of most of the measures being suggested: Arcep thus proposes introducing a rapid and pragmatic procedure for settling disputes regarding internet openness, notably for the benefit of professional users, and particularly SMEs and start-ups.

Generally speaking, because the framework that currently protects internet openness is European, EU lawmakers should take up this mantle. Device manufacturers' and operating system providers' eminently international dimension also leads to the conclusion that any action that is eventually taken must be European in scale. In the meantime, Arcep plans on doing its part by proposing courses of action that it recommends to put into effect immediately at the national level, with the goal of stimulating actions at the European level. It is also participating in the work being done by BEREC (the Body of European Regulators for Electronic Communications) which will be publishing a report in the coming weeks on the impact that content and devices have on the functioning of the telecoms market.

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## **Recap of the main proposals to ensure internet openness and users' freedom of choice**

## **Clarify the scope of the open internet by enshrining the principle of users' freedom to choose their content and applications regardless of the device**

### **Data-driven regulation**

- Gather information from device manufacturers and OS providers, and disseminate it
- Gather reporting from end users, both consumers and businesses
- Promote comparison tools
- Impose transparency on the indexing and ranking criteria that app stores use

### **Increase fluidity**

- Closely monitor and, once tried and tested, assess initiatives designed to facilitate device switching

### **Lift certain restrictions imposed by key device market players, more directly**

- Allow users to delete pre-installed apps
- Enable alternative rankings for the online content and services available in app stores
- Allow users to easily access applications offered by alternative app stores, once they have been deemed reliable
- Allow all content and service developers to access the same device functions
- Monitor the evolution of devices' content and service exclusivity practices

### **Act quickly**

- Invent an agile procedure for supporting businesses, and particularly SMEs and start-ups, when they encounter questionable practices