



EUROPEAN COMMISSION

Cabinet of Vice-President Neelie Kroes
Deputy Head of Cabinet

Brussels, 16 September 2013
Cabinet Kroes/POD

Dear Mr Van Daelen,

Thank you for your letter of 13 September.

I regret that you left on Thursday with a negative impression about the tone of our meeting, it was certainly a lively discussion but I do not accept that I behaved in the way that you suggest: the fact that I took our meeting seriously is an indication of the seriousness with which we treat the issue of open internet access, as reflected in the proposal of the Commission to ban blocking and throttling.

In particular I would like to clarify that I did not make the alleged comments or suggestions in regards to my colleague Ryan Heath. Talking to journalists is and remains a critical part of our efforts to ensure an informed debate on this important issue.

I must admit I found it difficult to have a discussion on substance given that (at the time) you had apparently not yet had an opportunity to read our final proposal, referring as you did to a wording of Article 23 that does not appear in the text as proposed by the Commission. I enclose a copy of the formal text of the draft proposal as adopted by the Commission, and I am happy to take up in writing some of the queries which you have raised.

You asked me to clarify the situation as regards a "Facebook only" service. I replied that I did not know how such a service could work, particularly in light of the guaranteed right under this proposal for end users to access information and run applications and use services of their choice, as well as the clear rules on transparency that would ensure that users would be fully aware of what they were signing up for. I can assure you that under the Commission proposal a restricted or partial service could not be imposed on end users.

On your request for a guarantee about the law in the Netherlands on Net Neutrality, as I said it is not the place of the European Commission to give you a legal confirmation about a Member State's law. I can say that we have examined the Dutch law, not least because it is one of the few examples we have of clear protections of open access to the Internet. For our part, we are convinced that our proposal is compatible with the Dutch law and its explanatory memorandum, as we understand it, and that the Netherlands will not have to change anything in its legislation when our proposal is adopted into EU law. But I would encourage you to address your question to the Dutch authorities who are the best placed to interpret the law of the Netherlands.

As to your question on the reference to preventing or impeding serious crime, I would recommend that you read this in conjunction with Recital 47 of the proposal, which makes reference to the serious issue of preventing access to and the distribution of child pornography. This has been a particular concern of European Union policies in relation to the Internet, and is the primary reason why we have proposed that reasonable traffic management measures should be allowed in order to prevent or impede such serious crime.

I trust this satisfactorily addresses your concerns.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Pearse O'Donohue', with a stylized, cursive script.

Pearse O'Donohue