



The Response of the Association of Commercial Television in Europe to the Net Neutrality Consultation

Introduction

The Association of Commercial Television in Europe representing the interests of 30 commercial broadcasters in 34 European countries welcomes the opportunity to submit its views to the Commission public consultation on net neutrality. The ACT members represent a wide variety of business models who continue to diversify and expand in order to meet consumer demand and expectations. To achieve this, commercial broadcasters are constantly investing and re-investing in new formats, services and content which they strive to make available on all platforms.

The broadband Internet (fixed or mobile) represents a complementary means of distribution for many of our member companies who are seeking to reach a wider and more diverse audience; however, it does not substitute other distribution platform but it provides added value for consumers alongside the more established means of distribution.

The internet is a new platform which raises numerous complex issues. Illegal distribution of copyrighted content on the internet is probably one of the most worrying phenomena which brings about enormous losses for the creative industries in terms of revenues and job losses not only in Europe but worldwide as well. In addition, the traffic generated by the illegal distribution of content potentially causes network congestion with a double negative effect: consumers might not benefit from the quality of service they expect and have paid for and legal services might be affected as well which is also detrimental to the consumer experience.

We support the Commission's careful approach to the issue of Net Neutrality which avoids artificially "importing" the issues at stake in the USA. Despite the leading position of the US in internet markets and in driving global internet policy, its market structures and related regulatory and competition issues cannot be easily translated elsewhere. So, remedies which may work on one continent should be carefully analysed before being applied to market situations in Europe which may be significantly different. In the absence of any demonstratable sustained market failure or abuses of market power, the dynamic conditions of the competitive market in Europe will be the driver for both access and content providers to innovate with different delivery and charging models.

For the time being, if the discussion is concentrated at the national level for the implementation of the New Regulatory Framework for Electronic Communications, it could also continue at European level, as the net neutrality issue cannot be restricted at national borders. European discussions on this issue should try, in so far as possible, to respect

national approaches to this question while recognising the international dimension of the Internet.

Question 1: Is there currently a problem of net neutrality and the openness of the internet in Europe? If so, illustrate with concrete examples. Where are the bottlenecks, if any? Is the problem such that it cannot be solved by the existing degree of competition in fixed and mobile access markets?

The ACT believes that access to the internet should be assured, in order to deliver benefits to citizens and consumers over the longer-term. Therefore, while we are not aware of any such problems to date, as set out below we consider that national regulatory authorities need to engage with these issues in order to ensure that the open internet is not compromised in the future.

Question 2: How might problems arise in future? Could these emerge in other parts of the internet value chain? What would the causes be?

Question 3: Is the regulatory framework capable of dealing with the issues identified, including in relation to monitoring/assessment and subsequent enforcement?

Q 1, 2, 3: Need for continued regulatory oversight

The EU recently adopted a revised EU telecommunications framework package which inter alia ensures the heightened regulatory oversight and competitiveness of the broadband internet access market in Europe. The affirmation of the principles of transparency and non-discrimination are particularly welcome. As things stand we do not see any need for further regulatory intervention in European markets, though we would call on national regulatory authorities to play a key and pro-active role in monitoring national markets – so as to enable them to identify and propose solutions to potential market failures in a timely manner.

Question 4: To what extent is traffic management necessary from an operators' point of view? How is it carried out in practice? What technologies are used to carry out such traffic management?

Many networks experience network congestion and are deploying traffic management in order to ensure network integrity and provide assured quality of service to congestion sensitive applications, such as voice and streaming video.

The necessity for traffic management varies widely between services or content, and between fixed and mobile networks.

Question 5: To what extent will net neutrality concerns be allayed by the provision of transparent information to end users, which distinguishes between managed services on the one hand and services offering access to the public internet on a 'best efforts' basis, on the other?

The ACT supports the empowerment of consumers in making informed purchasing decisions, and to that end, supports the provision of meaningful information on traffic management practices to end users. Transparency on traffic management practices should also be

guaranteed through contract between Internet access providers and commercial users (audiovisual media service providers).

*End users should be informed at the time of contracting the service or application of measures that may affect their experience of the Internet and their ability to exercise their free choice. They should be fully entitled to access and distribute information or run applications and services of their choice **where they have the legal right to do so.***

Question 6: Should the principles governing traffic management be the same for fixed and mobile networks?

Principles should be proportionate for each type of network and their enforcement should take into account the specificities of each network, for example the capacity of the network.

Question 7: What other forms of prioritisation are taking place? Do content and application providers also try to prioritise their services? If so, how – and how does this prioritisation affect other players in the value chain?

Question 8: In the case of managed services, should the same quality of service conditions and parameters be available to all content/application/online service providers which are in the same situation? May exclusive agreements between network operators and content/application/online service providers create problems for achieving that objective?

Question 9: If the objective referred to in Question 8 is retained, are additional measures needed to achieve it? If so, should such measures have a voluntary nature (such as, for example, an industry code of conduct) or a regulatory one?

Question 10: Are the commercial arrangements that currently govern the provision of access to the internet adequate, in order to ensure that the internet remains open and that infrastructure investment is maintained? If not, how should they change?

Q 7, 8, 9, 10 – Flexibility to develop innovative commercial business models and relationships should be ensured.

As the ways in which consumers are able to access audiovisual content expand, so the options of the producers and broadcasters of that content must also be free to develop. Any policy intervention should be aimed at supporting content providers' ability to deliver, and be rewarded for meeting consumer demand; be that through innovations in advertising, pay per view, VOD, licensing etc.

The ability of the internet to deliver audiovisual content to a mass audience at an acceptable quality is a relatively recent phenomenon which coincides with many strategic challenges to the established business models in the media sector. Although our sector is enthusiastic about the potential of the internet as a supplementary distribution platform, it is too early for businesses to have reached a definitive view on the issues raised in questions above. Broadcasters are exploring various options with online partners as to how best to structure the content offer, and we would caution against premature or ideologically-driven

intervention and ask the Commission to allow these nascent markets to develop further before considering new policy interventions.

Where additional measures are deemed to be necessary (to guarantee transparency...), they should be defined at national level in the context of the implementation of the new Regulatory Framework for Electronic Communications.

With regards to question 10, we urge the Commission in this and other dossiers to give equal priority to encouraging return on investment in the content sector as well as infrastructure. In addition, the contribution of content in the attractiveness of Internet access offers should not be underestimated in the debate related to the financing of investments in infrastructures.

Question 11: What instances could trigger intervention by national regulatory authorities in setting minimum quality of service requirements on an undertaking or undertakings providing public communications services?

Question 12: How should quality of service requirements be determined, and how could they be monitored?

Question 13: In the case where NRAs find it necessary to intervene to impose minimum quality of service requirements, what form should they take, and to what extent should there be co-operation between NRAs to arrive at a common approach?

Q 11, 12, 13 – *Quality of service should be monitored.*

As mentioned above, national regulatory authorities shall play a key role in identifying and proposing solutions to any potential market failure in a timely manner. Additional regulatory measures at EU level are not necessary, in particular at this early stage when Member States are still in the process of implementing the new Regulatory Framework for Electronic Communications which provides NRAs with the right to act according to the needs of their respective markets. In so far as managed services are concerned, quality of service parameters are agreed through contractual agreements.

Question 14: What should transparency for consumers consist of? Should the standards currently applied be further improved?

As per Q5

Question 15: Besides the traffic management issues discussed above, are there any other concerns affecting freedom of expression, media pluralism and cultural diversity on the internet? If so, what further measures would be needed to safeguard those values?

ISPs should not unduly discriminate between categories of legal services and content.

The Internet must continue to support innovation in applications and commercial business models. While new services, offering differentiated choice, are to be expected and welcomed, access providers must not unduly discriminate against specific legal applications or classes of service or favour self supply. A competitive broadband internet access market in Europe forms the basis for promoting media pluralism and cultural diversity through the increased availability of legal services, applications and content.

*Broadcasters acquire expensive rights to provide content that is often illegally available through the internet (streaming videos, progressive download, direct download, P2P). This affects seriously our legitimate interests and in the end will affect the financing of media and thus, media pluralism, creative content and cultural diversity. A mature debate about how to prevent piracy and illegal distribution of content is ongoing in several member states. No definition of net neutrality should prevent the possibility for network operators, **where required**, to use traffic management techniques to remove illegal services and illegal content.*