BSG draft response to the European Commission questionnaire for the public consultation on the open internet and net neutrality in Europe

BSG
Broadband Stakeholder Group

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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?
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?

It is our view that there are currently no problems relating to "net neutrality" in the UK. Management of traffic takes place today to underpin the efficient operation of today's internet and has not resulted in any apparent problems. The type of arrangements that might impact the consumer and change the status quo of the operation of today's internet - particularly commercial deals that prioritise and offer guaranteed quality of service to certain forms of internet traffic – are not a reality in today's market.

Therefore in advance of such developments, it is difficult to predict what the outcomes could be. There are a range of views from stakeholders in this debate on this point.

Some may argue that such arrangements could potentially lead to negative outcomes for the consumer and the operation of the internet as a whole. Some may state that one unwelcome scenario could be that commercial prioritisation of certain forms of traffic could lead to unacceptable degradation of service for other forms of internet traffic. They argue that this would negatively affect consumers' ability to access services and applications diminish the reach of public services online and create a barrier to entry for new content services and applications.

Others argue that innovation in commercial deals and the use of commercial traffic management practices could lead to improved service innovation, increased investment and improved choice and quality for the consumer.

The role of a competitive market is clearly of great importance in ensuring that innovation delivers for the consumer.

In a competitive retail broadband market, where consumers have access to a range of services, are given clear information about what these services consist of and can switch easily between them, negative outcomes for the consumer should be avoided.

The UK market involves a range of players engaged in vigorous competition which has led to a market that is highly competitive in terms of price. Furthermore industry commitment to building on existing transparency (see below) and Ofcom's current appraisal of switching arrangements demonstrates a commitment to ensure the existence and continuation of a vibrant and competitive retail broadband market in the UK.

Whilst it is of course impossible to predict the future, it is our view that trying to pre-empt hypothetical problems with regulatory or legislative action is incredibly difficult and carries a significant risk of limiting innovation and precluding choice for the consumer.

It is our view that the current regulatory framework is sufficient to support any intervention that may be deemed appropriate in the future. However at this stage we do not see any issues to prompt such action.

There is no indication at this stage to suggest that the market will not deliver for consumers and indeed action is already been undertaken to build on transparency and ensure switching arrangements are delivering for the consumer.

In the UK, the regulator is engaged with the issue and is following market developments closely. Unless there is any clear indication of any market failure, we are of the view that any pre-emptive regulatory or legislative action could be both unwelcome and disruptive.

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

Congestion and capacity challenges are ongoing for broadband networks. Network upgrades and investment in greater capacity in core, backhaul and access networks will help to mitigate these. However bottlenecks have a tendency to move around networks and greater bandwidth alone will not cancel these out.

Management of traffic over networks has always been part of the operation of the internet and will continue to be the case. Indeed certain forms of traffic management have been vital to underpinning the efficient operation of today's internet and providing a good experience for the consumer.

The term traffic management is used to describe various different types of activities that aim to achieve certain outcomes. Different uses of traffic management currently undertaken include:

- Management of the network to address issues such as packet loss, latency and jitter that may impede consumer access to services and applications
- Blocking of illegal content, such as child abuse images
- Prioritisation of traffic to manage congestion at peak and busy times

However, we would certainly agree that more could be done to improve consumer understanding of traffic management practices and how these might impact their experience of broadband services.

As such, the BSG has committed (and expressed so to the UK regulator Ofcom) that it will work with operators and other related stakeholders on a set of good practice principles that will underpin how traffic management practices are communicated in a transparent and meaningful way to consumers.

Our proposed approach will cover both traffic management practices that are undertaken now and potential future traffic management policies, i.e. future commercial arrangements that could lead to the prioritisation of "managed services".

The principles will be developed in line with the following objectives:

1. Ensuring consumers have access to meaningful information about the traffic management policies and practices employed by service providers to enable them to compare these policies and make informed choices.

2. Ensuring that there is an industry commitment in place to inform consumers about future commercial and technical innovations and explaining the implications of these changes for the services to which consumers may already subscribe or wish to purchase.

3. Enabling third parties to make a retrospective evaluation of the impact of different traffic management practices on the services provided to different types of end consumer.

4. Supporting independent verification of adherence with the transparency principles

There are a range of views as to whether transparency measures alone will be sufficient to safeguard the long-term utility and value of the internet and ultimately this will only become apparent over time. However, enhancing transparency is clearly a first order issue and progress can and should be made in the short-term. As such the BSG is committed to making real progress on this set of principles by the end of 2010.

In developing these principles, we are working with both mobile and fixed operators. We are of the initial view that underlying principles should apply to both types of networks, though the practices they choose to operate will naturally reflect the nature of their networks.

The key will be in empowering consumers to understand what types of services are offered by operators across both types of networks so that they can choose the best service for their needs.

On the issue of prioritisation taking place throughout the broadband value chain, it is useful to note that it is not just ISPs that seek to manage to flow of traffic over the internet. The emergence and growth of content delivery networks (CDNs) reflects the interest that content and applications providers have in ensuring that consumers have the best experience of their services.

Indeed a White Paper the BSG published in March 2010, *Broadband Infrastructure: The Service and Application Providers' View* indicated that quality is becoming more important for those companies in delivering for consumers.

We do not feel it appropriate for us to comment on what commercial arrangements might support better quality and believe that at present there should be space and time given for new business models to evolve. There is no indication as yet that such innovation could lead to negative outcomes for consumers and as such it is inappropriate for regulators to intervene in favour of one set of actors over another in what may be a period of legitimate and welcome commercial negotiations and discussions

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

Our view is that introducing a minimum quality of service for internet access will be difficult to devise, implement and enforce. It will also be difficult to communicate to consumers. In light of these difficulties, our initial view is that it should be viewed as a mechanism of last resort rather than an instrument to be used proactively to encourage particular outcomes.

Our fundamental view on the overall issue of net neutrality is that energies should be focused on supporting competitive markets and building on consumer understanding of broadband services. The European regulatory framework supports intervention in the eventuality that the market is not operating in the interest of the consumer.

However at present it is far from clear where commercial developments are going and we believe there is a real danger in regulators trying to pre-empt them. As such we support an approach of tackling consumer transparency first and thinking through what scenarios could warrant a potential regulatory response, rather than devising regulatory solutions for scenarios which are not a reality today and whose impact is unclear.

About the Broadband Stakeholder Group (BSG)

The BSG is the UK government's leading advisory group on broadband.

It provides a neutral forum for organisations across the converging broadband value-chain to discuss and resolve key policy, regulatory and commercial issues, with the ultimate aim of helping to create a strong and competitive UK knowledge economy.

The BSG’s diverse network includes telecoms operators, manufacturers, investors, ISPs, broadcasters, new media companies, mobile operators, content producers and rights holders, as well as government departments, Ofcom, devolved administrations and others.