

MEDIASET'S RESPONSE TO THE NET NEUTRALITY CONSULTATION

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Mediaset is a fully-fledged multimedia concern (<http://www.mediaset.it>) committed to delivering quality content through interoperable digital technologies. Broadband delivery is thus a complementary tool to our core DTT services. Before addressing the specific issue of network management, it is worth considering some preliminary remarks on the specific causes driving forth the current debate on Net Neutrality.

In fact, it is our understanding that the issue of “net neutrality” or (the limits to) “network management” could be considered as a downstream solution to an imminent upstream problem; this problem is commonly known as congestion of the network.

Generally speaking, traffic management is considered to be a practical instrument in order to mitigate the growing congestion of broadband networks. We can identify two main sources of congestion:

Infrastructure

There is a common agreement on the necessity to enlarge the fixed broadband network through the promotion of private investments on Next Generation Access networks and through public investments made possible by a rather generous EU State Aid policy¹. A third instrument identified by the European Commission in order to address the congestion of broadband networks is a vast program (RSPP) of reallocation of UHF spectrum from existing broadcasting purposes to mobile broadband services.

Content

The second aspect of this issue - from the perspective of a broadcaster directly connected to the above-mentioned reallocation of spectrum - is related to the quantity and quality of content conveyed on these networks. In fact, alongside the fundamental and verified role played by illegally uploaded and downloaded audiovisual content in obstructing the broadband pipes, there is a constantly growing concern associated to the general

¹ Cf. “Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks”, Official Journal C 235, 30.9.2009.

assumption driving the current EU decision making process. This assumption promotes a regulation-led scenario whereby in the near future all content distribution services will be combined and conveyed to the general public via a common pipeline – the Internet. Mediaset is here, once again, to challenge this rather simplistic idea and any public policy heading that direction: we have solid and fact-based arguments to say that European consumers do not want to live in a mono-platform world.

Mediaset, as an entirely European Audiovisual Media Provider, believes that competition between different delivery platforms is not only essential to support European and local audiovisual productions but also to address the consumers' need to have access to content from different technologies and across a variety of digital media services.

Growth in DTT consumption is increasing steadily all over Europe. Indeed, in most countries within Western Europe (excluding Ireland), the process of transition to DTT platform is at an advanced stage, and has been or will be completed by the end of 2010 in 11 countries (Denmark, Finland, Germany, Luxembourg, Holland, Norway, Switzerland, Spain, Malta, Austria and Slovenia). In Italy, the switch off process will be over in 2012, but by the end of this year more than 60% of Italian families will benefit from the roll-out of digital services. As for France and the United Kingdom, at the end of 2010, about 10 million French families (40% of the total amount of free to air users) and less than 7 million English households (25%) will have access to the digital terrestrial platform.

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?

Network management is just a way to alleviate a problem that only a pragmatic and evidence-based media policy could eventually prevent.

The real problem is network congestion and the real causes are two-fold:

- Illegal uploading and distribution of content;
- Policy programs (i.e. RSPP and State Aid Broadband Communication) supporting a mono-platform delivery of content strategy - not exactly consistent with the technological neutrality principle advocated by the EU - that displaces private investments and reduces competition in the audiovisual content market.

If no significant reduction of illegal content conveyed on the internet occurs, and without the promotion of inter-platform competition in the distribution of audiovisual content, congestion of the network will soon become a major problem.

In our opinion, the current EU policy, rather than producing a *virtuous cycle of the digital economy*², will end up producing opposite results:

- Ever insufficient infrastructure;
- Unsolvable and growing level of network congestion;
- New sources of revenue for gate-keepers;
- Reduced offer and fewer investments in the production of quality content;
- Additional costs for all consumers.

This vicious circle will in time come to terms with the need to implement priority and discriminatory schemes.

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?

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “A Digital Agenda for Europe” (COM(2010) 245 final, 19.05.2010).

Mediaset believes that consumers should be sufficiently informed about network management practices that may affect their capacity to access legal applications and content. Transparent information should also be guaranteed through contracts between content providers and Internet Access Providers.

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

In a time of increasing convergence the principles and limits governing traffic management should be the same for all types of networks.

Question 7: What other forms of prioritization are taking place? Do content and application providers also try to prioritise their services? If so, how – and how does this prioritization 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?

Mediaset is seriously committed to making available and to facilitating access to its programming on a multiplatform basis and plays a leading role in the distribution of content over the internet.

If consumers are given the possibility to have easy access to broadcasting services on open and interoperable platforms, internet is likely to become complementary to DTT in the delivery of quality audiovisual content.

Therefore, as long as the current balance between different delivery platforms is maintained and as long as the capacity to deliver legal content is not unduly limited, there is no need for any specific policy intervention

going beyond the implementation of the new Regulatory Framework for Electronic Communication.

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?

Delivery of content over the internet already constitutes a major driver both for private investments on IP networks and for revenues in the Telecom sector. Any political analysis should recognize the central role of legal content providers and support the development of practices encouraging return on investments in the content sector.

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?

As mentioned above, the provisions introduced in the New Regulatory Framework are sufficient to address the current market developments. It is now up to the National Regulatory Authorities to intervene on a case by case basis when necessary.

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?

The internet is a fantastic tool to promote a knowledge-based economy. This consultation on net neutrality is not the most appropriate discussion forum to dwell over the inherent dangers of a totally unfettered web distribution, both in terms of harmful and illegal content. Suffice to say what Mediaset has maintained throughout the consultations on online content distribution: freedom of expression is not synonym of licence to steal and copyrighted materials are just like any other immaterial good whose property holders are entitled not merely to claim property but, more specifically, to authorise appropriate timing for release and on which platforms. Only in due compliance with these fundamental principles can a rich and varied audio-visual library be made available to the potentially huge internet audience reach.

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