

ONITELECOM's reply to the European Commission's consultation on the Open Internet and Net Neutrality in Europe

06/09/2010

ONITELECOM is a Portuguese alternative operator focusing on the corporate, business, public sector and carriers market segments. ONITELECOM is the main alternative to the incumbent operator in Portugal in these markets and operates an extensive network already based on next generation technologies.

ONITELECOM welcomes the opportunity to present its views on the European Commission's consultation on the Open Internet and Net Neutrality in Europe. It is understood that European Institutions consider the openness of the Internet as a fundamental principle that should be preserved and the objective of this consultation is to determine if any public policy responses are needed to ensure that principle.

As a previous point, ONITELECOM would like to state that access to the public internet and to so-called "managed services" should be treated in different ways:

- Access to the public internet should be open and neutral. Therefore, operators should not create artificial barriers to access to specific sites, applications or services provided in the public internet. This should be true both for fixed and mobile operators. However, traffic management for purely operational reasons should be allowed.
- "Managed services" should be those services provided by an operator, over its own network, to its direct clients. The services could be specific to the operator, have guaranteed levels of service or other characteristics that could not be guaranteed over a public internet access. As such, these would not be available to clients of other operators, except in case of agreements granting access for clients of those operators. Operators should be allowed to provide services of this kind to their direct clients, subject only to the existing laws and regulations on service provision, contracts and client's rights

Below, we present ONITELECOM's replies to the questions of the consultation document.

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?*

We do not see any net neutrality problems in the fixed access to internet. However, there are some problems in the mobile access to certain applications and services. One known example is the blocking of mobile access to VoIP service providers. We believe this behaviour by mobile operators intends to protect their mobile voice business. Therefore, we believe this problem cannot be solved by the existing degree of competition and warrants a regulatory intervention.

Question2: *How might problems arise in the future? Could these emerge in other parts of the internet value chain? What would the causes be?*

Problems might arise from a number of causes:

- Increased demand for bandwidth-hungry applications and services might lead some operators to limit or block access to those applications and services to avoid network congestion and postpone network investments. Again, mobile operators could be the main players behaving in this way, due to limitations in their radio access and backhaul networks, and the need to upgrade to 4G networks. However, as long as there are sufficient offers in the market to ensure these applications and services can be accessed, these should be a limited problem.
- Content or Application Providers, associated or not with specific operators, providing their services over the public internet could block access to clients of other operators by refusing to negotiate fair conditions with those operators.

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

The fact that some problems of neutrality exist (e.g.: mobile operators blocking access to VoIP services) seems to imply that the regulatory framework is not capable of dealing with those problems.

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

ONITELECOM uses traffic management to ensure Service Level Agreements (SLA) with its clients are met. Since all clients are non-residential, their quality requirements are high or very stringent. As such, traffic is prioritised and segregated according to each specific SLA, using Quality of Service (QoS) techniques that allow classification and adequate routing of each packet transmitted over the network. This is done, also, taking into account the type of service (voice, data, video).

These techniques are implemented in high-capacity routers deployed in the network. It should be noted that these techniques are especially relevant for services provided over ONITELECOM's network to direct costumers ("managed services"), not to services provided over the public internet. Access to internet is just one of the services provided to ONITELECOM's clients and is subject to treatment from a traffic management point of view in order to meet the bandwidth, contention and other parameters defined in the respective SLAs.

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 effort" basis, on the other?*

In our previous considerations at the top of this document we have clarified our understanding of public internet access and managed services. We believe that such a clarification, transparently conveyed to end users, would be useful in order to achieve the objective of this question.

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

ONITELECOM believes the same principles should be applied to traffic management in 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?*

ONITELECOM applies traffic prioritisation according to the SLAs contracted with its clients, as explained in our reply to question 4. We know some ISPs are starting to apply similar traffic prioritisation techniques to their clients in the access to specific services (e.g.: on-line gaming).

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 networks operators and content/application/online service providers create problems for achieving that objective?*

As explained before, ONITELECOM considers as managed services those that are exclusively provided over the operator's own network to its direct clients, with levels of service that

cannot be ensured over the public internet. As such, these services should only be subject to laws and regulations on service provision, contracts and client's rights. Regarding problems arising from exclusivity of such services or agreements between operators, these should be dealt with under the Competition Law.

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?*

ONITELECOM does not agree with retaining the objective referred to in question 8.

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 the infrastructure investment is maintained? If not, how should they change?*

Increasing usage of bandwidth-hungry applications and services over the internet will force operators to invest in upgrading their networks. Alternatively, in order to delay investments, operators could increasingly resort to traffic management techniques detrimental to a comfortable user-experience (e.g.: slow access or blocked access to certain types of services/applications). This could be avoided if content/application/service providers agree to contribute to the infrastructure investment needed to maintain high levels of service.

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?*

Continued low levels of service, including blocked access to specific services/content/applications could be the trigger for NRA intervention.

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

In the case of public internet access, this could be assessed by means of evaluation of client complains and actual KPI analysis. It should be noted that in Portugal there is already a Voice QoS Regulation but an equivalent regulation is not in place for internet access. Perhaps an initial step could be taken by the

NRA by requiring operators to report regularly on a set of KPIs in order to evaluate the need for a regulatory intervention. The NRAs should also compare reported KPIs to advertised levels of QoS.

In the case of managed services, according to ONITELECOM's understanding, service requirements should be set by agreement between the operator and the client.

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?*

ONITELECOM believes that NRAs should define a common framework for defining minimum QoS requirements. The requirements should take into account what is technically and economically feasible, as well as the results of actual measurements (if available) and advertised levels of service.

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

Users should be fully informed about the conditions of provision of service, including any traffic management techniques used that could limit or block access to specific services/applications/content, and the minimum assured levels of service.

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?*

None that we are aware of