

Kista 2010-09-30

## Comments on the Commission's Public Consultation on "The Open Internet and Net Neutrality in Europe"

### *General Remarks*

During the latest decennium, general access to the Internet and, thereby, virtually endless possibilities to find, share and distribute information have become a reality for a very large portion of the world's population. This is one of the most important and profound changes in modern society, which has been made possible through technical and commercial innovations and breakthroughs. Tele2 strongly believes that the general public must be ensured a continuous and uncensored basic access to the Internet while keeping the terms and costs of access reasonable. Thus, as a general starting point, Tele2 underlines its support for the main principles of net neutrality, namely:

- Internet users are entitled to an Internet connection with a predefined capacity and quality;
- Internet users are entitled to an Internet connection that enables them to
  1. send and receive content of their choice;
  2. use services and run applications of their choice;
  3. connect hardware and use software of their choice as far as these do not harm the network;
- Internet users are entitled to an Internet connection that is free of discrimination with regard to the type of application, service or content or to sender's or receiver's address.

It may be something of a truism, but the Internet is constantly and rapidly changing: new applications, new forms of access and connectivity, and new business models are (constantly) developing. The entire Internet ecosystem is characterized by fierce **competition**. In Tele2's opinion, this is – by far – the best and most efficient way to ensure continuous development and to protect net neutrality. **Therefore, it is Tele2's opinion that additional guidance or new regulations on net neutrality are not necessary and could even be detrimental to the continuous dynamic development and change of the Internet.** Instead, Tele2 would recommend promoting competition in broadband services as the best solution to avoid compromising net neutrality.

The market has, in the cases known to us, taken care of any attempts by operators to block certain content providers. These cases have been solved quickly to the benefit of consumers and without any need for regulatory interference: the operators either had to completely unblock the formerly blocked content or offer a price differentiation that serves the same

purpose. The self-regulatory powers of a competitive market should thus not be underestimated.

If it proves to be necessary in the light of future market development, Tele2 would be in favor of some sort of agreed industry “Code of Conduct” or business standards, which could also include best practice policies to ensure the most efficient use of network capacity, to be signed by ISPs and service/content/application providers.

#### *Detailed Comments*

**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?

Tele2 is of the strong opinion that there is **no current problem with net neutrality** and openness between the operators and the consumers in Europe. On the contrary, the entire market is characterized by strong competition, dynamic and rapid development and a multitude of choices for consumers. There is, in our opinion, no reason that the market itself should not be able to solve any issues that may arise through the existing degree of competition on the European market.

However, as the demands from customers increase, investment in higher-capacity networks is needed in order to continue to offer high-quality services and avoid network congestion. It is, in Tele2’s opinion, very important that ISPs are free to offer different levels of service to their customers, respectively priced at different levels. Having the ability to price differentiate creates incentives to offer a range of services from which buyers can select, depending on their current and likely future needs. Price differentiation can benefit a wide range of consumers, in particular those who are on average more price sensitive, by allowing them to purchase services that they may otherwise have to forego. By disallowing price differentiation, the low usage customers will always end up subsidizing the high usage customers.

Furthermore, competition among service providers, coupled with transparency, will allow operators to solve quality of service problems as consumers will have the flexibility to move to the provider that satisfies their requirements.

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

With the current retail price models for fixed and mobile data (with unlimited or nearly unlimited usage for a fixed fee) and no or very limited traffic management, high usage customers tend to congest the network because they require more traffic. This happens primarily in the mobile network.

The result is twofold:

1. Customers who need and are willing to pay for a secured Quality of Service (QoS) experience, e.g. for real-time critical services, are unable to get a satisfactory service.
2. The vast majority of customers (low and medium users) will have to pay a premium to support the traffic of heavy users.

The only way to address these problems is to use traffic management solutions and by introducing more advanced and relevant pricing models, thereby allowing customers to pay fees which are directly corresponding to the extent of the service and quality they require (e.g. but not limited to, speed, data transferred, prioritized real-time applications, time of day etc). Tele2 is convinced that market forces, if allowed, will respond to customer needs and requirements by using such a mix of traffic management and new pricing models.

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

**Yes,** Tele2 believes that the current regulatory framework is both capable and sufficient for dealing with potential issues relating to net neutrality. In short, the two areas of concern are i) transparency issues and ii) potential abuse of dominant position but there already exist tested and efficient regulations for these areas. Naturally, as services and business models continue to evolve, those regulations may need to be amended and updated in order to continue to provide adequate protection. Nevertheless, Tele2 does not see any need to introduce new forms of regulation at the moment.

As stated above, consumers are currently offered a wide choice of broadband providers and service offerings based on different technologies. This minimizes the risk of network services forming a bottleneck that might threaten the openness or neutral nature of the Internet. There are no signs whatsoever of this development being reversed or reduced. On the contrary, competition is increasing steadily and new, innovative services and technologies are being introduced to the market. Any service provider that seeks to restrict access to information will be deserted by consumers in favor of a provider that safeguards their net freedoms. The ability of the consumer to switch from one provider to another, and the ease with which this can be done, safeguards the principles of net neutrality.

**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?

Traffic management, in general, is necessary – it is in fact vital for providing high-quality and diversified services – to be able to offer our customers attractively priced services for different levels of QoS. It can be used to restrict heavy usage, optimize service for non real-time and real-time traffic and to keep the overall price/service level as attractive as possible for our customers.

Since the capacity of a network is limited, traffic management principles are already employed to avoid network congestion and to maintain and improve the quality of services offered, as well as to fulfill legal requirements of certain services. Management is also necessary to filter identified spam and malware. As a result, the differentiated treatment of network traffic is not indicative of anti-competitive behavior, but is a necessary and important tool for providing high-quality services.

One example is that the deployment of traffic management solutions can be used to offer customers both service offerings that are optimized for real-time applications and service offerings that are not. This enables those customers who do not have a need for such

applications to purchase and pay only for the service they need and does not force them to subsidize the customers who use such applications.

Tele2 is strongly opposed to all forms of illegal anti-competitive behavior, including, of course, the abuse of traffic management practices that could, if applied to content, raise privacy-related concerns. However, Tele2 would like to underline that the market has the necessary tools, both technical and economic barriers, to make such anti-competitive actions unlikely.

In essence, while traffic management practices differentiate between various types of network traffic to carry out necessary service or network performance-related functions, this differentiation does not constitute discrimination.

As set out earlier in this response, we believe that a market characterized by competition and enforcement of the current regulatory framework is self-sufficient to avoid any potential discriminatory behavior related to 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?

Transparency is crucial for consumers and business users to fully understand what service offerings are available, to differentiate between those and to be able to choose the service offering that best matches their needs. A description of the traffic management principles employed by service providers is a necessary part of such transparency. However, for transparency to be an efficient method of safeguarding net freedoms, a choice of service providers must exist and barriers to switching must not be too high. We believe that this reflects the current situation in Europe.

Also, it is important that transparency requirements bring “real” transparency for consumers and not just burden consumers and providers with requirements to include overly complicated, detailed and extensive technical specifications and descriptions in all market communication. We believe that **common industry standards** for describing the relevant – from a user’s perspective – characteristics of different service offerings can be one way to achieve real transparency. Such standards would most likely differ between various countries and markets, since customer requirements, cultural and communication traditions, and market offerings differ. Therefore, this should best be left to the industry to agree upon.

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

Yes, if regulations on net neutrality differentiated between fixed and mobile technologies, it could distort the technology investment decisions and, in the end, customer service would

most likely suffer. However, it should be noted that the need for traffic management is, at least presently, higher in the mobile networks.

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

Yes, there are current examples of major content/service providers that try to use their bargaining power toward operators in order to get prioritization in terms of, e.g., improving customer service experience by co-locating their content servers in operator networks or by having the traffic to their service zero-rated for the customer. Today, this does not pose a problem or a significant issue, but if the bargaining power of big content/service providers becomes “too high”, their possibilities to negotiate favorable treatment on other actors’ behalf could become a reality.

The current market tendencies by content/application providers to prioritize their services could lead to blocking out any small players and newcomers in the market.

**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?

Tele2 believes that the same quality of service conditions and other parameters should be available to all content/application/online service providers for the same price and other terms and conditions. However, operators must in the same manner as regarding pricing to the end consumer, be free to offer different levels of services at different price levels to the content/application providers. The main principle of equal treatment for all (supported by Tele2) must apply at this level in the value chain as well.

Exclusive agreements may create problems for achieving the said objective. We would favor a situation where the same conditions are available for everyone. Naturally, some offerings may be limited by their nature (scarce resources, bottleneck situations or other), meaning that they cannot be offered to all. In such cases, normal market-economy methods for non-discriminatory selections should be used.

**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?

We believe that current anti-abuse regulations/competition law is well equipped to handle any potential issues in this area. Of course, continued monitoring of market development is necessary and, depending on developments, amendments and upgrades of existing regulations may be necessary in the future.

**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?

Internet access providers, which are exposed to competition fostered by the general EU regulatory framework, will be incentivized to continue to provide both Internet access and new and evolving managed services. Both have a place in the evolving industry ecosystem, and the emergence of new innovative business models should not be impeded by regulation, without prejudice to the firm assurance that the principles set out earlier in this response remain in place. The market should be relied upon to solve these issues commercially amongst market players (for instance, with the help of an industry Code of Conduct and similar measures).

**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?

This should be part of the current license terms and conditions, or be solved with market dynamics or, in exceptional circumstances, be handled in accordance with existing rules on State Aid and USO.

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

Please see above.

**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?

Tele2 believes that it would be very difficult to establish a fixed quality level for services provided over mobile and fixed networks in the EU, due to the fact that the extent to which these networks are dedicated or shared, and depend on scarce resources, varies over geography and over time. Also, and more importantly, Tele2 does not see any need for such a far-reaching regulatory approach. In a business characterized by strong competition, rapid development and with new technological breakthroughs on a regular basis, there is no need for state intervention on the market with regulated service requirements.

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

As stated above, the important thing is to ensure that – from a consumer’s perspective – the relevant technical, commercial and quality characteristics for different service offerings are described in a clear, concise and easy to understand way. One way to achieve this may be the development of industry standards on how service offerings should be described.

Consumer information on such topics as speed, quotas, principles for traffic prioritization and prices for different services would be the basic information which should be included. This area could probably benefit from some sort of agreed industry Code of Conduct, which could also include best practice policies to ensure the most efficient use of network capacity, to be signed by ISPs and service/content/application providers.

However, as the market for QoS differentiated data communication services is still in its infancy, it will have to evolve over the coming years. Thus, it may prove too early to try to regulate it at present. It should also be pointed out that there already exists a time-tested regulation regarding consumer protection and marketing communication, which is well equipped to deal with these issues.

**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?

Tele2 has no comment on this point.

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