

Arqiva response to the public consultation on the open internet and net neutrality in Europe

About Arqiva

Arqiva has some 2,300 employees, is technology- and service-neutral and operates at the heart of the broadcast and mobile communications industry. We are at the forefront of network solutions and services in an increasingly digital world. The company provides much of the infrastructure behind television, radio and wireless communications in the UK and has a growing presence in Ireland, mainland Europe and the USA.

Major customers include the BBC, ITV, Channel 4, Five, BSkyB, Classic FM, the 4 UK mobile operators, Viacom, Turner Broadcasting, Metropolitan Police and RNLI.

In July 2009 Arqiva acquired the platform assets of the former Project Kangaroo and launched the online TV service SeeSaw, tailored for UK audiences, in February 2010.

SeeSaw offers independent producers a retail opportunity independent of broadcasters to exploit the secondary rights granted to them in the UK's 2003 Communications Act, but largely unexploited. SeeSaw does not offer Hollywood films.

SeeSaw launched with more than 3,000 hours of content from the BBC, Channel 4, Five, TalkbackThames, Shed Media and others. Over 200,000 people visited SeeSaw in the first week, even before the initial advertising campaign started.

SeeSaw has received 3 million unique visitors since launch and now offers more than 3,500 hours of ad-funded TV from BBC, Channel 4 and more. New shows are added every day, with Catch-Up shows from 4oD and Demand Five.

Arqiva became a member of Project Canvas in March 2010.

Answers to consultation questions

The open internet and the end-to-end principle

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?*

Discrimination is common practice in most commercial markets, and two-sided markets are not uncommon either; what is perhaps surprising is that there is seemingly so little of this behaviour currently undertaken by ISPs, primarily because the market is still maturing.

However aside from the issue of illegal or pirated content, generally speaking any such discrimination should only warrant regulatory attention when either the ISP has SMP and/or affected subscribers would be unable to make an informed choice to avoid this discrimination because of insufficient transparency and switching costs.

The only exception, arguably, might be when it was access to online public services which were being discriminated against (where it is unlikely that the relevant service providers would be willing to pay ISPs), and then perhaps only when online public services have replaced their physical equivalents to a far greater degree than now.

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

ISPs charging for a “priority lane” of service delivery has the potential to raise the barriers to entry, with a consequential impact on consumer choice and innovation; but we believe that this risk is currently outweighed by the alternative of all media-rich online services being equally impaired thereby hindering the consumer experience across all such services.

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

Competition law should be capable of dealing with undue discrimination by ISPs found to have SMP.

If the capacity made available by ISPs for a “best effort” tier were reduced to the point where the internet’s historic low barriers to entry were effectively raised, with a reduction in innovation and consumer choice, then there may be scope for NRAs to use the powers to be granted to them to set a minimum quality of service to address this.

Addressing issues of ISPs discriminated against access to online public services would, if it were to occur, be a matter of public policy which the regulatory framework may not be capable of dealing with.

To a considerable degree consumer groups and ISPA can be expected to police ISPs’ websites, marketing and subscriber communications to ensure compliance with transparency obligations. However compliance with “the letter of the law” is less important than what consumers actually understand. It will be essential that NRAs underpin any transparency obligations with a commitment to undertake repeated consumer research to inform revisions to the transparency obligations.

Traffic management/discrimination

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?*

The mass adoption of always-on broadband, ever faster download speeds, and the resultant launch of bandwidth-hungry services has led to congestion for broadband subscribers during times of peak demand.

There is no evidence that this congestion will ease in the short to medium term. The problem of congestion may become most severe in wireless networks where consumer demand is rising rapidly (driven by dongles, smartphones and tablets), but governments control the release of new spectrum to the operators and there may be consumer opposition to new masts injecting delay in operators “in filling” existing sites.

Without some degree of traffic management, in peak hours of demand –

- traffic to and from the services consumers value the most fights for bandwidth with teenagers downloading pirated films, Facebook status updates, tweets and spam e-mails; and
- high-bandwidth services will lose customers as a result of factors outside their control.

With ISPs locked – at least in the UK - in a highly competitive, and price conscious, retail market it is unclear whether broadband subscriptions alone would fund the investment necessary to alleviate congestion. The introduction of charges for traffic management could provide ISPs with the means to fund the necessary investment in infrastructure from service providers as well as from subscribers.

With strong competition in the broadband market – again, at least in the UK - we believe that market forces will result in ISPs charging a fair and reasonable price for priority, where they charge at all. We would however suggest that NRAs closely monitor ISPs' pricing policies in this regard.

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 for consumers is definitely an issue which deserves regulatory attention in the short term, not least as it may persuade ISPs to offer greater differentiation of broadband packages, although getting across quite complicated issues in layman's language won't be easy and a programme of ongoing consumer research will be necessary to continually refine the transparency obligations.

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

Congestion is likely to manifest itself in different ways in wireless networks from fixed, but it is also likely that wireless users will have different expectations of quality of service.

Given that we can reliably predict neither consumer demand on wireless networks nor the impact on supply of future investment in those networks' infrastructure (where the introduction of LTE will likely considerably impact both sides of the equation), and that congestion will vary geographically by wireless network (and with currently no roaming or spectrum sharing between networks in the UK), there could be no "one size fits all" approach to traffic management appropriate to all broadband subscribers – beyond either permitting ISPs to continue to determine the most appropriate solution for them or prohibiting traffic management for all ISPs.

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?*

Throttling of peer-to-peer traffic in times of peak demand is not uncommon, and given the likely high usage of such services for accessing illegal content few would argue

against that if it resulted in improved quality of service for legal services with wide consumer appeal and high value.

If ISPs were prohibited from blocking or throttling certain services or content, then they would neither be able to hold themselves out as taking a tough stand against music and movie piracy (which could earn them better content deals on behalf of their subscribers) or offer “family or kid friendly” packages, which would reduce the barriers to internet use for some and create greater efficiencies because each subscriber opting for such tariffs wouldn't have to individually install, and continually update, filtering programs.

We are also aware of ISPs blocking access to VOIP services. While the blocking of access to VOIP services is undoubtedly an irritation to some subscribers, with a highly competitive market for broadband access and relatively low switching costs – at least in the UK - it is not clear that VOIP services need to be specifically singled out for regulatory attention except, perhaps, in respect of cellular subscribers for many of whom only another cellular Wireless ISP (WISP) would be a substitute (so that if all a Member State's WISPs blocked VOIP calls that would result in consumer harm, even if none of those WISPs had SMP within the market for provision of internet access in its entirety).

In the UK few content and application providers currently pay ISPs for priority (although they may pay for CDNs) but rising broadband penetration, combined with increasing interest in capacity hungry services such as high definition and 3D audiovisual content, online gaming and cloud computing, will undoubtedly ensure that consumer demand for broadband bandwidth (both uplink and downlink) keeps rising – even if demand for illegal content satisfied by peer-to-peer traffic were to fall significantly (and that is far from guaranteed).

Even though it is hard to be precise at the moment what additional bandwidth-hungry services may be launched, it seems a safe bet that, as with storage, consumers will tend to demand more than they currently have, putting strain on access infrastructure despite the investments being made in it.

As a result congestion is likely to become an increasing problem, and we believe ISPs should retain the option to manage the traffic over their networks. If this were no longer permitted, not only would consumers increasingly suffer as all traffic during peak hours slowed to a crawl, but ISPs would be denied an additional source of revenue to fund the investment in infrastructure necessary to address the problem.

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?*

Exclusive agreements are common in many markets, and especially those enabling access to content. This need not be a problem requiring regulatory attention provided that subscribers would be able to make informed choices to switch ISP because of sufficient transparency and switching costs.

It would be impossible to guarantee the same quality of service because ISPs' middle mile and last mile connectivity is only one factor affecting the quality of service

experienced by consumers, and therefore any imposed regulation would have to be far reaching and potentially complex.

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?*

In the first instance an industry code of conduct is always preferable.

Market structure

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?*

Two-sided commercial markets are not uncommon and there should be no presumption that they represent a problem which must be addressed by regulators.

Given the level of competition in the market, and the speed of market developments, industry players are best placed to determine whether the commercial arrangements they are party to will continue to be adequate going forwards.

It would be dangerous, and inhibit innovation, if the Commission felt that one objective ought to be to entrench the current value chain and payment flows.

Consumers – quality 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?*

If the capacity made available by ISPs for a “best effort” tier were reduced to the point where the internet’s historic low barriers to entry were effectively raised, with a reduction in innovation and consumer choice, then there may be scope for NRAs to use the powers to be granted to them to set a minimum quality of service to address this.

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

This is a matter best answered by ISPs.

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?*

This is a matter best answered by ISPs.

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

This is a matter best answered by consumer groups.

The political, cultural and social dimension

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?*

Addressing the internet role as a vital platform for the political, cultural, and social participation of European citizens cannot be done without considering the lack of universal access to broadband, media literacy and cost (both of access equipment and of internet access) for the poorest in society.