

Comments of the Ministry of Industry and Trade on the European Commission's consultation on the open Internet and net neutrality in Europe

Ministry of Industry and Trade of the Czech Republic welcomes this opportunity to respond to the European Commission's consultation on the open Internet and net neutrality in Europe. Our comments are also based on Czech public consultation and discussions with the Czech telecommunication office. We are ready to discuss with the European Commission this issue on the next stage.

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?

To our knowledge, there have been no substantial problems linked to net neutrality in the European Union.

Broadband providers have long vended prioritized capabilities to enterprise customers, including content providers, to ensure proper treatment of performance-sensitive Internet and other content through a broadband provider's network. Such services can make use of packet-prioritization techniques on several protocol layers. Broadband providers use the same service-differentiation technologies in the residential market to guarantee quality of service for performance-sensitive IP applications and content, such as IPTV and VoIP, those are offered to clients over the same physical infrastructure as best effort Internet access.

On the other hand many mobile network operators, including GSM/UMTS operators in numerous EU Member States, have decided to adopt technical and/or contractual conditions preventing users from using VoIP and P2P applications, and certain other forms of utilization are otherwise impeded or subject to unjustified additional retail tariffs.

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

For the end-user to fully profit from an open Internet environment, we believe that the debate on Internet openness should not be limited to the 'network layer' in the Internet. Key elements for users' unrestricted access to information, content and services are located on other layers of the Internet value chain, such as Internet search or content and service platforms. It is in these areas that criticisms over alleged anti-competitive behaviour have been raised in the recent past.

Against this background, regulatory principles to ensure openness, such as competition and transparency rules, should as far as possible be applied symmetrically and equally across the players in the Internet value chain. EU policies should address issues of competition, openness and consumers' rights not only at the level of electronic communications networks and services but wherever they emerge in the Internet value chain.

We suppose that the EU's existing measures on Internet openness are serving consumers well in their present form and that there is no need to expand these measures.

The fast-moving vertical and horizontal integrations and business dynamics within the converged Internet - ICT ecosystem (from hardware, to operating systems, to networks, to content...), exemplified by such phenomenon as 'bundling', could accelerate the trend towards severe harmful and other undesirable discriminatory practices that would have negative consequences for innovation, consumer choice and trade.

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

The Czech Ministry of industry and Trade considers the existing EU regulatory framework, together with competition law enforcement, to be fully qualified to address any issues that may arise from Internet traffic management.

Europe has a robust regulatory and competition framework for protecting consumers against anti-competitive behaviour. The revised EU framework for electronic communications includes additional transparency measures that further enhance consumers' ability to make informed choices regarding their Internet service. In addition, the National Regulatory Authorities have been given authority to prevent degradations of service quality to consumers.

Nevertheless the European Commission should issue clear guidance on the ex ante principles underpinning the protection of the open Internet in the revised Electronic Communications Framework, including what constitutes reasonable traffic management.

A judicious implementation of the Framework in national laws would give unequivocal powers to National Regulatory Authorities to enforce the protection of open Internet principles.

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 revised EU Framework for Electronic Communications already clarifies that "traffic management services are neither mandated nor prohibited. Any such measures must respect national and community law; be appropriate, proportionate and necessary; and be transparent".

Internet providers have made longstanding use of traffic management practices to ensure quality of service for their users. Moreover, Internet providers will be required to place even greater reliance on traffic management techniques in the future as the rapid convergence of all electronic communications onto the IP platform allowing the integration of voice, video and text into new multi-media applications for consumers.

The European Commission should expand by issuing guidance that would scope what is deemed reasonable traffic management, so as to give regulatory certainty and enable operators to manage traffic flexibly where necessary on an exceptional basis, whilst ensuring that such management does not harm end-users, competition or innovation.

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?

The Czech Ministry of Industry and Trade believes that end-users should receive information on how traffic management practices may affect the user's experience. Such information would both assist consumers in choosing between Internet providers and allay any misplaced concerns about the effects of those practices on Internet services. Such transparency requirements, moreover, should apply to all actors in the Internet value chain.

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

The EU regulatory framework for electronic communications does not distinguish between fixed and mobile networks. The provisions of the revised framework, such as the provisions on transparency, apply regardless of the network technology used.

General competition rules equally apply to both fixed and mobile network operators.

Therefore we see no reason why the open Internet should not be protected, whichever way it is accessed. EU regulations are rightly technology-neutral, and we wouldn't see justification for any difference between open Internet rules that would be applied to fixed or wireless.

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 prioritization affect other players in the value chain?

The main risk of harm in our opinion when it comes to prioritization would likely lie with the 'last mile' and possibly the backhaul segment where the end-user's network operator has bottleneck control over users' Internet access and can therefore dictate the conditions of both the delivery and the origination of traffic.

To give examples from other parts of the value chain, Internet search is also a prioritization process. The pre-installation of specific applications on an end-user device is a further example of prioritizing.

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?

For the legal clarity and certainty, we believe that the European Commission should define clearly what is meant by 'managed services', being clearly separate from the 'Internet'.

Despite the fact that we believe freedom to provide managed services is one of key elements of a successful model for developing the broadband infrastructure, we see two potential concerns associated with the development of managed services:

- a) whether the deployment of "managed services" with guaranteed quality could lead to anti-competitive effects,
- b) the longer term structural impacts on the best effort Internet.

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 regulators should play an active role in encouraging industry collaboration to resolve network management issues. Indeed, certain applications on unmanaged networks can use a disproportionately high amount of bandwidth and cause network congestion.

However, the European Commission should issue, and regularly review, guidance – including a definition of Internet access (as meaning access to the whole of the public, open Internet) vs. managed services, the recommendation that all end-users should be able to have a minimum QoS access to the best efforts Internet whichever other services they subscribe to, and specifying the scope of reasonable traffic management.

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?

The current arrangements that govern the Internet have worked very well so far, built upon the basic principle of non-discrimination, allowing innovative content, products, applications and services and information of all kinds to appear and be disseminated on the Internet without the need to seek prior permission from anyone.

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?

The instances depend on the market situation. In a competitive market with adequate consumer transparency, an individual operator, which degrades individual services and harm consumers' interests, is likely to be punished with loss of market share.

If there is not such ideal situation on the market, the national regulatory authority should use appropriate provisions from telecom package – art. 22 – where states that “in order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements.”.

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?

The European Commission and national regulatory authorities should set up multi-stakeholder working groups to define which minimum quality of service is appropriate to enable any European Internet user to have a ‘functional Internet access’. Another way how to determine quality requirements could be to conduct an accurate monitoring study of actual network performance – an independent third party could realize this.

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

As mentioned above, end-users should be clearly informed whether what they are buying is Internet access or not. Anything that is not the whole of the Internet cannot be described as the Internet. Misleading paraphrases such as “web access” should also be strongly discouraged. Therefore we consider the enhanced transparency requirements in the regulatory framework as a key transparency complex, which consists of:

- a) transparency regarding the conditions limiting access to and/or use of services and applications (art. 20/1/b/second point of universal service directive),
- b) transparency regarding minimum service quality levels offered (art. 20/1/b/third point of universal service directive),
- c) transparency regarding any procedures put in place by the undertaking to measure and shape traffic (art. 20/1/b/fourth point of universal service directive),
- d) and finally transparency for consumers towards content or application providers.

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?

It is very clear that restricting arbitrarily certain uses of the Internet has dire consequences for citizens' enjoyment of fundamental freedoms and modern values of the modern society, such as freedom of expression and citizens rights, as well as media pluralism and cultural diversity.

The European Union has long been a champion of freedom of expression and the free flow of information online. Allowing anyone to arbitrarily restrict certain uses of the Internet in the European Union would validate repressive practices abroad that regularly stifle freedom of expression and the free flow of information.