



Association Française
Des Editeurs De Logiciels

**CONSULTATION ON
THE OPEN INTERNET
AND NET NEUTRALITY IN EUROPE**

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**Position de l'Association Française
des Editeurs de Logiciels**

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1. 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?

Thanks to the Regulatory Framework of 2009, net neutrality issue is on track. However, we have noticed that some telecom operators deny services providers access to mobile networks (3G networks not available to VOIP and P2P services). For instance, 3G network is not given access to Skype – same for Google Voice with Apple services platform: App Store.

Yes, the problem cannot be solved by the existing degree of competition in fixed and mobile access markets for network operators or platform editors can take such strong position on the market that they can lock access to a great part of it. Thus, mainly because other providers would compete with their own solutions distributed through their own platforms.

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

Restructuration and consolidation in the IT market are increasing and this reduces competition on the market, especially in the US. The number of strategic partnerships is growing even between network operators and content and services providers, like Google and Verizon agreement. This might lead in some cases, i.e in a vertical way, to more merger control powers.

This kind of situation might impact the internet value chain by imposing services provider unfair trading conditions.

Cloud computing technologies will trigger the development of such trends. Note also that interconnection agreements between telecom operators are opaque and don't contribute to the transparency principles provided in the EU regulatory framework.

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

The regulatory framework seems relevant. But, take into account that:

- Transposition process is not achieved in Europe;
- Internet stakeholders who might impact neutrality principles evolution are mainly coming from North America;

Thus, because of commercial arrangements and partnerships, on a vertical way, competition may be affected. That's why NRAs should pay attention to those agreements. NRAs should take measures with a view to developing and maintaining a uniform monitoring in the field of competition (like

energy, transport). We need greater clarity in the relationships between the different players in the Internet ecosystem: network operators, content and service providers and users.

2. 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?

Network operators are asking for traffic management because of unproved traffic congestion. Moreover, network operators would like to propose managed services with high congestion potential as it is already the case for the VOD.

In case such traffic management would become necessary, the transparency of its implementation should be ensured by the consumer notwithstanding the nature of the service. The consumer himself should be able to manage the traffic on a megabyte broadband distinction basis, and not on a service distinction basis. The end user must keep total freedom as far as the choice of what he consumes is concerned. Meaning that he will get a total and an adapted access to Internet services.

In a system where the service provider would be obliged to pay, it would reduce access to the market ; which is contrary to the main definition of what internet is (an enabling technology). This would benefit only to the current and established actors.

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 end user must stay able to choose and must get all the information needed to know how to manage the traffic consumption, as it is/will be, in the electricity distribution market.

A certain degree of service management is possible, if two conditions are met: 1. if it appears necessary, for instance because of bottlenecks or when networks are overloaded with traffic; 2. if it is performed in a transparent and non-discriminatory way.

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

Yes, principles governing traffic management should be the same for fixed and mobile networks. However, congestion is currently more a risk on mobile networks and then, this also should be taken into account.

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?

Some platform application providers prioritize their services by refusing to other services provider to be mentioned in their platform or catalogue. In such a case, they may allow services providers to be mentioned or accessible, making them pay high fees, especially toward new actors. Those measures can jeopardize internet capacity to drive innovation.

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?

Yes, in the case of managed services, the quality of service conditions and parameters should be the same for all content/application/online service providers. And exclusive agreements between network operators and content/application/online service providers would create problems, privileging established and strong actors.

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?

Regulator commitment is even more expected in such context.

3. 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?

The non-transparency of some commercial agreements and the lack of visibility on business models is an issue for regulator assessment. For instance, regulator should take into account the fact that network operators would aim at selling new services to their end-users or monetizing access to end-users by selling it to other providers.

4. 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?

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?

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

5. 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?

The political, cultural, and social dimension of Internet is at stake. The openness and transparency of internet must be guaranteed and we hope the transposition of the Regulatory Framework will contribute to such challenge. That's why the NRAs will have to pay attention to the transposition process in the next few months. NRAs should be able to foresee the evolution of net neutrality principles and be ready to discuss with internet stakeholders about the concrete issues of net neutrality provisions.

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