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Public consultation on the open internet and net neutrality in Europe

CBI response

Aoife Clarke | Competitive Markets | CBI
Email: aolfe.clarke@cbi.org.uk

The growth of internet traffic and band-width hungry applications has raised the profile of network congestion and traffic management in the regulatory debate. The central challenge is to create a regulatory environment which allows consumers to access the content they want whilst supporting innovation in infrastructure provision and digital services.

Europe's future competitiveness will depend on its ability to develop strengths in knowledge-intensive, high value sectors. That in turn will require a world-class digital environment that promotes the fast and easy flow of ideas and information. This makes proportionate regulation of the digital environment very important for business.

This consultation response argues that:

- A thriving digital environment will be central to European competitiveness.
- Fostering innovation in both the provision of infrastructure and digital services will be key to solving issues of network congestion.
- The market is very nascent and there is a danger of stifling this innovation if stringent net neutrality regulations are imposed, especially in the absence of evidence of any consumer detriment.
- The competitive market across Europe where consumers have a choice of a range of ISPs provides a natural brake on any practices which could harm consumers.
- Therefore the best approach at the current time is to rely on existing competition and regulatory powers to increase competition in the European market for broadband alongside

enhanced consumer transparency to guard against any risks of damaging behaviour by network operators.

- Enhancing consumer transparency could stimulate further competition in the market as ISPs compete to offer a wider variety of services to consumers across a range of factors including internet speeds, download limits, traffic management policies and exclusive content deals.
- Achieving this will require sensitivity in the regulation of greater transparency with a focus on the substance of the information provided to consumers and not the form in which it is delivered.

A thriving digital environment will be central to European competitiveness

Europe has a competitive and dynamic digital market-place, with fast-paced growth on a range of indicators, from broadband coverage, to e-commerce uptake, to the production of digital content. The ICT sector is directly responsible for 5% of European GDP, with an annual market value of €660bn.¹

¹ Digital Agenda for Europe, European Commission 2010

With downward pressure on cost in many parts of the global marketplace, European firms have focused their efforts on producing products of ever greater quality rather than focusing on lowest price. By moving to meet demand for digital networks, content and services, these firms are creating new markets and developing Europe as a leader in the knowledge economy. To ensure these goals are achieved, policymakers must help create an attractive investment climate.

The seemingly insatiable demand for internet services, with 250m daily internet users in Europe alone², indicates that this strategy is indeed the right one, and can secure future growth and job creation. It does however need a strong infrastructure to support expansion, and problems of congestion are already being reported due to constrained capacity on existing networks. In this environment, network operators are faced with decisions about how to manage the traffic over their networks to continue to deliver the high quality services that consumers demand. This context makes the consultation on net neutrality both timely and important.

Innovation will be central in meeting consumer expectations

The growing digital environment is impacting on the strategy decisions of a wide range of companies. Whether this is telecoms firms making decisions about investment in infrastructure, or creative firms developing new content and service offerings, companies of all types and sizes are evolving in response to the rapidly changing digital marketplace and growing consumer demand.

Part of the solution to tackling the congestion that has started to occur depends on innovation in broadband infrastructure. Next generation networks are capable of delivering greater volume of content at a much higher speed, and are already being rolled out in some parts of Europe. The private sector is committed to helping meet the significant levels of investment needed to upgrade networks, but the speed at which this can be done will depend on the attractiveness of the investment climate.

Alleviating congestion will also require action to tackle illegitimate activities that are currently using a large volume of bandwidth. This issue is already under debate in other forums. But these actions may not resolve the issue completely if demand keeps rising at current levels. This means innovation in other areas may be required.

One of the key factors governing innovation in the digital environment is the regulatory and policy framework. Regulation shapes company investment decisions and service offerings. This makes it imperative that the decisions taken by regulators on net neutrality support rather than hinder this innovation.

Preemptive regulation could stifle innovation

Companies are constantly experimenting and offering a range of new products and services to consumers in order to meet emerging market demand. The mobile phone market is a good example where companies have developed a range of service offerings at different tariffs in order to meet consumer expectations. The broadband market has already evolved with a variety of tariffs offering different broadband speeds. This could develop into a wider variety of differentiating features where consumers are able to pay different amounts depending on the service type, speed and quality that they require.

Provided that there is a basic level of service that enables consumers to carry out all functions at a useable, even if not premium, level, fostering competition on other features will advance the competitive market in the UK rather than hinder it.

There is a danger that imposing stringent net neutrality regulations in the absence of a clearly evidenced problem would stifle this innovation. If companies are required to treat all traffic identically it would ultimately be to the detriment of consumers who would be faced with only one level of service offering with all of the attendant congestion issues. This would not enable them to perform all functions at the speed and quality that they may wish nor give them the freedom to opt to pay more for a premium service.

In markets with large vertically integrated network operators with their own content and service offerings there may be more scope for issues to

² Ibid.

arise. Competitive broadband markets put a very effective brake on abuse of dominance. Parts of the EU already have a very competitive market but a key action point for policymakers should be enhancing this competition through implementation of the Telecoms Framework Review and conducting a thorough study of the competitiveness of the EU telecoms market as outlined in the Digital Agenda.

Greater transparency for consumers will enhance this competitive environment. If an ISP prevents access to valuable content, consumers will vote with their feet and move provider – a very effective restraint on company behaviour.

Enhancing competition across the EU and increasing consumer information is a more appropriate response at the current time than imposing new regulatory requirements such as a minimum quality of service. However, given the rapid pace of development in the market it may be necessary to review this in a few years to ensure that this approach is still optimal.

Consumer transparency will be key but must be approached pragmatically

Relying on consumer transparency and competition in the market-place to address any potential concerns over traffic management policies depends upon two things: consumers must first be able to understand the actions being taken by their ISP and second be able to exercise a choice to move their custom elsewhere.

ISPs must therefore do their utmost to ensure that information on the principles of traffic management that are applied can be clearly understood by consumers. Traffic management is a very complex and technical issue which can be difficult to penetrate. Some industry players have **started to develop ideas such as “Charters” on net neutrality** and these industry-led initiatives to meet transparency objectives are to be welcomed.

However, there needs to be a pragmatic approach to the provision of this information that recognises the limits of what increased consumer information will achieve.

Firstly an ISP can only provide information about those aspects of the service that are within its

control. When a customer tries to access, for example, video on demand content, there are a range of factors that can impact upon this service. Factors such as the number of other people that are trying to access the same content; the capacity **available from the content provider’s server; the performance of the wireless network in a customers’ home or office; and viruses on the users’ computer can all impact on a customers’ experience at any given time.**

Whilst ISPs can, and should, be as transparent as possible, stated traffic management policies will never fully explain what the user experiences.

Creating a mechanism by which consumers can access traffic management information is pragmatic and welcome, however the substance of this information will determine its usefulness. Simple tick-box checklists of relevant traffic management practices may seem attractive at first glance but there is a danger that it could artificially narrow the areas of competition between providers. Giving prominence to certain features of service provision so that users can compare providers might restrict competition to those factors only. This may deter competition on a wider range of factors that might be attractive to consumers.

The current lack of information on wider network practices and policies means that broadband providers compete largely on price and speed. Opening up the fields of competition to include exclusive services and traffic management policies, encourages companies to offer a variety of products to meet different customer needs helping to create a flourishing broadband market.

Conclusion

The digital environment in Europe and internationally is innovative and rapidly evolving. Companies are reshaping offerings in both service and content provision in response to changing and growing customer requirements. We therefore support a pragmatic approach to traffic management which focuses on ensuring choice and transparency to consumers, allowing them to select the most appropriate service for their needs, and giving space for business innovation to meet these customer demands.



For further information or a copy
in large text format, contact:

Aoife Clarke
Senior Policy Adviser, Knowledge Economy
Competitive Markets Directorate
T: +44 (0)20 7395 8121
E: aoife.clarke@cbi.org.uk



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