



ZON CONTRIBUTIONS TO THE PUBLIC CONSULTATION OF THE EUROPEAN COMMISSION ON THE OPEN INTERNET AND NET NEUTRALITY IN EUROPE

ZON Multimédia, Serviços de Telecomunicações e Multimédia, SGPS, S.A. (including its subsidiaries, together “ZON”), the leading cable operator and provider of electronic communications and multimedia services in Portugal, hereby submits its response to the questionnaire included in **PUBLIC CONSULTATION ON THE OPEN INTERNET AND NET NEUTRALITY IN EUROPE** (hereafter referred as “NN Consultation”).

Introduction

The European Commission (hereafter referred as “EC”) launched a public consultation on a subject that is both strategic and structuring for the Digital Single Market, virtuously combined with NGA deployment. All inputs perceived from the market have focused on a black or white solution, rather than a combining one.

Net Neutrality (hereafter referred as “NN”) has a role on innovation and cable companies, such as ZON, have always been committed to develop and contribute actively to the Digital Agenda objectives.

As it was recently announced by EC, the ambitious, though achievable, targets for 2020 (30 Mbps - 100% Footprint; 100 Mbps – More than 50% take-up) are based on NGA deployment. Therefore, all the objectives referred on the Digital Agenda are based on a network usage that must be guided by a legal principle – “every user’s right to use Internet has its boundaries confining with other users’, respecting and not invading each other limits”, as well as performing regular economical externalities’ analysis.

Considering these principles, conscious and lawful usage of Internet is at the top of NN discussion.

Setting the scene

NN regulation or the placebo effect.

Broadband Markets in Europe are far more developed and competitive rather than in North America. Considering the different Competition approach, EU has based the Broadband Market growth, at first, and the Electronic Communications, in general, on

the ladder of investment solution to promote innovation. North America governments have chosen to allow Monopoly operators to get this task performed using the economical rent obtained.

These two different approaches have separated at birth NN discussion on both regions, since in Europe, competition is, by far, more intense as well as restraining anti-competitive approaches from ISP's, either voluntary or through anti-trust enforcement. Having concluded this difference, the approach to NN subject is necessarily different. In Europe, which is on the focus of this consultation, despite all competition concerns, Internet access has been evolving in a steady and intense path.

These competition concerns have been addressed by European Commission (when the practice has EU level) or by National Competition Authorities (when the practice has solely national impact).

Over all, the convergence phenomena verified across platforms and technologies has enhanced competition between traditional incumbents and cable companies, as well as fixed and mobile operators, verifying a blend of services made available by major operators and resulting in multiple play commercial offers.

Besides the increasing sophistication of these commercial offers, the complexity associated has imposed highly trained professionals promoting and developing these services.

All this was possible due to the convergence verified. However, there is always a "but", and these developments have induced traffic management challenges caused by IP traffic surcharge. The surcharge resulted from new Internet usages (massive availability of video clips and video applications, P2P, VOIP, just as examples) that are either highly bandwidth demanding or priority based traffic. Facing this increasing demand, Internet Service Providers have significantly promoted larger bandwidth commercial offers, exponentially growing.¹ Naturally this increasing capacity has had its foundations on NGA deployment with significant investments on new networks.

If all this occurred with the actual regulation, it can be argued in what manner can Digital Single Market benefit from a regulatory approach changing. Is there a market failure or a placebo² regulation will relief some worrying?

¹ In Portugal, from 2006, when the entry internet product had 256 Kbps (Netcabo Light), the evolution up to date has gone to a commercial offer of 5 Mbps (ZON SD Net). This represented an increase of approximately 20x, not to mention that there is already a commercial offer made available by ZON with 1Gbps (FIBRA 1 GIGA) which is almost 4000 x higher. All these occurred simply in 4 years.

² **Placebo** - a substance given to someone who is told that it is a particular medicine, either to make them feel as if they are getting better or to compare the effect of the particular medicine when given to others; something that is given to try to satisfy a person who has not been given the thing they really want. (Definition of placebo noun from the Cambridge Advanced Learner's Dictionary)

Definitely, EU Regulation, through the legal instruments made available (Directives at EU Level, National Laws at National Level) has been sufficient to define the rules, despite different types of enforcement results across countries.

Therefore, rather than focusing the concern on a regulatory proliferation, an accurate monitoring on actual implementation (promoting faster and effective decisions) shows more suitability to the subject.

Even if, eventually, it occurs lawful service degradation (not prohibition³) competitors will prevent end users damage by exerting a self-regulation intervention⁴, alerting end users to these practices if beyond reasonable measures.

European Commission has posed a number of questions to which it has requested responses. ZON addresses those questions here:

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?*

There is no NN problem on what concerns ZON services, since there is no network management that deteriorates any content provider in benefit of another. Besides this, no extra surcharges are applied to ZON customers to reach a service better-than-standard. On the contrary, more elaborate and customer fit products have been launched, enabling the deployment of Next Generation Services. All this based on a recently new NGA deployed, resulting from heavy investments on a EURO DOCSIS 3.0 upgrade. Considering ZON's knowledge of main practices across Europe Cable Operators, all have been evolving its network and are focused on bringing new products to consumers, mainly promoting a hard competition on incumbents developing alternative networks independent from historical operators. Having this into consideration, it seems that, overall, there is no major problem regarding NN in Europe in cable networks.

There might be some bottlenecks on the usage that some users impose on the networks, mainly in services that are highly bandwidth demanding, such as P2P (Peer-

³ These exclusionary practices have occurred on several mobile operators that restrain VOIP usage on all Wireless services on their portfolio

⁴ Again, if there is a collusion the problem consists on a Competition issue rather than a Regulatory market failure, requiring a National Competition Authority intervention, if at National Level, or European Commission, if at EU Level.

to-Peer) and video streaming on increasing definition standards. This means that on the one hand ISPs (Internet Service Providers) are making huge investments on increasing its capacity, but on the other hand, some end users induce high capacity requests that deteriorate all other end users service.

Up to date, this problem has been solved by present regulation and mainly by competition, which prevents operators from managing the services services in a way that reduces users' experience.

✂ **Beginning of Confidential Information**

✂ **End of Confidential Information**

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

✂ **Beginning of Confidential Information**

✂ **End of Confidential Information**

Apart from an asymmetric approach, a code of conduct on new services protocols should be promoted preventing network congestion.

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

As previously argued, European regulatory framework has created several rules that impose Electronic Communications providers' very specific transparency obligations. More than in other sectors where essential services are provided, Electronic Communication provider's have several regulatory requirements that help putting ICT sector ahead, namely, Quality of Service Information available for customers, high competition with multiple products choices, including diverse combinations, highly detailed invoicing with several opt-in/opt-out information, pre-analysis of services contracts from NRA (National Regulatory Authorities), just as mere examples. Considering all this, one of the discussions that has been brought to scene is ISPs charging content providers for a differentiated access (in a medium version) or conditioned to an access fee for their availability to their customers (in a more radical model). That might occur on markets where competition is less intense and where there is no alternative to customers. As it can be confirmed all across European Single

Market, besides concerns about competition enforcement, all users have several choices and operators are rationally restricted from starting those practices.

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 is restricted to maintain a steady and fairly equal access to all customers, avoiding unbalancing existent Quality of Service. As an operator, the concern should go with all its customers, from those with heavy requirements to those with simple connectivity needs. Any traffic management that might be used will not be fully restrictive of any content neither beneficial to any provider in detriment of another. It has also been noticed that a traffic management that restrains spam and unlawful, when legally identified, traffic will benefit end users' experience.

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?*

Internet has always been based on best-effort principle. ISPs (Internet Service Providers) alone are incapable of assuring a level of service since Internet characteristics are based on a multiple input network where traffic bottlenecks can occur independently of a single ISP. Therefore, for what NN is concerned, the information that end users should obtain includes any material and non transitory change to what had been provided, which means that same or better QoS (quality of service) is expected.

Besides this QoS issue, any restriction imposed on a service/protocol should be informed, so that end users make their choice a conscious one.

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

As previously argued, all networks are walking towards NGA evolution (Cable Companies – DOCSIS 3.0 / FTTx; Telco Companies – FTTx; Mobile Companies –

LTE), which will provide sooner or later, depending on each operator investment strategy, a very high bandwidth connection availability. With this technology evolution there is no arguable reason to provide an asymmetric regulatory approach to each type of network.

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?*

✂ **Beginning of Confidential Information**

✂ **End of Confidential Information**

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?*

The conditions and parameters available should be proportionally available to content/application/online service providers, meaning that highly demand usage, should proportionally have more bandwidth, promoting network efficiency.

In what concerns exclusivity, it should only be allowed in a very short deployment period rewarding a risk of investing in a specific content. This exclusivity, if exceeding an initial period will distort competition, creating fractioned rather than a Digital Single Market.

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?*

European Electronic Communications Regulation is a world standard and all subjects are already covered, or at least, closed to be covered with existing regulatory rules. Nevertheless, the enforcement and national transposition still needs a closer look to prevent any drawback from what has already been achieved. Existing undertakings are far from reaching a durable result and its monitoring is required to restrain any dominant position abuse.

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?*

As previously said, commercial arrangements that currently govern the provision of access to the internet are adequate. Intimately related, European Commission NGA recommendation has detailed a set of principles that will allow and promote infrastructure investment. However, its implementation by NRA (National Regulatory Authorities) must envisage the deepening of telecom liberalization initiated in the 90's which is at stake with new fiber deployments by incumbents, unless specific undertakings, that previously existed (and still exist) on copper are extended to this new networks.

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?*

Any instance where a SMP (Significant Market Power) company may obtain an exclusivity agreement in a permanent and discriminatory period of time should trigger an intervention, as well as, an access restriction to content or services in a platform privileging vertically integrated ones.

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

NRA (National Regulatory Authorities) should have a role on monitoring the service requirements announced by operators. This information should contain any limitation to the service to allow a conscious decision from end users.

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?*

NRA (National Regulatory Authorities), in the presence of a lack of commitment from operators, meaning total absence of information should be able to establish general

information required to provide end users. To reach a common approach, BEREC should be the right forum.

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

Information actually provided, when no restriction is performed, is enough and is consistent with the level of service provided. Even though, if any restriction of content access or reduction on the QoS parameters is applied, an information disclosure should be provided.

If the standards currently applied are improved, there will be a need to safeguard different types of take-up rates existing on each networks, namely when establishing new QoS ratios. At least, to induce common results, these ratios should be based on full capacity network load, rather than obtaining results from networks with different take-up rates and, necessarily, with different *de facto* performances.

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?*

Not in our country.

Any other issues

ZON would like to make some final remarks, especially in what regards the challenges Information Society is facing. Competition has improved and a lot of work has still to be done. It is not independent from the approach that European Union has had towards Electronic Communications the fact that most of NN principles are part of European end users experience.

In what concerns cable companies, since services convergence was available, a major contribution to competitive pressure on historical operators has been performed, allowing a sophisticated and evolved Electronic Communications market, anticipating a strong Digital Single Market.

Nevertheless, new challenges have been put ahead and the European Commission NGA Recommendation correct implementation is essential to proceed with Digital Single Market aims.

In what concerns broadband markets, which goes along with NN discussion, new rules including geographical sub-national must be deeply revised, namely in what concerns national analysis, preventing historical operators from recouping their pre-liberalization dominant position influence, exerting access restrictions, with significant competition choice. We should never forget that, even when there is, in a particular sub-national geography, a significant level of competition on the retail side, on the wholesale side there is usually only one provider – the historical operator. Only this player has the ducts and the fibers (in quantity) capable of providing other players with the necessary infrastructure for competitive product offers.