



**European Commission public consultation on the open internet and net neutrality
in Europe**

Comment of Amazon EU SarL

About Amazon

Since its inception as an online retailer in 1995, Amazon has been relentlessly focused on being Earth's most customer-centric company, where people can find and discover anything they want to buy online. Amazon also enables other retailers to sell through the Amazon Marketplace platform.

Amazon currently has three European web sites (amazon.co.uk, amazon.fr and amazon.de) that serve customers throughout the EU, wherever they are located. Amazon's vision for its European business is that customers and sellers in all 27 member states should be able to purchase or sell anything that customers wish to buy online at a great price, on any of its European web sites, and have it delivered quickly. Amazon's vision is consistent with the EU's objective of a fully-functioning Digital Single Market, and reflects Amazon's aim to be Europe's most customer-centric company.

Executive summary

The European Commission's Digital Agenda has set ambitious goals for developing the digital economy. Choice, transparency and convenience for consumers accessing internet services and applications will be critical to achieving these goals.

At the heart of the net neutrality debate is the question of whether the internet will remain an open platform where consumers decide whether an idea succeeds or fails. Amazon takes the view that it is consumers who should decide.

The provisions in the revised EU telecoms framework are unlikely to provide consumers with sufficient safeguards to ensure that they can continue to fully benefit from the open nature of the internet. Traffic management practices, in particular those that are discriminatory, could result in consumer harm, in particular where choices are made by the broadband internet access provider instead of consumers.

On behalf of our customers, Amazon believes that the European Commission should further develop its policy on network neutrality on the basis of the following objectives:

- Additional transparency is required. Where there are limitations to internet access, consumers should be provided with clear, timely and prominent information so that they can make informed decisions;
- No restrictions on lawful services. Consumers should be free to use their internet access for any lawful service or application. There is no legitimate reason why a service or application should be unavailable to a user paying for internet access, if the service in question is lawful; and
- While traffic management, prioritization of traffic or the provision of managed services by network operators should be possible, such practices should only be provided on a non-discriminatory basis and on the condition that they do not degrade the performance of other services or applications.

Our behalf of our customers, below Amazon EU SarL provides detailed replies to the European Commission's questionnaire.

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Question 1: Is there currently a problem of net neutrality and the openness of the internet in Europe? If so, illustrate with concrete examples.

As far as Amazon is aware, to date in Europe, there have only been few instances that can be considered as obvious violations of net neutrality. However the problem may be more nuanced, for example where traffic management is taking place and the customer experience is negatively impacted but it is not transparent to the customer or to the service or application provider.

However as long as the discussion over net neutrality remains polarised we assume that the risk of net neutrality "offences" remains. Such a polarised debate only creates uncertainty for consumers, application and service providers and internet access providers and does little to create the conditions necessary to promote investment in new services that will benefit consumers.

Given that the EU has set clear and ambitious goals for developing the digital economy, the regulatory framework needs to provide incentives to invest both in broadband provision and internet services and applications. We therefore believe that new approaches are required in order to ensure that consumers reap the full benefits of the digital economy.

Where are the bottlenecks, if any?

Limited competition in the local access market remains a bottleneck. The provision of broadband internet access needs to be highly competitive (e.g. based on price, speed, service and other factors) and to allow easy access for new entrants.

Service limitations also pose a potential challenge, for example where lawful services or applications are unavailable to users on certain internet access services.

Switching between internet access providers should be both easy and timely for consumers. For example, many broadband access products are 'bundled' with other services such as voice telephony and TV/VoD services. Bundling can make it more difficult for consumers to switch providers (for example related to the cost associated with changing hardware and the inconvenience caused by even a temporary break in connectivity). These restrictions can reduce the effectiveness of competition and reduce customer choice.

Is the problem such that it cannot be solved by the existing degree of competition in fixed and mobile access markets?

Whilst the unbundling of the local loop, other regulatory measures affecting the local access market, and broadband provision more generally, have resulted in some improvements, consumers still have relatively few choices.

In addition, whilst progress in competition for broadband access is welcome, we do not believe that competition alone will address the underlying issues related to network neutrality in Europe.

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

The concern is that network operators could use traffic management or managed services to discriminate against certain internet traffic to the detriment of consumers. In principle, Amazon does not object to traffic management or managed services, as long as any payment for improved performance does not come at the expense of any other services. Network operators should be allowed to provide performance enhancement to all service or application providers as long as it is on equal terms and does not degrade the performance of other services or applications.

The principal concerns that are likely to arise are (1) network operators favouring their own services or applications over those of competing service or application providers (2) discriminatory or non-transparent traffic management by network operators which impacts negatively on the customer experience. Examples might include:

- Bundling, which has the potential to cause problems as already mentioned in our response to question 1 above;
- Partnerships between last-mile broadband access providers and service or application providers (e.g. for Over the Top services);
- Managed service agreements with a service or application provider which degrades or slows the traffic of other service or application providers; and
- In relation to cloud computing services, network operators could give traffic from their own proprietary clouds preferential treatment.

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

The revised EU telecoms framework establishes specific requirements relating to quality of service and transparency of information to consumers (Articles 20 and 22 of the revised Universal Services Directive 2002/22/EC). However, these provisions are unlikely to provide consumers with sufficient safeguards against discriminatory traffic management practices.

In our view, the obligation to inform 'end-users' of any 'limitations imposed by the provider on their ability to access or distribute lawful content or run any lawful applications and services of their choice' should go further and simply ensure that consumers are free to use any lawful service or application of their choice.

Furthermore, the power of National Regulatory Authorities (NRAs) to 'set minimum quality levels for network transmission services for end-users' depends on their ability to detect degradation. Detecting such practices is notoriously difficult and places a significant enforcement burden on NRAs.

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?

Amazon takes the view that there is a fine line between traffic management and interference. Where demand for bandwidth exceeds network capacity then, in a static network, some traffic management has to be considered inevitable. But if network capacity is growing then traffic management can enhance one service without impacting other services. The important principle is that of equality of treatment: a level-playing field for all services and applications that must be upheld at all times. In addition, there can be no legitimate reason why a specific service or application should be unavailable to a consumer paying for internet access, if the service in question is lawful.

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 is only an effective solution provided there is real competition between internet access providers, with minimal barriers for consumers wishing to switch internet access providers.

The way information is provided to consumers is key. Information should be prominent and not unnecessarily complex. Standardised presentation of information may be useful, although

real time and proactive transparency is a more robust solution (for example an email informing a customer of a change in their service quality) to enable users to relate the information to the immediate context in which they receive it.

At a minimum, it should be clear from the information provided to both consumers and service and applications providers:

- What traffic management is applied, why and when (for example, only in temporary cases of acute traffic congestion);
- How traffic management practices may affect certain service types due to their technical specificities, for example in relation to the activities consumers typically use the internet for, where certain applications require better latency or faster delivery than others; and
- Whether broadband access provides access to the whole of the internet or rather "limited access to the internet" or "access to certain online services and applications".

However, even with clear information many users will be unable to distinguish between issues arising as a result of the service or application provider and issues arising as a result of actions by the network provider, and so information provision is only one part of the solution.

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

The principles should be the same for fixed and mobile networks. Customers are increasingly accessing the internet via mobile devices (for example, with smartphones). This is a trend that will continue in the future. Customers expect the same internet access experience, irrespective of whether they access the internet via fixed or mobile networks.

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?

Amazon does not have a specific view on this question.

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?

As mentioned in question 4 above, a level playing field is essential. All three major groups of stakeholders - consumers, network operators and service or application providers - will be better off with clear, balanced rules that prohibit harmful discrimination but also allow network operators to offer performance enhancement on equal terms to all service or application providers and without degrading the performance of other services or applications. However, safeguards also need to be in place to make sure that any allowance to offer managed services is not abused.

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?

Amazon agrees that in the case of managed services the same quality of service conditions and parameters should be available to all providers. The specific means to achieve this could be either self-regulatory or regulatory.

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 commercial arrangements currently governing the provision of access to the internet will not necessarily adequately ensure that the internet remains open and infrastructure investment is maintained. For example, by discriminating against traffic from a small business service provider who, in addition to the amount they are paying for broadband access, cannot afford to pay additional charges, network operators could exercise undue control over access to and undermine the open nature of the internet.

Access to next generation networks is likely to include new business models between various players in the value chain. These could be consumer offerings, for example domestic broadband packages, priced differently according to speed or download limits, or business services, for example offering value-added services to a service or application provider. In all cases consumer choice and transparency is crucial in maintaining the level-playing field necessary to maintain an open internet and drive the growth of the digital economy.

Even under the new telecoms framework, some network providers may have incentives to block or degrade services or applications or to overcharge consumers for traffic relating to specific services or applications, either to maximise leverage for financial gain or because those services compete with their own services. Since such intervention is often difficult to detect and prove, NRAs are faced with a significant enforcement challenge. For this reason, the current arrangements, rather than creating incentives to invest in new broadband capacity, could have the perverse effect of rewarding practices that restrict broadband capacity by creating conditions under which traffic management policies could provide leverage for network operators.

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?

Amazon believes NRAs should review any practice that could unfairly hinder consumer or service and application provider access. Whether minimum quality of service requirements would need to be set, would then depend on the specific situation.

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

Quality of service requirements should be clearly expressed in a standard format for ease of comparison. However, rather than set minimum levels, which may limit innovation and may not necessarily be future-proof, a methodology should also be developed for validating published claims (for example, relating to the capacity and speed of a network connection) that will allow consumers or service and application providers to make informed choices.

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?

Amazon does not have a specific view on this question.

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

Transparency for customers is key to ensuring an open internet. At a minimum Amazon believes that this should include:

- When and if any traffic management practices are applied by a network operator;
- How traffic management practices may affect service or applications due to their technical specificities (for example in relation to the activities consumers typically use the internet for, where certain services or applications require better latency or faster delivery than others);
- When the internet access service sold is limited in any manner. Irrespective of any information provided to end-users, it should be remembered that there is no legitimate reason why a specific service or application should be unavailable to a consumer paying for an internet access service, if the service in question is lawful; and
- The cost and means of switching providers.

In respect of all the above, Amazon believes that customer transparency would be improved if such information is provided in a standardised way, so as to assist with comparison, and also in certain circumstances in real time and in a pro-active manner so that customers are informed as and when it has a direct impact on their internet experience.

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?

Amazon does not have a specific view on this question.

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