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## Public consultation on the open internet and net neutrality

Dear Sirs!

The Austrian Association of Alternative Network Operators (VAT) is pleased that the Commission has decided to launch a consultation on the open internet and net neutrality in the European Union. We believe that a lot of the arguments used in the discussion are polemic and lead to uncertainty and misinformation. Because of this we are pleased to be offered the chance to contribute our point of view to the on-going debate.

### 1. Questions 1 – 3

VAT sees no current problems of net neutrality and the openness of the internet in the European Union. We believe that competition between ISPs ensures that customers continue to enjoy unrestricted internet access.

Consumers in Europe benefit from a highly competitive market place for broadband Internet access, choosing from a range of providers and options to access and use the Internet. A customer is not obliged to select an ISP that blocks certain applications when there are others that allow unrestricted access. As long as customers have the information they need to make well informed choices, there is no need for regulatory intervention.

It is possible an ISP were to launch a low cost internet access service, not allowing access to certain high bandwidth applications. This seems like an acceptable practice, as this would bring internet to those that don't need high bandwidth for a cheaper price. As long as consumers know what they are buying, this enhances customer choice.

Competition between ISPs will be the best safeguard for customers' access to the applications, content and services they want, be it on fixed or mobile networks.

The European regulatory and competition framework protects consumers from anti-competitive behaviour. The regulatory framework promotes competition and thereby ensures that network management is employed to benefit consumers and enable further innovation of services and business models alike.

The regulatory policies should be focused on promoting competition and thereby ensuring innovation across all levels of the internet value chain and ultimately benefitting consumers and businesses by providing the widest possible range of content and services.

The recently revised regulatory framework specifically includes additional transparency measures to further consumers' ability to make informed choices, that require operators to inform subscribers of any limitations on the services and applications they can access (Article 21(3)(c) of the revised Universal Service and Users' Rights Directive) and traffic management techniques in use (Article 21(3)(d)). These provisions seem to be sufficient to provide the required transparency. In addition, NRAs have available a new reserve competence to prevent a possible degradation of service quality for consumers.

As those rules are not yet in force, regulation now would be to conclude that the revised regulatory framework is not adequate even before being effective and even without identifying an actual (rather than theoretical) problem.

## **2. Questions 4 - 9**

In the highly competitive fixed and mobile broadband markets, pre-emptive regulation restricting traffic management and service differentiation would undermine Europe's digital economy by excluding new business models, locking in today's technologies, and hindering necessary innovation.

The open internet and network management are not opposed to each other. Managed networks do not restrict the users' freedom of choice nor do they lead to anti-competitive behaviour by providers. To the contrary, smart (managed) networks are an essential input for enhancing the benefit of the consumers and allowing future innovation. Management of networks is essential for providers to operate their networks securely and efficiently to be able to deliver the desired customer experience for everyone.

In all networks spectrum capacity is limited up to a certain point and finite bandwidths have to be shared by all users. If networks were viewed as 'bit-pipes', treating and charging every packet identically, certain services could simply not be provided successfully, as it would not be allowed to manage how these services use the network resources.

As traffic increases operators are installing additional capacity to meet the demand. However, it is difficult both from an operational and a financial perspective to install capacity quickly enough to meet the growing demand. Even if it were possible, it is unlikely to be financially viable. Customers would not be prepared to pay for a network that has sufficient capacity to meet demand everywhere at all times of the day.

Just like the road networks, consumers accept that there is a trade-off between capacity and price and accept that in busy locations at peak times there will be congestion. Therefore, it is inevitable that there will be some congestion in some locations at certain times of day. The question is how to deal with that congestion.

One option would be to leave traffic unmanaged and accept whatever customer experience resulted from that. It would mean that an important eHealth application could be disrupted by the background software update of another user. This is similar to having no traffic lights and leaving drivers to fight their way through traffic. It may also be contrary to the (possible) quality of service requirements under the revised framework, since these would be impossible to achieve with any certainty.

The second option would be to establish traffic management, to allow operators to improve the functioning of the internet and customers' overall experience. This may mean prioritizing voice calls, including VoIP, over software updates or P2P applications. Different operators

will take a different view of which services they should (de-) prioritise to improve their customers' experience, providing customers with choice through competition. As already mentioned above, the importance lies in the transparency of ISPs' offers.

Furthermore it is important to recognise that the need for effective network management cannot be eliminated by the afore mentioned adding of capacity, as experience shows that the demands placed on broadband networks have grown to match and then exceed added network capacity. Moreover security threats always need to be dealt with no matter what the capacity of the network. Last but not least effective network management will always be more cost-efficient than adding costly capacity. It makes no economic sense to impose rules that require the addition of more capacity than would be needed if existing capacity could be used more efficiently.

Consumers can benefit in various ways from network management. Unwanted traffic can be prevented from reaching consumers (e.g. spam and malware) and the effective and timely delivery of traffic that requires priority (e.g. emergency services, HD videoconferencing) can be achieved, thus enhancing user experience. Services in future will be ever more sophisticated and further innovation of the networks and traffic management are necessary conditions to deliver the expected customer experience.

Consumers and business have different expectations and needs depending on the type of service. Just as content providers offer differentiated services like standard and premium content for different prices, network operators will and are already offering different bandwidths-products for different consumer needs. Customers benefit from these tailored solutions as only those, who want to use special services in superior quality will have to pay for the associated extra costs, while customers only interested in basic services do not have to be burdened with huge costs.

Due to the complications introduced by mobility and a variety of other technical constraints, the need for network management is particularly acute in the context of wireless broadband services. Moreover, network management is critical to important national priorities such as cybersecurity, fighting illegal content, and protecting children online. The possibility that new techniques could not be deployed would undermine incentives to invest and innovate to better address these concerns.

Network management is an extraordinarily complex undertaking that requires maximum flexibility. By imposing rules in this area this flexibility will be limited and this may have harmful unintended consequences. Even network providers have different views as to the optimal approach, and the best approach may differ for different networks. Consumer welfare is best promoted by allowing network operators to have wide berth to experiment and use different techniques, recognizing that competitive market forces will cause them to use those approaches that best create consumer value.

### Managed services

Any network provider that offers traditional internet access should also be free to provide consumers with additional services that the provider cares to offer, without regulatory limitations or restrictions. This is in the consumers' best interests. It will give them additional and new options that they can choose to take in addition to (or even instead of) traditional internet access, whether it be video services, eHealth applications or other offerings focused on particular user groups. Consumer demand and market forces can then determine which services do or do not succeed. Applying rules for the first time to so-called "managed" or "specialized" services would cause significant harms.

Broadband access providers need broad flexibility to offer their own differentiated services in order to support a business case for making ongoing investments to deploy broadband more broadly, and to increase capacity and add new capabilities where it has been deployed. While the revenues earned from charging consumers for public Internet access are a critical component of the business case, they simply cannot justify the required investments standing alone.

The dividing line between Internet access and “managed services” is becoming increasingly blurred as more and more services integrate content or features from the Internet or connect directly or through a proxy with the Internet. Any attempt to define a fixed category of permissible services inevitably will create ambiguities and limit development of innovative new services that do not fit neatly within any definition adopted today. Such innovations, of course, benefit consumers by offering them even more choices.

The deployment of managed services should be seen as a positive development, offering customers the choice over the services available and encouraging experimentation and innovation. It allows operators to package services to match their customers’ preferences. The popularity of the iPhone and the iPad and the applications store and the recent launch of Amazon’s Kindle show there is a lively market for new mobile services and new ways of offering content. These innovations are bringing about a more open and ‘neutral’ mobile internet by allowing greater consumer choice and point to a well-functioning market and not one in need of regulatory intervention.

In fact, by limiting pricing freedom and by preventing networks from partnering with a single provider, regulatory intervention to restrict operators’ ability to differentiate their services could make it far more difficult for many new services to come to market. A product like the Kindle, which uses the internet but only allows access to one content provider (Amazon), might not be possible under net neutrality rules.

Experimentation and the ability to innovate are important elements of any market. This is especially so for a market that is growing as rapidly as the internet. Regulatory intervention now risks freezing the market around the existing business models and pricing structures. This may suit market players profiting from the current business models, but it may not be in consumers’ interests. There is no way of knowing what innovative services or business models could emerge in the future.

Contractual arrangements between ISPs and content or application providers should also not be regulated or constrained in any way. ISPs do not have a bottleneck monopoly over application providers. In fact there is a bi-lateral negotiation and the relative power may differ between different parties. The relationship is one of mutual benefit since consumers only subscribe to broadband to get access to content and applications. Operators have an interest in offering new services that may grow to become the next Facebook or YouTube.

VAT sees managed services as complementary to allowing users basic access to an unrestricted internet service. Operators should be required to offer basic internet access but have the ability to offer differentiated managed services in addition. As with traffic management to deal with congestion, transparency of managed services will be essential to a well-functioning market. Consumers must have the information to make informed choices.

Network Management is definitely not equivalent to filtering the content transported over the network or controlling what consumers see and do online. It does not restrict consumer’s fundamental rights like freedom of speech or secrecy of telecommunications, which would in fact be contradictory to network providers’ own commercial interests. Consumers benefit from a highly competitive market place and are free to choose from a wide range of providers and options to access and use the internet.

VAT sees no grounds for regulatory intervention to restrict or prevent the use of traffic management techniques or so called managed services. Operators should be free to deploy them as they feel appropriate. Different operators may use different techniques and prioritise different services depending on the services they want to promote and their customer base. As long as operators are transparent about the traffic management techniques they use, customers are then able to choose the network that offers the services that matches their needs.

### **3. Questions 11 – 14**

We believe it will not be necessary for NRA's to set a minimum of quality service requirements, as we believe competition between ISP's will take care of offering an adequate quality of service to customers.

The competitive market in most EU Member States is driving operators to invest huge sums in upgrading their networks. Mobile network operators are upgrading their 3G networks to HSPA+ and ultimately to LTE, while fixed network operators are investing in VDSL and FTTx network technologies. In this market, characterized as it is by competition to provide faster and more reliable broadband services, there seems little role for regulatory intervention.

An NRA should only then be setting minimum quality of service requirements if there is a market failure and the quality of service drops below the European standards.

We ask you to consider our opinions and remain at your disposal should any further questions arise.

With kind regards

**VAT - AUSTRIAN ASSOCIATION OF ALTERNATIVE TELECOMMUNICATIONS OPERATORS**

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