



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofcom's discussion paper on Net neutrality and traffic management

September 2010

About Consumer Focus

Consumer Focus is the consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses and public services to put consumers at the heart of what they do. Consumer Focus gives a strong voice to consumers on the issues that matter to them and works to secure a fair deal on their behalf.

We work with consumers and a range of organisations to tackle the problems customers face and to achieve creative solutions that make a difference to people's lives.

We welcome Ofcom's discussion paper on traffic management and net neutrality and are grateful for the opportunity to engage in a debate on this issue which is so crucial to consumers.

Summary of recommendations

Consumer Focus regards net neutrality as a key principle of the internet. It safeguards an enhanced participation by citizens in society, secures access to knowledge and diversity, and promotes innovation, economic growth and democratic participation.

We believe that any discussion on traffic management policy should reflect a wider debate over the right to access a 'best effort' public internet. It is essential that any policies proposed on traffic management should be scrutinised for potential detriment to consumers and especially those most disadvantaged groups. We regret that Ofcom's discussion paper left this crucial issue out of its debate, despite Ofcom's principal duty to further the interests of citizens in communications matters generally, and in relevant markets, where appropriate, by promoting competition.¹ We fear that the lack of a joined-up approach may undermine the existing Government initiative to enhance digital participation in the UK², and lead to a two-tier internet with few able to access premium managed services and many left in the slow lane with a low quality and restrictive public internet.

We strongly recommend that any traffic management policy is based on the key principles of net neutrality that entitle consumers to an internet connection:³

- of the speed and reliability advertised
- that enables them to:
 - send and receive content of their choice
 - use services and run applications of their choice
 - connect hardware and use software of their choice that does not harm the network
- that is free from discrimination with regard to type of application, services, or content or based on sender or receiver address

There should also be:

- competition among network, application, service and content providers
- transparency over network management practices deployed by providers

In order to achieve this we recommend that Ofcom:

- follows the examples of national regulatory authorities from Canada and Norway and adopts net neutrality and traffic management guidelines to serve as a benchmark for assessing what is or is not acceptable practice
- conducts an impact assessment of traffic management practices to assess their short and long term implications for consumers' and citizens' access, choice and ability to contribute to online content and services
- carries out a review of the existing transparency and consumer information measures, and in-depth research on consumers' experience and understanding

¹ Communications Act 2003, <http://bit.ly/d4CYOM>

² Race Online 2012 campaign, <http://raceonline2012.org/>

³ Transatlantic Consumer Dialogue (TACD) Resolution on net neutrality, April 2010, <http://bit.ly/b38quK>

of traffic management, with the aim to adopt a best practice approach to information provision on traffic management

- addresses the problem of switching barriers that prevent consumers from changing Internet Service Providers
- improves market surveillance and monitoring mechanisms in order to verify information on traffic management provided to consumers, and to detect potential abusive behaviour
- improves the quality of consumer information provision on internet services in conjunction with traffic management information, rather than narrowly focusing on the latter alone
- facilitates access to easily accessible, low cost and timely complaints handling and redress mechanisms to process consumers' complaints and rule on redress in cases of detriment
- adopts a joined-up approach in policy making and enforcement to ensure Ofcoms' policy on net neutrality and traffic management reflects wider interests of both consumers and citizens in communication market, and is in-line with the Government's objective to enhance development of internet communication technologies and digital inclusion

1. How enduring do you think congestion problems are likely to be on different networks and different players?

As the internet is turning into an essential tool for modern life, internet traffic is growing and the pressure for traffic degradation and prioritisation is increasing. As pointed out by Ofcom, the growing online multimedia market and consumer demand for bandwidth – heavy applications are straining the existing ‘best effort’ approach, so network operators and Internet Service Providers (ISPs) are investing in traffic management technologies to deal with the congestion.

In parallel, consumers’ awareness of traffic management practice is growing as indicated by complaints data received by Ofcom⁴. Typical consumer problems experienced in relation to traffic management include loss of internet connection, a slower connection speed, freezing of screen when on the internet, poor connection, or inability to access certain applications and websites.⁵ Consumers become conscious of connection speeds and usage allowances by, for example, caps on the amount of data they can download. In addition, traffic management practices are experienced by mobile users as mobile operators may restrict access to some online content and services. For example our cross-country research on consumers’ experiences with shopping via mobile phone found that many shoppers were prevented from buying online content.⁶

However in the existing regulatory environment it is difficult for consumers to determine (1) the extent of traffic management practices and their impact on their internet access, (2) what part of the network chain is at fault (for example Internet Service Provider, Internet connection speed, content provider or end of users’ equipment and software) and, (3) what is genuine traffic management and what is unfair practice.

We believe that the new transparency requirements that will come into UK law through the transposition of the revised Framework Directive⁷ will help, to some extent, to alleviate the transparency problem, though it will not alone resolve the issue of traffic congestion.

In our view, Ofcom should address the issue of investment in the development of sufficient infrastructure capable of meeting the growing demand for online content and services. We believe that appropriate investment in the infrastructure, such as deployment of superfast broadband, is more likely to ease the congestion problems than investment in the development of traffic management technologies.

Any proposal to drive investment in infrastructure should be balanced and fair for all parties affected, and above all should put the consumer at its heart. The infrastructure policy should also reflect wider issues of digital inclusion and broadband take-up beyond physical connectivity, such as affordability, usability and driving motivations, expectations, creativity and innovation.

⁴ Ofcom Discussion paper on net neutrality, p.36.

⁵ Consumer Expectations of the Internet, Synovate 2009.

⁶ <http://consumerfocus.org.uk/g/4m0> Marzena Kisielowska-Lipman, Consumer Focus December 2009.

⁷ <http://bit.ly/destUK>

2. What do you think are possible incentives for potentially unfair discrimination?

At present it is difficult for consumers to determine the extent of traffic management because network operators and ISPs are not transparent about their traffic management policies. Nonetheless there are some examples of traffic management practices that are in the public domain, such as blocking or traffic prioritisation applied by network providers that may raise concerns about fair market competition and its impact on consumers. These include blocking Voice over Internet Protocol (VoIP) services such as Skype by major UK mobile providers, concerns over BBC iPlayer traffic being throttled, blocking some P2P traffic under the pretext of security threats, or restrictive access to competitors' content and services on mobile platforms.

The potential for unfair discrimination is increasing due to the convergence of network providers with providers of television, radio and telephony services. Providers of integrated communications and multi-media platforms are likely to have financial incentives to prioritise transmission of affiliated content and services at the expense of competing products. For example, an internet provider that provides video distribution services has incentives to allocate greater bandwidth to its own services at the expense of potentially competing internet applications. Similarly, an Internet provider that also supplies telephony might degrade or block a VoIP provider.⁸ Such practices may lead to market foreclosure of new entries for content and for service providers who do not secure integration or exclusive agreement with network operators; and in turn this will have a direct detriment for consumers in terms of limiting choice and the potential for price maintenance.

We are particularly concerned about the impact of such practices on consumers living in rural and underdeveloped urban areas with limited competition for network providers, whose choice of content or services may be restricted to those offered by a network operator which holds a dominant position in the area.

We are also concerned that discrimination may impact on the growth of the internet infrastructure as it will be against the financial interests of network providers to invest in expansion of the infrastructure's capacity to support content and services of competing players.

3. Can you provide any evidence of economic and consumer value generated by traffic management?

We recognise that reasonable traffic management practices are necessary to ensure proper functioning of the internet to the benefit of end-users. These include measures to tackle legitimate congestion issues, quality services chosen by a consumer, or to comply with legal obligations such as orders from the courts and law enforcement agencies to curtail unlawful online activities. However these need to be distinguished from discriminatory practices arising from anti-competitive behaviour and commercial interests that may harm competition, restrict access to the public internet and infringe the civil rights of users to free speech and privacy.

⁸ Transatlantic Consumer Dialogue (TACD) Resolution on net neutrality, April 2010, <http://bit.ly/b38quK>

We are concerned that the revised Framework Directive that will become UK law next year mandates traffic management practices by default, so long as they meet transparency requirements, in the absence of clear guidance on what constitutes a legitimate traffic management practice.⁹

Currently consumers may experience different types of traffic management practice that raise concerns over fairness. These include:¹⁰

- Transparency failures where ISPs may fail to tell consumers and application developers which services they offer, estimated bandwidth, latency, etc. The lack of transparency has been confirmed by, for example, Ofcom's study on broadband speeds¹¹
- Blocking and 'throttling' (traffic shaping) where certain content and services are blocked and/or service quality downgraded. These practices include Skype blocking or downgrading P2P networks
- 'Walled gardens' or preferred partners applied, for example, in mobile telephony, where network providers can offer preferential treatment to one application provider over others. It leads to development of so called 'gate keepers' that restrict open and interoperable access and prevent consumers from accessing some online content and services
- Mobile termination rates (MTRs) that enhance market segmentation and could limit new entrants to the market, therefore limiting the number of mobile broadband providers available

Traffic management is also used by content providers, many of whom invest in the development of Content Delivery Networks (CDN) in order to diminish the effects of traffic congestion and provide an improved quality of service by enabling service providers' content to be near the end-user. However CDNs are not neutral and are accessible only to those willing to pay for them.

In addition there is a growing trend towards managed services and platforms that offer access to premium services with guaranteed service quality. There are also examples of joined initiatives between network operators and content providers, such as Project Canvas,¹² to develop multimedia and communication platforms that would facilitate seamless access to a range of third-party services to consumers which raise issues of openness and interoperability between platforms.¹³

The existing regulatory framework does not specify what is acceptable practice what is potential for abuse. To give clarity and ensure a benchmark for legitimate traffic management we recommend that Ofcom develop guidelines that would subscribe to the principles of:

- **Transparency:** traffic management practices should be disclosed to consumers in comprehensible ways
- **Proportionality:** the measures in place should have the minimum impact on network operation and be proportionate to the problem encountered
- **Non-discrimination:** streams with comparable technical properties should be treated in an equivalent manner and access providers should not discriminate between providers of the same content or service

⁹ <http://bit.ly/destUK>

¹⁰ Christopher T Marsden, Net Neutrality and Consumer Access to Content, Scripted, V4, Issue 4, September 2007 <http://bit.ly/cRFeC9>

¹¹ <http://bit.ly/abEBPu>

¹² <http://bit.ly/dkLCT9>

¹³ <http://bit.ly/aD8D2m>

- **Open access and adaptable networks:** consumers should be able to use and run lawful content, applications, software and services of their choice, and connect to hardware of their choice as long as it does not harm the network
- **Fair competition:** consumers should be entitled to benefit from competition between network, application, service and content providers
- **Redress:** consumers should have the right to compensation in cases where network operators and ISPs breach contract's terms and conditions in relation to traffic management policies

Similar guidelines on net neutrality and traffic management have been developed by national regulatory authorities in Canada¹⁴ and Norway¹⁵ and adopted by the industry. The need to endorse similar principles is being considered by the Federal Communications Commission in the USA and the French communications regulator ARCEP.¹⁶

Once the guidelines are established Ofcom should monitor and report regularly on the industry's compliance. Should such guidelines prove insufficient to prevent unfair and discriminatory traffic management practices we would advocate that regulatory measures be introduced that are legally binding for the industry.

4. **Conversely, do you think that unconstrained traffic management has the potential for (or is already causing) consumer/citizen harm? Please include any relevant evidence.**

As mentioned in Q3 we accept that legitimate traffic management must be permitted under net neutrality to allow the proper functioning of the network. Network operators and ISPs already apply traffic management practices for various reasons. Therefore the core of the debate should focus on establishing a benchmark for acceptable traffic management practices rather than the issue of 'unconstrained traffic management' per se.

5. **Can you provide any evidence that allowing traffic management has a negative impact on innovation?**

The success of the internet was founded on the notion of open access and the 'end-to-end principle' that allowed all data flows to be transmitted without any form of priority. These two principles drove creativity and innovation, and led to an unprecedented growth of the multi-layered model of the market that revolutionised communication services, to the benefit of both consumers and businesses.

Many of the well-established internet based businesses such as social networking sites, derived from low investment, with no initial incentives to value their content and services financially. Financial value was enabled only because of the network effect created by a critical mass of contributors and consumers.¹⁷

¹⁴ Ofcom's discussion paper, pp.20-21, footnote 18.

¹⁵ Network neutrality. Guidelines for Internet neutrality, Post-og teletilsynet, 24 February 2009.

¹⁶ Discussion points and initial policy directions on Internet and network neutrality, ARCEP May 2010.

¹⁷ Christopher Marsden, Net Neutrality and Consumer Access to Content, Scripted, volume 4, issue 4, September 2007.

We are concerned that allowing network operators and ISPs to set traffic management parameters by default, without a clear benchmark of legitimacy and fairness, is likely to bring unwelcome changes to the multi-layered and consumer-driven market.

Firstly, networks and ISPs will have financial incentives to prioritise affiliated content and services, or can be pressurised by well-established content and service providers valued by consumers to restrict access to new products offered by competing providers, that may nonetheless be of better value to consumers.

Secondly, networks and ISPs will have limited incentives to invest in the expansion of network infrastructure of the 'public' internet capable of supporting competing and more innovative business models.

Thirdly, the uncertainty over fair and unfair traffic management practices is likely to undermine business confidence in developing innovative cutting-edge products that may require long-term investment.

Therefore we fear that the lack of clear guidelines is likely to diminish the innovative and competitive nature of the existing market, forcing consumers to accept services and products that could be of a lesser value.

6. Ofcom's preliminary view is that there is currently insufficient evidence to justify ex ante regulation to prohibit certain forms of traffic management? Are you aware of evidence that supports or contradicts this view?

We do not share Ofcom's view that the existing regulatory framework is sufficient to deal with potential anti-discriminatory traffic management practices, taking account of the conditions of the existing ICT market that is fast moving, multi-layered and dominated by small and medium size enterprises.

Competition law takes effect only in cases where a company is proven to have abused its significant market power (SMP) and relies on a narrow definition and interpretation of the relevant market in which such power arises. However, as pointed out by Ofcom, in the complex and changing ICT market it is difficult to define the appropriate market¹⁸ Therefore we are concerned that competition law may be ill-equipped to deal with cases of anti-competitive behaviour of an ISP that does not hold SMP in the overall market, but has a dominant position in a particular geographical location where consumers have limited choice of providers.¹⁹

Secondly, competition law can only deal with some aspects of traffic management such as blocking internet access as a whole, or intentionally degrading competing content and services of unaffiliated providers.²⁰ It is not adequate to address issues of network operators (1) degrading all the non-prioritised traffic in order to launch and promote prioritisation services, (2) setting up unreasonable restrictions for end-users running some applications and (3) refusing unaffiliated internet content providers access to prioritisation services.²¹

Thirdly, the competition rules can only apply ex-post once the anti-competitive behaviour takes place; they are costly and can take a long time to resolve the issue.

¹⁸ Ofcom's paper, p.26

¹⁹ Christopher Marsden, Net Neutrality and Consumer Access to Content, Scripted, volume 4, issue 4, September 2007.

²⁰ Legal analysis of network neutrality under EU competition rules and the Regulatory Framework for Electronic Communications, Peggy Valcke, Liyang Hou, David Stevens, Eleni Kosta.

²¹ Legal analysis of network neutrality under EU competition rules and the Regulatory Framework for Electronic Communications, Peggy Valcke, Liyang Hou, David Stevens, Eleni Kosta.

In the meantime consumers may be tied into a low value deal that may be difficult to switch from due to barriers such as contract early termination charges, or software and equipment costs in the case of bundled services.

Fourthly, there is an enforcement gap in the existing regulations to verify traffic management practices claimed on the basis of security threats or illegal activity. At present much P2P traffic is blocked under claims of security threats such as malware or spyware. However, Ofcom lacks the regulatory powers to assess such cases as they fall within the responsibilities of the Home Office and the Information Commissioner, whereas the latter have limited technical expertise to adjudicate when such cases arise.²²

And finally, we do not believe that the new transparency requirement that will come to force under the revised Framework Directive will solve the problem of discriminatory traffic management practices on its own. Informing consumers about practices will work as long as switching barriers are addressed, jointly with an obligation placed on operators to justify every traffic intervention on their networks. The latter approach has been adopted in other countries.²³

Therefore we advocate that Ofcom develops guidelines on traffic management that should be adopted by the industry. In addition we recommend Ofcom to enhance cooperation with the Home Office and the Information Commissioner to address the enforcement gaps in cases where traffic management is being justified on the basis of security or illegal content/services claims.

7. Ofcom's preliminary view is that more should be done to increase consumer transparency around traffic management. Do you think doing so would sufficiently address potential concern and why?

A requirement for transparency is an important step towards ensuring consumers are informed about traffic management practices, but as mentioned in Q6 it is insufficient, by itself, to prevent discriminatory practices. We recommend that Ofcom takes account of other factors that are likely to ease anticompetitive behaviour such as (1) switching barriers, (2) mobile termination rates (MTR), (3) complaint and redress mechanisms, (4) market surveillance, and (5) infrastructure investments.

Typical switching barriers faced by consumers include contract cancellation fees, costs of setting up the new network in case of bundled services (eg software, equipment, installation costs), and time costs associated with informing third parties about new contact details (telephone number/and or email address). We are aware Ofcom is carrying out work in this area and we await its outcome in the hope that it will lead to a reduction in unnecessary obstacles to consumers.

In addition we also would like to point to the negative effect of high mobile termination rates (MTRs) that act as a deterrent to competition as they may limit the number of mobile broadband providers available and hence impact on consumers' choice. We support Ofcom's efforts to reduce MTRs over a period of five years. We believe that continuing reduction in MTRs is likely to reduce retail prices, drive competition and deliver investment in new services such as mobile broadband.²⁴

In parallel there is a need for easily accessible, low cost and timely complaints handling and redress mechanisms to facilitate consumers' complaints and to rule on redress in cases of detriment.

²² Christopher Marsden, Net Neutrality and Consumer Access to Content, Scripted, volume 4, issue 4, September 2007.

²³ <http://bit.ly/ajJjmd>; Network neutrality. Guidelines for Internet neutrality, Post-og teletilsynet, 24 February 2009.

²⁴ <http://consumerfocus.org.uk/g/4m1>

This is particularly relevant to consumers in areas dominated by one service provider, or those who cannot afford to switch to a provider that offers better service quality at a premium price. According to Synovate research on consumer expectations of the internet only 10 per cent of consumers in the UK were willing to change to a more expensive provider in case of traffic blocking or service limitation.²⁵ Effective complaint and redress mechanisms would work as a deterrent and provide incentives for companies to abide by the law.

We also recommend that Ofcom improves market surveillance and monitoring mechanisms in order to verify information on traffic management provided to consumers, and intervene if necessary. Network operators and ISPs should be obliged by Ofcom to justify intervention in the network. We address the issue in more depth in Q10.

Finally we would like to refocus the discussion onto the issue of investment and the need to give businesses incentives to invest in network infrastructure. However we are not convinced that traffic management is an appropriate tool that is likely to fill the investment gap required to secure the network infrastructure of the future.

8. Are you aware of any evidence that sheds light on people's ability to understand and act upon information they are given regarding traffic management?

We agree with Ofcom's analysis that traffic management presents a potential challenge to consumers in identifying when it takes place, its impact on services they use, and assessing what part of the chain is at fault, and what constitutes fair or unfair practice.

Part of the problem:

- derives from the fact that ISPs are not transparent about their traffic management practices (see Q10)
- comes from the way information is presented
- is due to consumers' technical ability to verify such information

As pointed out by Ofcom, at present, consumers are not adequately informed about traffic management practices, as is confirmed by recent studies. For example, Synovate research into consumers' expectations of the internet found that only three per cent of consumers received information on traffic management practices.²⁶ Ofcom's research on broadband speeds found that many ISPs do not comply with information provision requirements. This is despite the fact that the existing Ofcom's Code of Practice on broadband speeds requires ISPs to provide consumers with information about traffic management and traffic shaping.²⁷

Even in cases where information is given, research suggests that consumers find it difficult to understand and to utilise. For example, Ofcom's research on broadband speeds found that only a minority of consumers were at ease with making practical use of the information, by comparing connection speeds or reliability of connection.²⁸

Consumers may also find it difficult to assess what part of a service's chain is at fault. For example, Synovate research indicates that consumers who experienced problems with Internet connection attributed them to different causes, such as ISPs, Internet connection speed, computer hardware, computer memory, websites, download limits of their internet plan and others.²⁹

²⁵ Consumer Expectations of the Internet, Synovate 2009.

²⁶ Consumer Expectations of the Internet, Synovate 2009.

²⁷ <http://bit.ly/brj51b>

²⁸ Ofcom's discussion paper, p.37.

²⁹ Consumer Expectations of the Internet, Synovate 2009.

We believe that the issues of transparency and quality of information on traffic management should be investigated in the context of general information provision to consumers, and by exploring the most appropriate and effective models to help decrease information asymmetry in the telecommunication sector.

For example our research on consumer experiences of the mobile market suggests that only one in five consumers found it easy to navigate through the available information, with close to 70 per cent feeling that there are too many mobile tariffs available.³⁰ Similarly, our cross-country research on consumers' experiences with buying goods and services with the use of a mobile handset found insufficient information disclosure on products, on subscriptions, costs and customer services.³¹ Mobile shoppers also struggled to navigate through complex transaction chains and identify lines of responsibility and accountability in those contract chains in case of a problem.³²

We are of the opinion that the revised Framework Directive that introduces new provisions to safeguard improvements to the quality of consumer information and the transparency requirement on traffic management should serve as the starting point for improving the quality of consumer information so that it is meaningful and empowers switching.³³

We support Ofcom's proposal to carry out in-depth research into consumer's experiences with traffic management to inform development of the best enforcement mechanisms to be adopted once the revised Directive is transposed into UK law next year.

9. How can information on traffic management be presented so that it is accessible and meaningful to consumers, both in understanding and restrictions on their existing offering, and in choosing between rival offerings? Can you give examples of useful approaches to inform consumers about complex issues, including other sectors? (Could you include any good practice models)

We support Ofcom in addressing the issue of providing quality of information on traffic management to consumers, so that the information is accurate, accessible, comparable and meaningful. However we advocate a holistic approach to the matter in the context of the existing transparency and consumer information measures rather than narrowly focusing on information on traffic management only.

We agree with Ofcom's analysis that at present information about traffic management practices remains difficult to find and compare.³⁴ We would like to engage with Ofcom and the industry on finding the best practical models that would deliver an optimal outcome for consumers. Our strategic partner the National Social Marketing Centre can also offer advice on social marketing and behaviour change tools.³⁵

We support broadly Ofcom's proposal for the information package presented in the discussion paper, but would also add to the list real-time information on usage. We believe real-time information is essential for consumers to monitor and track their consumption. As mentioned in Ofcom's discussion paper, real-time usage monitoring tools have been considered by the Canadian Radio-Television and Telecommunications Commission under the so called 'determination on internet traffic management' that is

³⁰ <http://consumerfocus.org.uk/g/4m2>

³¹ <http://consumerfocus.org.uk/g/4m0>

³² <http://consumerfocus.org.uk/g/4m0>

³³ <http://bit.ly/destUK>

³⁴ Ofcom's discussion paper, p.39.

³⁵ <http://www.nsmcentre.org.uk/>

binding for ISPs.³⁶ In addition we suggest including in the information package Ofcom's contact details in case a problem cannot be resolved by the technical support line.

In summary, we propose the information provided by network operators or ISPs should include the following:

- Information on price of the package, quality of service and quality of experience eg connection speed rate and services consumers can receive at different times throughout the day
- Description of traffic management practices, including the reasons and circumstances that might justify their introduction
- How traffic management can affect a user's internet experience for different types of internet services, eg the list of services, applications and content that cannot be accessed via retail offers
- Real-time information on usage caps and costs of exceeding that usage, and notification when close to exceeding the cap
- Options for upgrade including information on additional costs
- Any changes made to ISPs' existing traffic management policies stated under contract terms and conditions and the impact on a user's experience
- Contact details for the technical support helpline and the complaint handling mechanism
- Ofcom's contact details

It is equally important that ISPs publish the levels of quality of service (QoS) they provide to end-users to facilitate reliable comparisons between services and providers. As far as the models of delivery of consumer information on traffic management are concerned we support Ofcom's proposal to investigate innovative solutions that have been developed in the financial services and energy (smart meters) markets.

We are particularly in favour of the financial services model of an information summary box that would standardise information provision and make the process of comparing products and providers easier. The standardised information summary box model would remove the obstacle to comparability of information in 'a tiered approach' as outlined in the discussion paper (Ofcom's example 1)³⁷. As such, it could facilitate implementation of both 'a tiered approach' and 'price comparison websites' model (Ofcom's example 3) also cited in the paper.³⁸ However, we would like to point out that in order for the 'tiered approach' to work it is essential that Ofcom develops adequate monitoring and verification mechanism to ensure that quality of information and compliance with the standardise format is maintained. In addition, we believe that, any information provided should be real-time (Ofcom's example 4) to empower consumers to monitor their usage, and make informed decisions when to use certain services and content. Therefore we recommend that Ofcom explore the smart meter technology which enables consumers to access time-sensitive information on their energy consumption. We would also suggest exploring the real-time usage monitoring tool that has been considered in Canada.³⁹

We also recommend that an information summary box should be presented in plain language with the minimum use of technical jargon. It should include information about the QoS (eg 10GB) alongside Quality of Experience (QoE) (eg 10GB will enable you

³⁶ <http://bit.ly/ajJjmd>

³⁷ Ofcom's discussion paper, pp.41-42.

³⁸ Ofcom's discussion paper, pp. 42-43.

³⁹ <http://bit.ly/ajJjmd>

unlimited surfing, receiving 6,000 emails, five hours streaming, downloading 500 songs). Some ISPs already provide QoS information jointly with QoE.⁴⁰

We would like to note that there are already first attempts within the industry to try and provide more usable information for consumers which we would recommend Ofcom examines in relation to traffic management.⁴¹

As far as the model of a 'one stop shop' (Example 2) is concerned we believe it can work to the benefits of consumers on condition that it takes into account a whole consumer journey from searching for information to deciding on a provider, and as such facilitates provision of packaged information on ISPs products rather than information only related to traffic management.

We recommend Ofcom conducts a review of the existing transparency and consumer information measures, and in-depth research on consumers' experience and understanding of traffic management, with the aim to adopt a best practice approach to information provision on traffic management

10. How can compliance with transparency obligations best be verified?

As noted by Ofcom, despite the existence of the Code of Practice (the Code) on broadband speeds, some networks and ISPs fall short of meeting the Code's requirement to provide information on policies on fair usage, traffic management and traffic shaping.⁴² Consumers on the other hand lack knowledge and expertise to verify relevant information on traffic management that will be provided to them.

Although we acknowledge Ofcom's plan to strengthen the existing Code, we believe that a more robust monitoring, verification and enforcement mechanism of the transparency obligation on traffic management is needed to meet the requirements of the revised Framework Directive.⁴³ We propose the new mechanism requires network providers and ISPs to justify their traffic management practices by providing conclusive evidence of congestion, and report specific network management practices in details to both Ofcom and the public. In parallel we recommend that Ofcom improves its monitoring mechanism and reports regularly on ISPs traffic management practices in order to ensure compliance and verification of the information provided directly to consumers, and to detect potential abusive behaviour.

11. Under what circumstance do you think the imposition of a minimum quality of service would be appropriate and why?

In the discussion paper Ofcom takes account of a two-tier system scenario in which access to the public internet will be offered for free on a 'best effort' basis whereas priority access to so called managed services will be available for a fee. However Ofcom fails to specify the definition of what the 'best effort' internet ought to be.

We understand that priority services may be valued by some consumers because they can offer them guarantees on quality of service particularly important, for example, for real-time streaming multimedia applications such as VOIP, IP-TV, peer to peer or online games. Priority services can also facilitate fair distribution of costs for broadband users, eg those exceeding an average usage or accessing bandwidth-hungry applications paying more in comparison to an average user.

⁴⁰ Ofcom's discussion paper, p. 38.

⁴¹ <http://www.o2.co.uk/newdatatariffs>

⁴² Ofcom's discussion paper, p.38

⁴³ <http://bit.ly/destUK>

However we are concerned that the promotion of managed services may result in much of the infrastructure being deployed to such services and this could have an adverse effect on the quality of the public internet. This in turn may have an adverse effect on consumers' access to the internet and choice.

Therefore we recommend Ofcom undertakes an impact assessment of traffic management practices to report their short and long term implications on consumers' and citizens' access, choice and contribution to online content and services. Should the result of the impact assessment raise doubts over maintenance of the 'best effort' internet or ability to access online content and services valued by consumers and online public services we would advocate the imposition of a minimum QoS.

Should such a situation arise we believe that the imposition of a minimum QoS would secure guaranteed parameters for 'best effort' internet including, for example, guaranteed level of access to online content and services, guaranteed speeds, accepted traffic management practices, and others that would safeguard maintenance of the public internet.

We also recommend Ofcom takes an active role in the process of setting up quality of service parameters for internet services. We would recommend that Ofcom considers a co-regulatory approach that has been proposed by the French Regulatory authority (ARCEP) that considers the possibility of joint co-operation in this field between network providers and ISPs and consumer organisations.⁴⁴

⁴⁴ Discussion points and initial policy directions on Internet and network neutrality, ARCEP May 2010.



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