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Your ref: infso-netneutrality@ec.europa.eu

Policy Development Unit (B1), BU33 7/40
DG Information Society and Media
European Commission
B-1049 Brussels
Belgium

Dear Sir or Madam

CONSULTATION ON THE OPEN INTERNET AND NET NEUTRALITY IN EUROPE

The ICAEW is pleased to respond to your request for comments on the *Consultation On The Open Internet And Net Neutrality In Europe*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

CONSULTATION ON THE OPEN INTERNET AND NET NEUTRALITY IN EUROPE

Memorandum of comment submitted in September 2010 by the ICAEW, in response to European Commission consultation paper Public Consultation on the Open Internet and Net Neutrality in Europe published in June 2010

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INTRODUCTION

1. The ICAEW welcomes the opportunity to comment on the consultation paper *Public Consultation on the Open Internet and Net Neutrality in Europe* published by the European Commission.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. We are listed on the Register of Interest Representatives. Our registration number is 7719382720-34.

MAJOR POINTS

Support for the initiative

5. The success of the internet in recent years has been a source of great economic and social benefit across the world. As technology continues to improve, the internet will become ever more important to businesses, individuals and governments in how they carry out their activities and interact with one another. The ability to access the internet on the basis of an adequate level of service is therefore a key foundation to future economic growth, democratic participation and efficient government and it is essential that businesses of all sizes, as well as individual consumers and citizens, can carry out transactions, communicate, innovate and make use of services freely on the internet.
6. Practices which limit or control access to the internet, and hinder service use or innovation, are therefore potentially economic and socially damaging. The management and prioritisation of internet traffic by providers may be necessary and perfectly legitimate for technical reasons, especially given the growth of rich content. However, there are also commercial drivers to such practices and where the effect of measures is to stifle access to the internet, or reduce competition, action may be needed to rebalance the situation.
7. Market competition and consumer choice are powerful weapons in maintaining an open internet for all. Regulatory oversight may be needed where these forces are insufficient. In particular, transparency around services is a key enabler of these forces and we support any strengthening of the current framework to enhance transparency. As with any form of regulation, however, specific measures should be driven by a careful analysis of their costs and benefits and based on robust evidence as to the impact of regulatory change

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Q1a: 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?

8. We are not in a position to comment on this question.

Q1b: Is the problem such that it cannot be solved by the existing degree of competition in fixed and mobile access markets?

9. To some extent. See answers to qq. 4, 5, 8 and 9 below.

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

10. We are not in a position to comment on this question.

Q3: Is the regulatory framework capable of dealing with the issues identified, including in relation to monitoring/assessment and subsequent enforcement?

11. The regulatory framework for the internet, if it is to be effective, must ultimately have a global dimension. It is unclear, despite the efforts so far of such organisations as the UN's Internet Governance Forum (IGF), how much real progress there has yet been in this direction. The EU should seek to promote the further globalisation of internet regulation, incorporating as far as possible the European values of freedom of expression, media pluralism and cultural diversity and also the immense value of the internet as a market-place for businesses of all sizes. Actual regulation is likely to stay with individual nation states for the foreseeable future. Since the member states of the EU all contain specialists with significant levels of expertise in relation to the issues identified, we consider that the regulatory framework within the EU is likely to be in a position to offer a lead to others. We encourage the Commission to adopt such a leadership role.

Q4a: To what extent is traffic management necessary from an operators' point of view?

12. There are a variety of technical and processing issues such as network overload, which from any point of view are legitimate reasons for using traffic prioritisation techniques and should not be subject to regulation.

13. There may also be commercial issues. To the extent that traffic on the internet is commercial traffic, that is to say either traffic arising from commercial transactions of one sort or another or traffic either directly or indirectly financed or supported through commercial sponsorship, aspects of prioritisation will become increasingly significant and differentiation of priority will become an increasingly important factor in the contractual service packages sought by suppliers and offered by operators. Since ISPs are themselves commercial organisations, they will also be increasingly likely to seek to offer prioritised services if they consider that those services are likely to attract additional users in sufficient numbers to be of interest to sponsors and advertisers. In that respect, traffic prioritisation techniques may be considered necessary from an operator's point of view but there may be a case for regulatory oversight in these cases.

Q4b: How is it carried out in practice? What technologies are used to carry out such traffic management?

14. We are not in a position to comment on this question.

Q5: 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?

15. We consider that transparency is always the best principle in the provision of services, of whatever nature. Without full information about the level of the service to be provided, even sophisticated users will be at a potential disadvantage, while unsophisticated users, particularly private individuals, will inevitably suffer from reliance on suppliers hiding behind the misrepresentations that are inherent in ambiguities in the description of services. This is definitely a matter in respect of which regulators can contribute to the retention of net neutrality, in other words to the preservation of an important factor of its early, essentially unregulated growth.

Q6: Should the principles governing traffic management be the same for fixed and mobile networks?

16. We are not in a position to comment on this question.

Q7: 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?

17. Businesses, almost by definition, will try to prioritise their services if they can, vis-à-vis their competitors. To the extent that internet business becomes increasingly prevalent, they will seek to do this on the internet to the extent that they consider it to be economically worthwhile, by purchasing the higher value service packages from the ISPs. If there are shortcomings in the provision of internet service facilities, for example in connection with the speed of broadband, businesses may in any case seek to prioritise their services in absolute terms, even if their competitive profile is not affected.

Q8a: 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?

18. Network operators provide the market-place within which content/application/online service providers offer competitive services to end-users. The same quality of service conditions should therefore be available to all service providers which are in the same competitive market-place; otherwise the competitive market-place is undermined and the end users are thus disadvantaged. It may, however, be a matter of judgement whether two service providers are really in the same competitive market place or whether the services they each provide, while comparable or related, are actually different.

Q8b: May exclusive agreements between network operators and content/application/online service providers create problems for achieving that objective?

19. Exclusive agreements between network operators and service providers distort the existing market-place. There may be justification for this if the objective is to create a new and more progressive market-place, but this is likely in most cases to be a matter of judgement.
20. The IT Faculty of ICAEW, in our recent report on IT value, Measuring IT Returns (icaew.com/informationssystemsystems), has considered important aspects of the issues relating to the development of new and more progressive IT-based market-places and the problems for existing markets arising from exploitation of business opportunities that may achieve greater overall economic benefits.
21. In addition, the focus in this report on costs and benefits is consistent with our view that public policy and regulatory interventions to promote expenditure on IT need to be justified on the basis of the net benefits that they will deliver.

Q9: 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?

22. Because of the great number of detailed scientific, technical and technological issues affecting the operation of networks in general and the internet in particular, we consider that the measures would almost certainly need to be regulated in order to be credible.

Q10: 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?

23. We are not in a position to comment on this question.

Q11: 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?

24. We are not in a position to comment on this question.

Q12: How should quality of service requirements be determined, and how could they be monitored?

25. The consultation document states (para 4.2) that

‘Network operators may offer their customers guaranteed quality of service over and above the quality which would otherwise be available on the network. Such offers may involve guarantees covering a range of aspects of the service, such as bandwidth, packet loss, jitter (variation in timing between data packets), latency (delay of data packets) or network security which are important for the provision of particular types of services. Where services or applications have specific characteristics which require a high level of quality or reliability in order to perform their intended function, then these types of guarantees may be necessary.’

‘These types of enhanced service are often referred to as ‘managed services’ and can be distinguished from services using the normal mode of internet service provision, which involves delivery of internet traffic on a ‘best efforts’ basis.’

26. The types of ‘guarantees’ mentioned in the first paragraph quoted above are key issues in business processing, particularly in respect of network security and the integrity of transmitted data through maintaining the integrity of every session without loss of packets. Neither of these factors can ever just be left on a ‘best efforts’ basis. The same factors also apply to contacts between citizens and governmental agencies, in respect of which privacy and confidentiality are crucial issues. The more the internet comes to support business transactions and transactions between citizens and government, the more significant these factors will become.

Q13: 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?

27. We are not in a position to comment on this question.

Q14: What should transparency for consumers consist of? Should the standards currently applied be further improved?

28. Transparency for consumers should be defined as clarity of explanation of what service levels are in operation or are available on different terms for any particular service. Clarity implies that nothing should be hidden or obfuscated. In particular, an explanation is unlikely to be clear if it uses technical jargon or marketing slogans. Transparency for consumers should apply whether or not the service is fully competitive and whether or not it would be easily practical to switch from that service to another, because it is still relevant to the question of whether the consumer wishes to use the service or not.

Q15: 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?

29. It seems possible that improvements in technologies, which continue to be developed at an increasingly fast rate, will in due course compensate for any limitations on the flows of internet traffic, but the same will not necessarily be true of the economic factors facilitating or inhibiting access to the internet by different sizes of business, by individuals within different socio-economic groups or by users in different locations across the world. Questions relating to any regulation of the need for the management of internet traffic should always be considered fully from this point of view.

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