



# Net neutrality and the Open Internet: the consumer perspective

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## Seminar discussion summary

This document summarises the debate at the seminar *Net Neutrality and the Open Internet: the Consumer Perspective*, held on 7<sup>th</sup> September 2010. The seminar was organised by the Communications Consumer Panel, the UK statutory body for advising on the interests of citizens and consumers in communications markets and POLIS, the London School of Economics media and society think tank. It brought together academics, government officials, consumer and industry representatives to debate the citizen and consumer perspectives in the net neutrality debate.

Speakers at the seminar included:

- Giuseppe Conte, Broadband and Internet Infrastructure, Cabinet of Neelie Kroes, Vice-President, European Commission
- Alex Blowers, International Director, Ofcom
- Zachary Katz, Legal Counsellor to the Chairman, FCC
- Anna Bradley, Chair, Communications Consumer Panel

The seminar was chaired by Damian Tambini, Communications Consumer Panel member and Senior Lecturer in the Department of Media and Communications, LSE. Attendees included representatives from the following organisations:

- BT
- Consumer Focus
- Consumer Forum for Communications
- Department for Business, Innovation and Skills
- LSE
- Open Rights Group
- Open University
- Skype
- Virgin Media
- Westminster University
- Which?
- Yahoo

Key themes emerging from the discussion were:

- Net neutrality is a contested term and can mean different things to different people;
- It is important to think about the impact of approaches to traffic management on both consumers and citizens, where these interests might conflict or overlap, and what the different remedies might be to meet these different needs;
- A competitive market is crucial to ensuring that consumers needs are met;
- Evidence in this area is difficult to collect and we need to think creatively about how we might gather evidence;
- Transparency is difficult to get right because the information is complicated and just one element in a wider set of considerations that consumers take into account. To get the information right it is important to think about how consumers make decisions about broadband in the round.
- Transparency also needs to be accompanied by action to make it easier to switch broadband provider, including for those consumers who subscribe to bundles of communications services;
- It is possible that approaches to traffic management could have a negative impact on innovation, and careful thought needs to be given to how innovation is measured and protected; and
- Government needs to develop a clear, strategic approach to investment in next generation broadband.

The Communications Consumer Panel and Polis would like to thank all participants for their contributions.

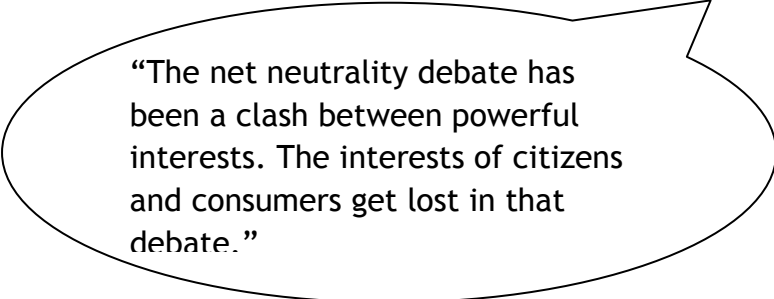
## The Debate

### What do we mean by net neutrality?

There is a definition issue when it comes to net neutrality. The term can be emotive and used to mean different things. Depending on where and with whom the debate is happening, net neutrality can be seen as something that is threatened by government censorship, traffic management, walled gardens, or the digital divide. In the European debate, censorship issues in some member states colour their approach to the discussion. Ofcom and the European Commission are focusing particularly on traffic management issues, but some participants argued that it is not possible to separate narrow traffic management questions from broader issues of fundamental rights and citizenship.

### Defining consumers

There was also debate about how to define consumers. Some participants wanted



“The net neutrality debate has been a clash between powerful interests. The interests of citizens and consumers get lost in that debate.”

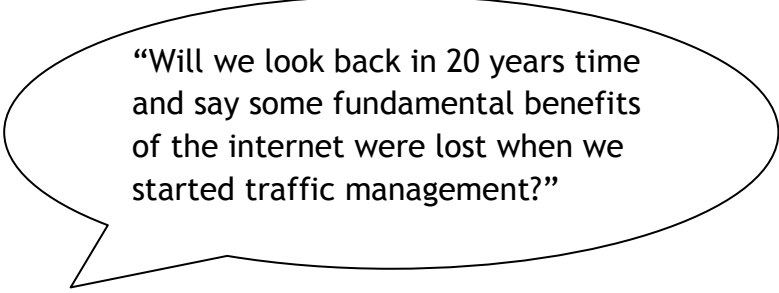
to know whether Ofcom was taking into account the needs of different types of consumer, including small and large

businesses and public sector organisations, and whether these different groups were given equivalent weight. Ofcom responded that all these groups were important, but that the remedies are likely to be different for different types of consumers, including different groups of individual consumers. There was general agreement that Ofcom, in partnership with others, has to find ways to communicate with, and solutions that are appropriate for, all types of consumers.

### Citizen detriment

There are citizen as well as consumer issues at stake in this debate. Traffic management has potential

implications for a wide range of issues, including citizenship, privacy and access to public services. There was considerable concern about these issues among some participants, who worried that the decisions we take about traffic management now could mean we lose some of the fundamental benefits of the internet in future.



“Will we look back in 20 years time and say some fundamental benefits of the internet were lost when we started traffic management?”

The issue of access to public services was of particular concern. Participants were worried that if business models developed in which consumers and/or service or content providers pay for guaranteed quality of service public services could suffer. For instance, high bandwidth public services could be actively ‘managed’ or ‘throttled’ in some scenarios. Public services may also appear less appealing if consumer expectations are shaped by experience of content or applications that utilise paid for prioritised quality of service. Participants wanted to know how these issues would be monitored and when and how Ofcom or government would intervene. Some suggested that a minimum quality of service commitment could help tackle this issue. However, others felt this would involve a very different kind of approach to the internet. It was argued that this kind of profound change would need widespread public debate and that there is limited evidence to suggest it is needed at the moment.

It was pointed out that the distinction between consumers and citizens is not straightforward. But most agreed that although the lines are blurred it is still important to look at both perspectives. This will ensure that the different and potentially competing needs are well understood. It will also ensure that the debate starts from what we, as consumers and citizens, want from the future of the internet, what the different needs are, how they conflict or overlap, and how we might meet them.

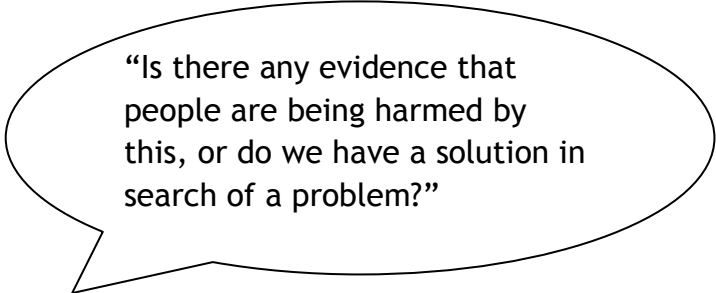
### The importance of competition

A number of participants stressed the importance of competition. It was argued that competition is key to ensuring that consumer interests are met, both in the UK and across Europe. Competition should underpin all aspects of the market, including the transition towards next generation fibre networks and the upcoming spectrum auctions that will be taking place across Europe. It was also suggested that the reason the debate about net neutrality is more advanced in the US is because they have a less competitive market.

Competition was seen as crucial for transparency to be effective. Giving consumers information about how traffic is managed will only help if there is a competitive market in which consumers have a choice of providers. However, some questioned whether end users will punish their internet service provider (ISP) because they can't use one particular service, and suggested that competition might not be enough to prevent discrimination or protect innovation. These participants argued in favour of putting in place a guarantee to preserve the open internet.

### Evidence

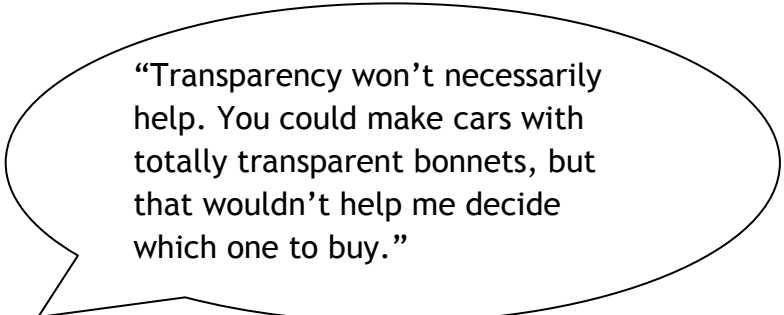
There is currently not much evidence of harm from traffic management practices. However, there is evidence of concern and confusion among some consumers. Some argued that there is a lack of evidence about harm because such evidence is difficult to collect, and that we need to think carefully about how we understand and monitor consumers' views, experiences and behaviour. Others suggested that we could be in danger of having a solution in search of a problem, and that lack of evidence could simply be because consumers are not being negatively affected.



“Is there any evidence that people are being harmed by this, or do we have a solution in search of a problem?”

### Transparency

There was considerable debate about the extent to which transparency, together with the non-discrimination rules that Ofcom are considering, will be enough to protect citizen and consumer interests. Transparency involves giving people information about how different providers manage traffic on their networks and whether they block particular applications or services. Neelie Kroes, Vice-President of the European Commission, has said that transparency is non-negotiable, and there are transparency obligations in the telecoms framework passed by the Commission and currently being transposed into UK law. There is also an option in the new framework for national regulatory authorities (NRAs) to introduce some kind of minimum quality of service obligation. The current focus of the European Commission is whether these existing provisions are enough or



“Transparency won't necessarily help. You could make cars with totally transparent bonnets, but that wouldn't help me decide which one to buy.”

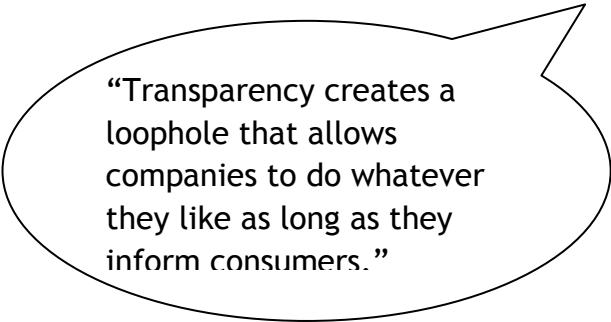
whether additional measures are needed, although they are keen not to regulate for the sake of it.

There was widespread agreement that introducing transparency is easier said than done. Information on net neutrality is very technical and it will be difficult to make it meaningful to consumers. One participant used the analogy of a car, pointing out that it is possible to build a car with an entirely transparent bonnet, but this would not help the viewer to understand how the engine worked, or what car to buy.

It was also pointed out that for transparency to be effective at least some consumers have to switch provider as a result of the information they receive. Some participants argued that it needs to be much easier for people to switch, including where they have bundles of services, and that this must include ending long contracts, which can be up to two years.

Given this complexity, most participants felt that transparency will probably not be enough to protect the interests of citizens and consumers. Indeed a few even

suggested that transparency may not help at all, as it is so complex. Or that it could have a negative effect as focusing on transparency creates a loophole that allows companies to do whatever they like as long as they inform consumers.



“Transparency creates a loophole that allows companies to do whatever they like as long as they inform consumers.”

Others thought that while getting to the right kind of comparable metrics is difficult, it might be possible to develop some relatively simple messages and explanations. One participant argued that transparency could be a solution if the market was competitive enough, pointing out that not everyone needs to switch to exert pressure on the market. It was also pointed out that we already have rules on discrimination. The question is therefore not whether transparency is enough; it is whether transparency and the other available regulatory remedies are enough.

This led to discussion about how transparency can be put into practice, with both the European Commission and Ofcom keen to hear ideas. One participant pointed out that transparency is not just about understanding how everything works. It is shorthand for providing consumers with a set of information that is useful. Therefore, different types of transparency will be useful for different purposes and for different groups of consumers.

One ISP gave an outline of the approach they are taking. They are trying to provide positive statements about what they do and don't do, but making the information relevant to consumers can be difficult. It needs to be targeted enough so that it reflects the way they use, or might use, their internet connection. However,

making it too targeted can trigger concern among consumers, who want to know how their ISP knows so much about them. They are also planning to work with others in industry to help ensure consumers can access comparable information.

Several participants suggested that developing common messages is best done through a co-regulatory system, although there may be a role for the regulator to provide some form of quality assured, independent verification to ensure transparency policies are being complied with. This would need to be fair so that it correctly sorted out innocent traffic management from other things. It was proposed that this verification process could incorporate the 'wisdom of crowds', in other words finding a way of getting feedback from end-users.

### Innovation and new business models

Participants discussed whether approaches to traffic management could endanger innovation. Some were concerned that the development of paid for prioritised service, or the ability of ISPs to block or throttle particular applications, could raise barriers to entry, making innovation more difficult. It was contended that innovation benefits exist because of networks. There is a danger that traffic management could result in bits of the network becoming inaccessible or more difficult to access as more service and content providers choose to pay for prioritised quality of service. This would cause a disproportionate impact on the network, which could reduce innovation and have a detrimental impact on the European economy.

One participant wanted to know whether there is evidence linking the open internet as we currently know it to innovation in the UK and Europe. Others responded that while there is some evidence on wholesale open access at the business level, there is none at the consumer level. It was suggested that the problem is that the data has not been disaggregated. It looks at the ICT sector as a whole, which is too broad a measure to really tell us anything.

It was also suggested that we need to think carefully about how we measure innovation, and any potential impact net neutrality might have on it. Participants pointed out that the 'two guys in a garage' metric is unlikely to work. This type of innovation has always been less prevalent in Europe than in the US, and there are reasons for this other than the approach to net neutrality.

Some participants felt that the definition of innovation was too narrow. One argued that new business models that deliver prioritised or managed content are themselves an innovation, and that it is companies, not regulation, that drive this kind of innovation. Another participant pointed out that consumers are also potential innovators. It is important that people have enough space and capacity to innovate and create.

### Investment in next generation

Some participants were concerned that while both Ofcom and Government have issued various consultations looking at parts of the debate about next generation broadband, there is still a need for Government to outline a clear, strategic view and some clear priorities. For instance, should we be looking to incentivise investment in infrastructure, support traffic management, or increase consumer choice?

Most participants were not convinced that ISPs need a free hand in traffic management in order to invest in next generation networks. However, it was also pointed out that investment is not going to provide an immediate solution. It was therefore argued that it is reasonable to allow traffic management to smooth the gradient between different points of investment. However, one participant cautioned that new business models must not provide disincentives to invest in networks. He also warned that regulators must be sure that congestion is not artificially created in order to generate profits through scarcity.

### Summary

There were a number of key points arising from the debate:

- Net neutrality is a contested term and can mean different things to different people;
- It is important to think about the impact of approaches to traffic management on both consumers and citizens, where these interests might conflict or overlap, and what the different remedies might be to meet these different needs;
- A competitive market is crucial to ensuring that consumers needs are met;
- Evidence in this area is difficult to collect and we need to think creatively about how we might gather evidence;
- Transparency is difficult to get right because the information is complicated and just one element in a wider set of considerations that consumers take into account. To get the information right it is important to think about how consumers make decisions about broadband in the round.
- Transparency also needs to be accompanied by action to make it easier to switch broadband provider, including for those consumers who subscribe to bundles of communications services;
- It is possible that approaches to traffic management could have a negative impact on innovation, and careful thought needs to be given to how innovation is measured and protected; and
- Government needs to develop a clear, strategic approach to investment in next generation broadband.

The Panel has used the findings from this seminar to inform its response to Consultations from Ofcom and the European Commission on net neutrality issues.

These responses can be found on our website:

[www.communicationsconsumerpanel.org.uk](http://www.communicationsconsumerpanel.org.uk)

The Panel will be continuing to monitor these issues and ensure that the interests of citizens and consumers are represented in the ongoing debate about net neutrality and approaches to traffic management.

The Panel and Polis will also be discussing whether there is value in holding other similar collaborative events in the future.

If you have any questions or would like to discuss the issues raised in this paper further, please contact:

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