Net neutrality:
a Regulatory Perspective

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Net neutrality: a regulatory perspective

Net neutrality and traffic management

What is net neutrality?

BEREC:

A literal interpretation of network neutrality, for working purposes, is the principle that all electronic communication passing through a network is treated equally. That all communication is treated equally means that it is treated independent of (i) content, (ii) application, (iii) service, (iv) device, (v) sender address, and (vi) receiver address. Sender and receiver address implies that the treatment is independent of end user and content/application/service provider.

Traffic management

- It is widely accepted that some traffic management is necessary and efficient

- This means pure net neutrality is rare

- Some traffic management practices have raised concerns

- Which leads to the two big questions
  - which traffic management measures require a response; and
  - what that response should be.

Which traffic management measures require a response?

- Blocking a rival's content or applications

- Throttling a rival's content or applications

- Exclusively prioritizing (through access tiering) the ISP's own content or applications

- Dedicating so much capacity that remaining "best efforts" service is degraded

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Regulatory responses to net neutrality

Cautious observation

• Consider net neutrality issues and choose not to make a specific response

• Instead rely on competitive retail broadband market
  • if the ISP does not possess SMP, end users that are adversely affected by traffic management will shift to an ISP with more favorable traffic management practices

• Many countries have already implemented measures to control wholesale market power and promote retail competition
  • open access obligations
  • non-discrimination rules
  • forms of separation (particularly in fixed markets)

Tentative refinement

• After consideration, NRAs may decide the existing regulatory environment for the retail broadband market does not entirely address net neutrality concerns

• Relatively minor refinements may be necessary:
  • transparency, so that end users can see the traffic management practices of a particular Internet access service
  • reduced switching costs, so that end users can easily leave an unsatisfactory service
  • power to impose minimum QoS

Active reform

Specific restrictions against:

• blocking of lawful content, applications, services or (on occasion) non-harmful devices (e.g., USA FCC rules)

• other discriminatory practices, which may be unreasonable or, while not outright blocking, render lawful content, applications or services effectively inaccessible or unusable (e.g., USA FCC rules, Chile, Singapore)

• usually subject to reasonable traffic management exception

Thank you.

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Recommendations

- Review existing telecommunications regulation and competition laws to determine whether the regulatory tools are already in place to adequately address the competition issues in the retail broadband market that tend to impact on the principle of net neutrality.

- Traffic management practices should be made transparent through clear and useful consumer information.

- Customers should be able to quickly and efficiently end their contract without high switching costs.

- ISPs should be transparent over their use of DPI/DFI.

- Regulators should possess the power (held in reserve) to impose minimum QoS requirements on Internet access services where over-prioritization degrades the "best efforts" Internet.

- If concerning traffic management practices continue, regulators should consider specific targeted regulatory remedies, including restrictions on blocking and unreasonable discrimination.

Thank you.

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