Comments on AGCOM's Public Consultation on Network Neutrality

by VON Europe, May 2011

Preliminary Remarks

The Voice on the Net Coalition Europe ('VON') welcomes the opportunity to comment on AGCOM's public Consultation on network neutrality (hereafter 'the Consultation').

In addressing the issue of an open Internet and net neutrality, VON believes AGCOM should strike a careful balance between:

– the need of operators to manage their networks;

– the ability of service and application providers to develop and innovate, including the proverbial '2 guys in a garage';

– the position of content providers, regardless of whether they are a citizen, an administration, a school or university, or a media conglomerate; and,

– the role of NRAs to address the risk inherent in an operator's ability to discriminate in the treatment of traffic based upon the operator's control over a bottleneck and its resulting economic or other fundamental interests.

VON therefore urges AGCOM to take a path that recognises the symbiosis which exists between the users, the Internet actors and the providers of broadband access and balances interests in a way that serves the interests of end-users, operators, and service, content, and application providers, including the media and cultural industries and Government at all levels, by taking the following steps:
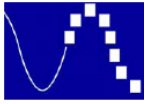
– First, AGCOM should explicitly confirm the widely-accepted principles that end-users have the right to send and receive the content of their choice, and access and use the content, applications, and services of their choosing, and to connect hardware and use software of their choice that do not harm the network.

– Second, AGCOM should adopt a transparency standard requiring operators to provide all end-users (*i.e.* individual users including consumers, but also service, content, and application providers, including the media and cultural industries and Government at all levels) with clear, precise, and relevant information on the services and applications that
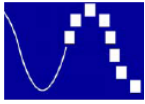
can be accessed through their operator, the traffic management practices employed on the networks, and any quality of service limitations.

– Third, AGCOM should set a behavioural standard intended to prohibit operator discrimination that is anticompetitive, creates barriers to innovation, or harms end-users, and it should bar operator conduct that violates the other core, open Internet principle of user choice (see our first bullet point). Operators may face some technical challenges to manage network congestion and support various online applications. VON agrees that any regulation should not limit efforts by operators to fairly use network management to overcome genuine technical challenges and maintain a high quality Internet service for their customers. However, this freedom to manage the network should not be a license for operators to behave in anti-competitive and other harmful ways, such as blocking legitimate content and applications or unreasonably degrading services that users have paid to access, or to cease making replacement investments to achieve greater capacity. Neither should operators unreasonably discriminate against any content or services on the Internet. VON believes that AGCOM should state explicitly that discriminating against VoIP services and applications is not seen by AGCOM as legitimate given that these services and applications do not consume substantial network resources and function today on fixed and mobile broadband access networks around the world (in the areas where they are technically and contractually unrestricted).

– Fourth, AGCOM should make it clear that traffic management should not be seen as an alternative to sustained network investment to meet large increases of capacity, which has characterised the Internet since day 1.

– Fifth, AGCOM should adopt an enforcement mechanism that would handle complaints from all end users (*i.e.* individual users including consumers, but also service, content, and application providers, including the media and cultural industries and Government at all levels) on a timely 'case-by-case' basis to determine whether an operator has violated the principles adopted by the regulator, including whether an operator's discrimination is anticompetitive, creates barriers to innovation, or harms end-users.

More details can be found in VON's responses below.

Detailed Responses

> **Q2. Quali tipologie di servizi dati e quali forme di gestione del traffico assumono particolare rilievo nell'ambito del dibattito riguardante la neutralità della rete? Qual è il presumibile impatto che la crescente diffusione delle forme di gestione del traffico di rete per ragioni tecniche o di blocco di applicazioni per motivi commerciali avrà sul principio della neutralità della rete? Quali fattori concorrono alla declinazione della definizione di neutralità della rete?**
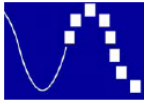>
> **Q3. Quali sono gli obiettivi e gli strumenti, come definiti nel quadro normative europeo, ritenuti più rilevanti ai fini della regolamentazione, ove opportuno, del rapporto tra forme di gestione del traffico, tecniche commerciali e neutralità della rete? Quali forme di gestione del traffico possono essere considerate ragionevoli?**
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> **Q5. Quali sono i potenziali problemi concorrenziali derivanti dalla diffusione delle nuove forme di gestione del traffico? Le norme a tutela della trasparenza delle condizioni economiche e tecniche dei servizi offerti sono sufficienti a prevenire l'attuazione di comportamenti anticoncorrenziali nei mercati dei servizi dati? Ove sia ravvisata l'opportunità della regolamentazione a tutela della concorrenza, con quali strumenti a disposizione del policy maker sarebbe opportuno porre mano alla regolamentazione?**
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> **Q6. Quali sono gli elementi strutturali che contraddistinguono l'ecosistema della rete che potrebbero assumere rilievo qualora i potenziali problemi concorrenziali e le specifiche circostanze del mercato rendano opportuno un intervento del policy maker a tutela della concorrenza? Quali fattori incidono sui prezzi e sulle quantità prodotte di servizi dati, nonché sulla capacità a innovare e sugli incentivi ad investire dei diversi soggetti attivi nel settore? Come si sostanzia il rapporto tra net neutrality e crescita economica e qual è l'impatto dell'economia di internet sullo sviluppo della società?**

1.   An open Internet is critical to consumer welfare and the continued growth of Italy's knowledge economy. **In addressing the net neutrality issue, VON considers it is important that AGCOM cautiously balances the tensions between**:

–   the operators' need to manage their networks;

–   the abilities of service, content, and application providers to develop and innovate, including the so called 'two guys in a garage';

– the position of content providers, regardless of whether they are a citizen, an administration, a school or university, or a media conglomerate; and,

– the role that AGCOM plays in addressing the risks inherent to an operator's ability to discriminate in the treatment of traffic based upon the operator's control over a bottleneck and the resulting economic or other fundamental interests.

2. This task should be motivated by the fact that *"Internet application services can be provided by carriers or by many other application providers on the Internet and can be placed at many locations within the Internet"* and that *"Internet application services usually have fixed costs that are small relative to incremental costs, and thus there is usually a low barrier-to-entry, which leads to a competitive market with a large number of application providers"*.[1]

3. **A starting point in the approach to traffic management and net neutrality should be the desire and duty to preserve and promote an open Internet, a goal that is now mandated for NRAs under the revised Framework Directive in Art. 8.4 Par. G.[2]**
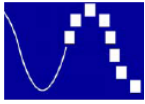
4. Traffic management has always taken place in the Internet and VON considers there is no issue for ISPs to fairly use network management to overcome technical challenges and maintain a high quality Internet service for their customers. However, this freedom to manage the network should not be a license for ISPs to behave in anti-competitive and other harmful ways, such as blocking legitimate content and applications or unreasonably degrading services that users have paid to access. It should also not be seen as an alternative to sustained network investment to meet large increases of capacity, which has characterised the Internet since day 1.[3]

5. Practice shows that there is evidence that operators – especially when they are vertically integrated into the provision of services, content, and applications – unduly manage traffic conveyed over their network through blocking and/or virtually foreclosing the access to and the use of services,

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[1] Jordan, S. (2011). Should Users be Entitled to Run the Applications of Their Choice on Wireless Networks? *IEEE Conference on Wireless Communications and Networking* (WCNC), 28-31 March, Cancun, Mexico. Retrieved at, http://www.ics.uci.edu/~sjordan/papers/wcnc2011.pdf.

[2] *"(…) promuovendo la capacità degli utenti finali di accedere ad informazioni e distribuirle o eseguire applicazioni e servizi di loro scelta"*

[3] The Canadian CRTC has very specifically stated in its Review of the Internet traffic management practices of Internet service providers: *"36. The Commission notes that investment in network capacity is a fundamental tool for dealing with network congestion and should continue to be the primary solution that ISPs employ. However, the Commission considers that investment alone does not obviate the need for certain ITMPs, which may be used to address temporary network capacity constraints and changing network conditions, as well as for service innovation."*. See http://www.crtc.gc.ca/eng/archive/2009/2009-657.htm

content, and applications provided by third parties from their platforms, in order to secure (higher) revenues or other commercial benefits.

6. **VON has identified the following (non exhaustive) list of incentives for harmful discrimination that are detrimental to service, content, and application providers, and detrimental to end-users in general:**

– First, there is discrimination by operators that aims at favouring their own services, those of subsidiaries (in case of vertically-integrated providers) or a preferred partner, or that is intended to block or degrade services, content, and applications that are considered as potential competitors for their own offerings. These discriminatory practices are illustrated through the following reported cases:

- 2005: American Internet provider Madison River (a small US ISP) blocks the traffic of Internet telephony service Vonage. It is evident that the blocking is intended to favour its own telephony services, stifling competition. After this comes to light, the Federal Communications Commission (FCC) intervened;[4]

- 2007: UK mobile operators Vodafone and Orange remove the VoIP features from the Nokia N95 handsets;[5]

- 2009: Mobile operator Vodafone Italia puts in place Peer-to-Peer (P2P) and VoIP caps on Internet traffic, by capping this traffic on 64 Kbit/s on its mobile network from 7 AM to 10 PM;[6]

- 2009: In Germany, Deutsche Telekom announces that it will block Skype, on iPhone in particular. That same year, T-Mobile Germany announced that it will block Skype traffic on smartphones with a mobile Internet connection, and that it considers blocking Skype through its WiFi hotspots.[7] Since then and due to customer reactions,

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[4] See Marsden, C. (2010). *Net Neutrality: Towards a Co-regulatory Solution*. London: Bloomsbury Academic. p. 35ff. Retrieved at, http://techrisk.se/wp-content/uploads/books/NetNeutrality.pdf.
[5] See Ray, B. (2007). *Orange and Vodafone cripple Nokia's flagship: N95 comes with VoIP disabled*. The Register. Retrieved at, http://www.theregister.co.uk/2007/04/18/n95_crippled/.
[6] See Vodafone. (n.d.). *Informazioni sulle condizioni di utilizzo dei servizi Internet in mobilità*. Retrieved at, http://www.areaaziende.vodafone.it/190/trilogy/jsp/programView.do?tk=9610,c&channelId=-8671&contentKey=48195&programId=12545&ty_key=az_uso_equo_servizio_internet_mobilita&pageTypeId=9610&ty_skip_md=true.
[7] See Handelsblatt. (2009). *Telekom plant Skype-Blockade für iPhone und Blackberry*. Retrieved at, http://www.handelsblatt.com/technologie/it-tk/mobile-welt/telekom-plant-skype-blockade-fuer-iphone-und-blackberry/3145006.html.
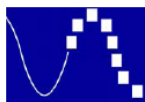
T-Mobile charges its users an extra 10 euro/month for the right to use Skype on their mobile devices. Similarly, Vodafone Germany charges an extra 5 euro/month for the right to use Skype;

- 2010: Swedish mobile operator TeliaSonera blocks VoIP and P2P-traffic, according to the advertisements on their website;[8]

- 2010: French mobile operator SFR sells iPad subscriptions without access to P2P, VoIP and newsgroups, although it is not clear whether these are only contractual or also technical restrictions;[9]

- 2010: French Internet provider 'Free' restrict P2P, SSH and VoIP services on ADSL. According to Free, all ports and/or protocols which are not standard are blocked in the afternoon, such as SSH, streaming videos, VoIP, and P2P;[10]

- 2011: In the meantime multiple Swedish mobile operators – Telenor, TeliaSonera, and Tele2 – are introducing barriers to the use of VoIP applications;[11] and,

- 2011: Mobile operator Vodafone Italia charges its users an extra 8 euro/month for the right to use VoIP applications of their choice. [12]

– Second, an operator can use its bottleneck power towards VoIP or other services, content, and applications to place them at a competitive disadvantage or harm them in different ways. This could result in undesirable outcomes, such as price or quality discrimination (*i.e.* intentional degradation of the QoS to encourage consumers to only use the operators' own services). An illustration of such harmful conduct would consist in an operator reserving part of the bandwidth for their own VoIP or traditional voice service, in order to secure a

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[8] See Telia. (n.d.). *Surfa i mobilen*. Retrieved at,
http://www.telia.se/privat/produkter_tjanster/mobilt/surfaimobilen/
[9] See SFR. (n.d.) *Forfaits Internet pour Tablettes, iPad, Clés 3G+*. Retrieved at, http://www.sfr.fr/mobile/forfaits-internet.jspe?#onglet2.
[10] See Numerama. (2010). *Free briderait les protocoles SSH, VoIP ou P2P en zone non dégroupée*. Retrieved at, http://www.numerama.com/magazine/15461-free-briderait-les-protocoles-ssh-voip-ou-p2p-en-zone-non-degroupee.html.; and consumer complaints at http://pastebin.com/MZ3WF8sz.
[11] See Brohult, L. (2011). *Operatörer förbjuder Viber och Skype*. Mobile.se. Retrieved at, http://www.mobil.se/nyheter/operatorer-forbjuder-viber-och-skype-1.385105.html.
[12] See this statement from the Vodafone Italy website: "La promozione Mobile Internet Plus ti consente di navigare in internet sul cellulare e utilizzare applicazioni VOIP al costo di 8 euro a settimana con traffico fino a 2GB". See also iSpazio. (2011). *Vodafone blocca Viber, Tango, Skype e tutte le applicazioni che permettono di effettuare chiamate VoIP su rete 3G da iPhone*. Retrieved at, http://www.ispazio.net/166560/vodafone-blocca-viber-tango-skype-e-tutte-le-applicazioni-che-permettono-di-effettuare-chiamate-voip-su-rete-3g-da-iphone.; accompanied by various user complaints on Vodafone Italy's forum, at http://lab.vodafone.it/forum/viewtopic.php?f=17&t=17985.
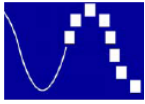
competitive advantage over their perceived rivals, or through asking competing VoIP services financial contributions for QoS to be able to compete with the operator's own VoIP service with the same QoS level (this for example arose in the Shaw Cable dispute with Vonage in Canada, where Shaw allegedly charged customers an extra QoS fee to use non-Shaw VoIP services).[13]

– Third, there is discrimination motivated from some operators' focus, as evidenced in press statements, towards specific companies as *"those that make all the money"* from them offering the network infrastructure. Such statements obviously forget that the infrastructure is only a means to access services, content, and applications, but not a means to an end. This results in a situation where operators can extort excessive rents out of their controlling position over a bottleneck.
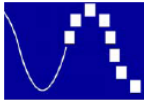
7.   Therefore VON believes it is important to distinguish between the different types of traffic management. Along this line Neelie Kroes, European Commissioner for the Digital Agenda, stated that: *"any commercial or traffic management practice that does not follow objective and even-handed criteria, applicable to all comparable services, is potentially discriminatory in character"* and added to this, that *"discrimination against undesired competitors (for instance, those providing Voice over the Internet services) should not be allowed"*.[14] Furthermore, on the 19th of April 2011[15], the Commissioner expressed, with two explicit references to Skype and an explicit reference to 'commercial reasons', that blocking or degradation of VoIP is not acceptable.

8.   **So the real issue of this debate is: where is the line between 'legitimate' and 'harmful' traffic management?**

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[13] See CBC News. (2006). *Shaw, Vonage engage in war of words over internet phone service*. Retrieved at, http://www.cbc.ca/news/business/story/2006/03/08/shaw-060308.html.

[14] The Register. (2010). *Commissioner pledges protection for net neutrality*. Retrieved at, http://www.theregister.co.uk/2010/04/15/kroes_net_neutrality/.

[15] See European Commission. (2011, 19 April). *Digital Agenda: Commission underlines commitment to ensure open internet principles applied in practice* [IP/11/486]. Retrieved at, http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/486&format=HTML&aged=0&language=en&guiLanguage=en and Kroes, N. (2011, 19 April). The internet belongs to all of us [SPEECH/11/285]. *Press conference on Net Neutrality Communication*, Brussels. Retrieved at, http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/285&format=HTML&aged=0&language=EN&guiLanguage=en.

9.   VON sees traffic management for the purpose of combating spam, network security or punctual exceptional measures to alleviate congestion as useful and these have never been contested as such, as long as they remain proportional and not harmful.

10.   However, academic research shows that the security rationale is *"often used to justify practices that block traffic"*, and therefore *"this rationale should be divided into two categories — traffic management to address traffic potentially harmful to the user versus network management techniques employed by broadband Internet access providers to address traffic harmful to the network"*.[16]

11.   At the same time, this same research highlights that the congestion rationale is *"is often used to justify ISP traffic shaping on file-sharing traffic"*, but *"if the practice involves blocking without user choice"* this should then be classified *"as unreasonable"*.[17]

12.   VON would simply add that traffic management for commercial motivations based on the exploitation of a bottleneck or discrimination between services, content, and applications of similar nature does not create consumer value, as it decreases choice and switches the control from the end-user to the access operator acting as gatekeeper.

13.   These practices breach the end-to-end connectivity principle of the Telecoms Package enshrined in Article 5 of the Access Directive (2009/140/EC)[18], the principles set out in Recital 28 of the revised Universal Service Directive (USD) (2009/136/EC)[19] as well as Recital 40 of the Roaming Regulation (Regulation (EC) No 544/2009)[20].

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[16] Jordan, S. (2010). A Framework for Classification of Traffic Management Practices as Reasonable or Unreasonable. *ACM Transactions on Internet Technology*, 10(3), 1-23. p. 15. Retrieved at, http://www.escholarship.org/uc/item/3ng6r1fw.

[17] Ibid, p. 15.

[18] It must be noted however that Article 5 applies to 'access and interconnection' issues, which would not cover many issues faced by content, service or applications providers faced with abusive behaviour by an ISP or mobile operator.

[19] *"Gli utenti finali dovrebbero poter decidere quali contenuti vogliono inviare e ricevere e quali servizi, applicazioni, hardware e software vogliono usare a tali fini, ferma restando la necessità di preservare l'integrità e la sicurezza delle reti e dei servizi. Un mercato competitivo assicurerà agli utenti un'ampia scelta di contenuti, applicazioni e servizi. Le autorità nazionali di regolamentazione dovrebbero promuovere la capacità degli utenti di accedere e distribuire le informazioni e di utilizzare le applicazioni e i servizi di loro scelta, come stabilito all'articolo 8 della direttiva 2002/21/CE (direttiva quadro). Tenuto conto dell'importanza crescente delle comunicazioni elettroniche per i consumatori e le imprese, gli utenti dovrebbero in ogni caso essere pienamente informati di qualsiasi condizione imposta dal fornitore di servizio e/o di rete che limita l'utilizzo di servizi di comunicazione elettronica. Tali informazioni dovrebbero, a discrezione del fornitore, specificare il tipo di*
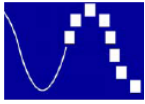
14.   VON would also like to point out to AGCOM that the fast-moving vertical and horizontal integrations and commercial dynamics within the converged Internet / ICT ecosystem (from hardware, to networks, to content, etc.), exemplified by such phenomena as 'bundling'(*e.g.* triple or quadruple play bundling voice, broadband Internet, TV and mobile access), could accelerate the trend towards serious harmful and other undesirable discriminatory practices that would have negative consequences for innovation, consumer choice, trade, etc. So even if improving and facilitating switching by subscribers is important to promoting a competitive market, it is clearly insufficient in its own right to preserve the open Internet, especially given that all operators could adopt similar restrictions (which experience around Europe demonstrates is a real threat rather than conjecture).

15.   Therefore, VON supports the European Commission's view in its April 2011 Communication on the open internet and net neutrality in Europe that *"transparency and ease of switching are key elements for consumers when choosing or changing internet service provider **but they may not be adequate tools to deal with generalised restrictions of lawful services or applications"*** [our emphasis added].[21]

16.   VON believes that policymakers and regulators should guarantee that end-users have access to and can use the Internet services, content, and applications, as well as the devices of their choice. Therefore all attempts, whether regulatory, commercial (be it by prohibiting it or unduly asking for additional subscription fees) or technical, to block or hinder unfettered access to VoIP (or similar technologies), and in general all legal Internet content, applications, and services, including their underlying technologies, should be prevented.

17.   As VoIP is particularly sensitive to degradations in network performance (especially in terms of latency requirements), and because of its reliance on Peer-to-Peer (P2P) in some cases, it can be faced with various network management impediments put in place by access operators. Additionally,

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contenuto, applicazion e o servizio interessati, le singole applicazioni o servizi, o entrambi. A seconda della tecnologia impiegata e del tipo di limitazione, tali limitazioni possono richiedere il consenso dell'interessato a norma della direttiva 2002/58/CE (direttiva relativa alla vita privata e alle comunicazioni elettroniche)"
[20] *"(…) non dovrebbero esservi ostacoli allo sviluppo di applicazioni o tecnologie suscettibili di sostituire o di costituire un'alternativa ai servizi di roaming, quali la tecnologia WiFi (wireless fidelity), i servizi Voice over Internet Protocol (VoIP) e Instant Messaging (messaggistica istantanea)"*
[21] European Commission. (2011). *The open internet and net neutrality in Europe*. p. 9. Retrieved at, http://ec.europa.eu/information_society/policy/ecomm/doc/library/communications_reports/netneutrality/comm-19042011.pdf.
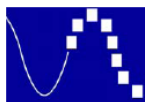
because the predominant VoIP protocols used today all generate P2P traffic (including SIP, H.323, and Skype's own P2P protocol among others), they are at risk of being blocked or degraded as a result of blanket anti-P2P measures imposed by operators, even though they do not inherently involve file transfers or intellectual property issues. For example, P2P has been used in the research and academic worlds for useful and legitimate purposes (*e.g.* for the Berkeley University's SETI project that connected the computing power of thousands of users to analyse astronomical data, or as used by the European Nuclear Research Council).

18.   In practice, VoIP and video communications can be especially harmed by temporarily delaying sessions using peer-to-peer or other applications and protocols, due to their reliance on a steady stream of real-time communication packets. Limiting or delaying a VoIP session or video communication can be tantamount to blocking, that is negating a user's ability to communicate. Even when VoIP packets are delayed a mere 250 milliseconds, the lag is noticeable and impedes speech communications.
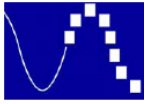
19.   Maybe more importantly from a traffic management perspective, it is important to realise that **peer-to-peer VoIP traffic generally represents just a trickle of packets in today's growing broadband pipes**. For most VoIP codecs, between 6 and 30 Kbps upstream and downstream is sufficient.

20.   In other words, VoIP services and applications do not consume substantial network resources (hence not justifying blocking or degradation on the basis of capacity constraints) and function today on fixed and mobile (broadband) networks around the world when left technically and contractually unrestricted.

Q7. Più in generale, considerati i profili inerenti alla tutela del consumatore e alla tutela della concorrenza, quali modalità di intervento e di regolazione consentono la salvaguardia del principio della net freedom, vale a dire, la natura aperta e libera che contraddistingue la Rete?

Q8. Quali forme di intervento sono ritenute più appropriate ed efficaci, Fermi restando i principi di adeguatezza, necessarietà e stretta proporzionalità dell'intervento rispetto alle finalità perseguite previsti nel nuovo quadro regolamentare?

Q9. La piena attuazione del principio della neutralità della rete come incide sulla vita sociale, culturale e politica del Paese? Quali sono i valori generali connessi al dibattito concernente la net neutrality che devono essere tenuti in considerazione al fine di garantire la piena attuazione del

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principio della neutralità della rete? Al riguardo, quali strumenti possono essere utilizzati dall'Autorità?

21.   VON considers that safeguards are necessary to ensure the quality of Internet access, in order to avoid a 'dirt road' effect, in parallel to the possibilities for operators to offer managed services.
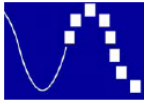
22.   This point is also being raised in a recent Report from the French Parliament, which states that *"the quality of the public Internet could quickly degrade because of the important growth in data streams, if Internet access providers were not to invest in their networks or were to give priority to the commercialisation of managed services"*.[22]

23.   In that context, VON would like to draw attention to Art. 22 Par. 3 of the revised Universal Service Directive which stipulates that *"per **impedire** il degrado del servizio e la limitazione o il rallentamento del traffico di rete, gli Stati membri provvedono affinché le autorità nazionali di regolamentazione possano imporre prescrizioni in materia di qualità minima del servizio all'impresa o alle imprese che forniscono reti di comunicazione pubbliche"* [our emphasis added]. VON believes that the use of the wording 'prevent' suggests that actions must be taken ex-ante instead of ex-post.

24.   In setting such minimum quality of service (QoS) requirements, AGCOM, should take into account the complexities and multi-dimensional facets of the online ecosystem. The enforcement of open Internet policies and regulations will therefore require on the one hand the leveraging of deep technical expertise within AGCOM and on the second hand the gathering of input from outside experts.

25.   VON recommends that AGCOM convenes a technical expert group – comprised of industry participants (service, content, and application providers together with operators) – operating across the EU. The resulting expert input should help AGCOM forward in taking reasoned and well balanced decisions about what forms of traffic management could be discriminating and/or anticompetitive, and thus harm end-users and consumers, while at the same create barriers to innovation. These experts could also provide AGCOM with valuable input on practices abroad, network management techniques and developments in network infrastructure and technologies, and on what constitutes minimum QoS and/or 'functional Internet access', as provided for in EU legislation.

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[22] See http://www.scribd.com/doc/52922958/Rapport-d-information-sur-la-neutralite-de-l%E2%80%99internet-et-des-reseaux

26.   VON notably considers that initiatives such as Ne.Me.Sys (Network Measurement System)[23] by AGCOM are interesting first steps, but require a dialogue with a larger number of Internet players than just the traditional telecoms operators. We are also unclear as to what the next steps in this project are.
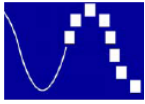
27.   More generally, when looking at the tools that AGCOM could use, it is important to note that self-regulation efforts, as recently illustrated in Norway, do not seem sufficient to guarantee an open Internet. The following quote from a letter of the European consumer organisation BEUC to European Commissioner Neelie Kroes underscores this.

> "The **recent developments in Norway**, where the biggest telecom operator has announced its intention to charge for content providers for prioritized transmission with the aim of promoting its content and that of its partners, raises serious concerns from the consumers' point of view. At the same time, Norway's second largest mobile services provider is publishing schemes to disallow VOIP on their networks. Developments towards that direction are extremely worrying, when considering that Norway has been among the first countries to adopt guidelines on net neutrality. However, **this soft approach has proven to be ineffective in protecting consumers' from discriminatory practices**."[24]

Q4. Nell'ambito delle norme a tutela del consumatore e, in particolare, di quelle a tutela della trasparenza delle condizioni economiche e tecniche dei servizi offerti, quali sono gli elementi rilevanti, ulteriori rispetto alle disposizioni vigenti, che contribuiscono alla piena conoscenza, da parte dell'utente finale, delle caratteristiche dei servizi dati, in mobilità e in postazione fissa, disponibili nel mercato? Quali sono o quali potrebbero essere le modalità tecniche rilevanti al fine di informare gli utenti anche in tempo reale al verificarsi di forme di gestione del traffico e quali, in generale, le modalità ed i canali informativi minimi per assicurare all'utente finale informazioni trasparenti in relazione ai servizi dati?

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[23] See https://www.misurainternet.it/

[24] BEUC. (2011). *Net Neutrality in Europe needs to be safeguarded. Letter sent to Ms Neelie Kroes, Vice-President of the European Commission*. p. 2. Retrieved at, http://www.beuc.eu/BEUCNoFrame/Docs/2/IFMGGBABLLHODCMADAJPJJBLPDWY9DBYW19DW3571KM/BEUC/docs/DLS/2011-00115-01-E.pdf.

28.   When it comes to transparency and publication of information Art. 21.3 Par. C of the revised Universal Service Directive stipulates that undertakings providing public electronic communications networks and/or publicly available electronic communications services have to "*informare gli abbonati di ogni modifica alle condizioni che limitano l'accesso e/o l'utilizzo di servizi e applicazioni, ove siano ammesse dalla legislazione nazionale in conformità del diritto comunitario*". On top of this Par. D of that same article also states that operators need to "*fornire informazioni sulle procedure poste in essere dal fornitore per misurare e strutturare il traffico in un collegamento di rete onde evitarne la saturazione e il superamento dei limiti di capienza, che indichino anche le eventuali ripercussioni sulla qualità del servizio riconducibili a tali procedure*".

29.   Moreover, Art. 22.2 of the same revised Directive also specifies as regards to quality of service that "*le autorità nazionali di regolamentazione possono precisare, tra l'altro, i parametri di qualità del servizio da misurare, nonché il contenuto, la forma e le modalità della pubblicazione, compresi meccanismi di certificazione della qualità, per garantire che gli utenti finali, inclusi gli utenti finali disabili, abbiano accesso ad informazioni complete, comparabili e di facile consultazione*".

30.   In light of this, VON considers the disclosure of traffic management information as a critical resource for NRAs, service, content, and application providers, end-users, and consumers in order to determine if operators are engaging in anticompetitive behaviour or putting in place harmful practices at the level of Internet access services.

31.   It should be noted that traffic management practices cover quite some technical details, which can seem incomprehensible or even frightening for mainstream end-users (not only individual consumers, small businesses and administrations, etc.). Then again oversimplification of this information can be misleading, as often, the devil lies in the details.

32.   Hence, VON considers that information on traffic management should be provided in at least two different formats:

> 1) on the one hand, an easily understandable end-user fact sheet. In this context, the key principle should be that "*information is definitely not communication, and information*
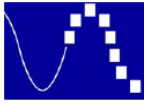
overkill leads to information not being read rather than readers trying to get to the bottom of it";[25] and,

2) on the other, a comprehensive and detailed technical fact sheet. Indeed, BEREC has rightfully pointed out that *"as well as transparency for consumers, the transparency towards content/application providers should also be considered"*.[26] This is logical as access to detailed traffic management information can assure service, content, and application providers that their offers are optimised to make the best and most efficient use of the network.

33.   This would then result in meaningful information for all players.

34.   Moreover, the traffic management information available should conform with a minimum number of conditions, being: their ease of access in various formats (*e.g.* on the operator's website, paper brochures, etc.); their communication prior to subscription; the immediate notification in case of changes to them; the adoption of a comparable format amongst operators, preferably agreed upon by the different relevant stakeholders including consumer groups and the online providers' community[27], to allow all end-users to compare the different available offerings in an informed and user-friendly manner.

35.   But more importantly, VON considers that transparency is just one element of the equation, seeing that even those markets which European regulators deem to be competitive (*i.e.* the mobile retail markets) do not in fact exhibit the market dynamics leading to unrestricted access to the Internet. Transparent information tells consumers about the terms and conditions of their package, but does not offer them real choice nor unrestricted Internet access if operators mimic each other's behaviour – as experience in Europe demonstrates. This goes against the motivations for introducing transparency provisions for traffic management and access limitations in the revised European Electronic Communications Framework.

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[25] Van Eijk, N. (2011). About Network Neutrality 1.0, 2.0, 3.0 and 4.0. *Computers & Law*, 21(6), 11-14. p. 13. Retrieved at, http://www.ivir.nl/publications/vaneijk/CLM_2011_6.pdf.

[26] BEREC. (2010). *Response to the European Commission's consultation on the open Internet and net neutrality in Europe*. p. 17. Retrieved at, http://erg.eu.int/doc/berec/bor_10_42.pdf.

[27] This broad participation is necessary to avoid the pitfalls of the approach taken in the UK, where a transparency code was put forward by the ISPs, without any involvement by other industry players nor consumer and advocacy groups. As a result it was met with very little support, including by the UK Minister Ed Vaizey, who concluded that the said code would need to be followed up with a 'chapter 2' outlining what constitutes acceptable traffic management and non-discrimination.
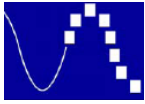
36.   BEREC also raised this point in its Response to the European Commission's consultation on the open Internet and net neutrality in Europe stating that: *"transparency, information and customer awareness are necessary conditions, since they allow customers to make informed choices, but they are not by themselves sufficient. The end-user access market must be competitive enough to enable the end-user to switch to another provider in the first instance. Second, switching must be reasonably easy. Thirdly, there has to be at least one other provider offering acceptable quality for best effort Internet access. If all of those conditions are brought together, then transparency can allow competition to become effective in practice"*. Therefore, in VON's view, BEREC correctly concludes that *"there are some limitations on the effectiveness of transparency as a measure remedying network neutrality issues"*,[28] a point acknowledged in the April 2011 Communication issued by the Commission on Net neutrality (see above).

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About the VON Coalition Europe

The Voice on the Net (VON) Coalition Europe was launched in December 2007 by leading Internet communications and technology companies, on the cutting edge to create an authoritative voice for the Internet-enabled communications industry. Its current members are iBasis, Google, Microsoft, Skype, Viber and Voxbone.

The VON Coalition Europe notably focuses on educating and informing policymakers in the European Union and abroad in order to promote responsible government policies that enable innovation and the many benefits that Internet voice innovations can deliver.

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[28] BEREC. (2010). *Response to the European Commission's consultation on the open Internet and net neutrality in Europe*. p. 10-11. Retrieved at, http://erg.eu.int/doc/berec/bor_10_42.pdf.