

## Consultazione pubblica sulla neutralità della rete

***Q1. Quali sono i profili tecnologici e commerciali che, in prospettiva, assumeranno maggiore rilievo nell'evoluzione del settore dei servizi dati, in mobilità e in postazione fissa? Tali profili influenzeranno le strategie di mercato formulate dai diversi soggetti economici operanti nel settore, gli internet service provider e i content provider? In che modo? Come incideranno i medesimi profili in esame sulle modalità di consumo dei servizi dati da parte dei consumatori?***

Given the soaring levels of bandwidth consumption, Internet congestion will become much more evident, especially if net neutrality regulations are imposed that discourage investments in capacity enlargements, and if flatrate charging continues to prevail.

If, as expected, online traffic and bandwidth consumption continues to increase, Internet service providers (ISPs) will look for additional sources of revenue in order to maintain the highest standard of service. As a result, this may well see flat rates by volume based tariffs or limit traffic quantities by volume caps (especially at prime times).

In order to avoid or limit quality deterioration or even crowding-out of quality-sensitive services, some of today's internet traffic will be conveyed over proprietary networks instead.

Thus, in order to respect the demands being placed on ISPs by regulators – in both Rome and Brussels – for additional investment and innovation, providers may have to pursue a priority pricing system. Such a move would demand that individuals who consume more bandwidth pay more for their online access. As a result, this would prevent individuals who consume less bandwidth from seeing their access slowed down by online games and videos.

***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?***

In discussing this aspect, it is important to divide the debate into two categories. On the one hand, it is possible to define broadly different types of traffic management. The most important ones for the regulatory debate on net neutrality are *packet differentiation* and *IP routing*. These instruments allow to treat in different ways different types of traffic in order to guarantee a specific quality of service to consumers.

Downloads and video streaming have a lower value per data packet, requiring scarce internet capacity, and are mostly quality-insensitive. On the other hand there are quality-sensitive services like tele-medicine, interactive services and some business services that will be harmed from the first category.

Traffic management will be necessary in order to deal rationally with capacity shortages at prime times. The easiest way would be to give priority to quality-sensitive interactive services

and to slow down the data packets of the aforementioned first categories as soon as overload occurs. A better method would be introduce priority pricing (pay for priority) as a market based method to deal with temporary shortages.

Instead of defining net neutrality as “strict equal treatment” of any data packets, no matter the origin or destination, it should be defined as "giving the same priority to any data packet that paid the same price in a strictly non-discriminatory way” (except, of course, for illegal content).

***Q3. Quali sono gli obiettivi e gli strumenti, come definiti nel quadro normativo 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***

As accepted by the European Commission and by most of the stakeholders of the Internet ecosystem, network operators need to adopt some forms of traffic management in order to ensure an efficient use of their networks. As it will be explained later, the need of traffic management comes from the particular structure of the internet ecosystem, where the network is a limited resource and therefore subject to congestion, which can be translated in a worse consumers’ experience.

Traffic management is therefore reasonable, keeping in mind the fundamental objective of non-discrimination, namely so any consumer, any service or content provider pay the same price for a specific priority of their data packets. The most reasonable kind of traffic management is priority pricing (pay for priority).

***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?***

Consumer information and competition are the most reasonable ways of protecting consumers. The quality parameters and/or the procedures applied by different network operators (network management rules) to deal with congestion should be as transparent as possible in order to make competition more workable and efficient. Consumer associations, ISPs, individuals, as well as the media, could play an important role herein.

In terms of transparency, it is fundamental to note that transparency requirements are foreseen by the EU Directive on Universal Service. These requirements establish that consumers must be informed on the service quality they can expect, they must be enabled to easily switch operators and the terms of contract termination must not be a disincentive against changing service provider.

***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?*

As pointed out by the European Commission on April 19, 2011 in its Communication *The open internet and net neutrality in Europe* (COM(2011) 222 final), the European regulatory framework ensures a satisfactory level of competition by requiring network operators with significant market power to provide wholesale access and by allocating spectrum in a competitive manner. These provisions, together with the overall EU socket of competition rules, are sufficient to ensure an Internet which is open, innovative and which favours investments.

Obviously, market failures and oligopolistic behaviours may arise. The most important competition concerns provoked by forms of traffic management would be the possibility of a network operator slowing down the data traffic related to substitutive services. This should be prohibited by law. After transparency rules have been imposed to inform consumers, general competition rules are basically sufficient to prevent anti-competitive conduct.

*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?*

The most important structural element of the internet is the use of the cables and router capacities as a common resource with no regard to the services' different economic value of congestion-free traffic. The famous "tragedy of the commons" is about how to create economic efficiency in this specific ecosystem

Internet bandwidth is a finite and scarce resource. Thus, the more data people consume, the slower their internet experience will be. Most consumers will be familiar with the fact that during peak hours – when demand is higher than supply – products or services become more costly.

Also, it is fundamental to point out the fact that nowadays the Internet is the principal engine of innovation, jobs creation and economic growth. At the same time, it has to be recognized that the central element of the spectacular growth of the Internet consists on the fact that, since the very beginning, its development has taken place without prescriptive regulation that would have prevented the development of specific products, technologies or business models.

The ability of ISPs to innovate depends, primarily, on the regulatory framework and incentives on offer from central government. ISPs' decisions to invest strongly depend whether they have the scope can realistically not just cover costs, but to maximize their opportunities and make profit.

Both the Italian government and the European Commission has regularly cited the crucial role that the Internet has, not just on the economy, but on society overall. Strict net neutrality

regulations would have a devastating impact on economic growth, not just in Italy, but across Europe.

***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?***

In order to let markets flourish, intervention and regulation should be minimal, leaving the Internet to the free market and competition. In the instances when competition is weak, two important issues should first be looked at. The first one is non-discrimination in the sense that any online user, from both sides of the platform, has equal access to the priority he wants, if he is willing to pay the market price for priority.

The second issue is transparency about the qualities a network is providing and the network management principles it is applying. As already noticed, an adequate level of transparency is ensured at EU level and, if needed, can be strengthened by specific requirements at member state level.

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

Unless one is referring to controlling illegal content, discrimination, and non-transparency, regulatory intervention in the online space must be avoided at all costs in order to let the market flourish.

This is the approach adopted both by Ofcom, the UK regulator, and by the European Commission. Indeed, both institutions highlight the fact that, as long as National Regulatory Authorities are enabled to intervene in the market in order to protect competition and transparency, there is no need for implementing new, prescriptive network neutrality rules that would restrict traffic management.

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

As already discussed, implementation of strict net neutrality would not just undermine the ability of the individual to have a fulfilling online experience, but it would also have a major impact on innovation and economic growth. One of the most crucial aspects of net neutrality that should be respected is transparency. ISPs must be as transparent as possible with consumers about their terms of services. However, in order for new services to flourish, consumers must acknowledge that ISPs require greater resources in order to invest.

***Q10. Qual è il rapporto tra le diverse declinazioni del principio della neutralità della rete e il pluralismo dell'informazione e, più in generale, le libertà di comunicazione e di manifestazione del pensiero***

Through strict net neutrality, freedom of expression will be reined. Because bandwidth is currently a finite resource, individuals who consume vast amounts of information and online services, therefore restrict the ability of other users to communicate.

Thus, strict net neutrality will most certainly impinge on freedom of expression because it will favour those individuals that consume more than their fair share of bandwidth. Greater online pluralism can be encouraged through greater fairness when it comes to consumption, such as reconsidering the current situation whereby some individuals subsidize others who consume more bandwidth.