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### **About the Institute for Liberty**

The Institute for Liberty is a non-profit organization based in the United States, focused on defending the principles of free-markets and limited-government. While we spend a great deal of our time focusing on policies within the United States, IFL has spent a considerable amount of time on international economic issues--from issues of growth in the developing world, to consulting with governments on how to improve their economies and political climates, to working on refugee issues in North Africa.

### **Our Stance on Net Regulation**

On the issue of so-called "net neutrality", IFL has been an active advocate within the United States for ensuring that our government's policies do not hobble the most transformative global information sharing and communications tool the planet has ever seen. And because the internet isn't confined to the United States, we believe that it is important to educate policymakers in other nations, so that their efforts do not similarly handicap the internet's continued improvement.

### **AGCOM QUESTIONNAIRE ON NET NEUTRALITY**

Q1. What are the technological and commercial profiles that, in perspective, will become important in the evolution of the data service sector both for wireless and fix? Will such profiles influence the market strategies created by the different subjects working in the sector, ISPs and content providers? In which way? How will those profiles influence consumers' data service consumption?

As it is widely known, Internet network is characterized by limited capacity and it is a “scarce resource” in an economic sense. Indeed, because of this limited capacity, the applications which are transmitted over the network are in competition with each other. Problems of congestion are frequent and have a negative effect for the consumers’ experience. For instance, in 2010 applications consuming an extremely high portion of bandwidth, such as P2P and video, accounted for 74% of the total internet traffic.

If there is no possibility for the Internet providers to manage the traffic following specific criteria, consumers’ data service consumption can be significantly worsened, in particular if we consider time-sensitive applications such online gaming and tele-medicine. Slowing down these services because the bandwidth is over charged reduces the utility of the services themselves for the consumers.

In the next years, the Internet will change even more and new and innovative services and applications will appear. Some of them will be not only time-sensitive but also particularly important from a social perspective, for instance any tele-medicine or real time education

services. Because of their nature, these services must rely on a network structure which allows them to fully deploy their benefits for the consumers. This will be only possible in a network which is managed.

Q2. What types of data services and what kinds of traffic management are particularly important in the debate on net neutrality? What is the likely impact that the increasing spreading of traffic management's forms, either for technical reasons or the blocking of applications for commercial reasons, will have on the principle of net neutrality? Which factors contribute to the definition of net neutrality?

As the Italian regulator observes, there are several different definitions of net neutrality. However, it is important to underline that behind all the different connotations of net neutrality there is the belief that all kind of traffic should be treated equally without any form of discrimination or prioritization, just on a first-come-first-served access for everyone, all the time.

Traffic management, namely the practice of differentiating the traffic on the basis of its characteristics, has been widely accepted both in Europe and in the US. The UK regulator Ofcom, together with BEREC, the body of European Regulators for Electronic Communications, and the European Commission have all acknowledged traffic management as a practice which allows the consumers to benefit from a better service. As BEREC explains, *“usage of traffic management cannot be qualified per se as right or wrong. This will depend on the purpose for which it is used, the circumstances in which it is used and the impact on the goals of the framework”*.

Of course, blocking or throttling of lawful traffic is an unacceptable and unjustifiable behavior, as it reduces the freedom for consumers to access and benefit of the Internet services they prefer. As observed by the European Commission, blocking can take the form of making it difficult to access or restricting certain services or websites on the Internet. An example would be mobile internet operators blocking voice over internet protocol (VoIP). On the other side, throttling, which is a technique employed to manage traffic and minimize congestion, may be used to degrade (e.g. slow down) certain type of traffic and so affect the quality of content.

However, it is important to bear in mind that the issue of blocking and throttling services should be kept partially separated from the issue of net neutrality. Indeed, the Body of European regulators observes that most of the problems linked to blocking and throttling practices were solved voluntarily through intervention by the NRA or pressure created by negative media coverage. Thus, it appears clear that imposing net neutrality regulation is not the solutions to these problems.

Q3. What are the most relevant objectives and instruments, as defined in the European Regulatory framework, for the purpose of regulation for the relationship between forms of traffic management, commercial techniques and commercial net neutrality? What kind of traffic management can be considered reasonable?

Any kind of traffic management which enables all the actors of the Internet ecosystem (ISPs, content providers, consumers) to benefit of the great opportunities of the Internet should be allowed. This ensures the openness of the internet and guarantees the liberty for everybody.

Traffic management is not acceptable when it leads to anti-competitive behaviors and when transparency is not ensured. As long as consumers are informed about the traffic management

practices undertaken by ISPs and that they can easily switch operators, there is no reason why further regulation should be imposed.

Q4. In the framework of the rules aimed at protecting consumers and, in particular, those protecting transparency of the economical and technical conditions of the services offered; what are the other relevant elements available on the market that contribute to the full knowledge of the end user of the characteristics of the data services both for wireless and fix? What are or which could be the relevant technical modalities to inform users even in real time, when forms of traffic management are happening and, in general, the modalities and the minimum informative channels ensuring end-users transparent information in relation to data services?

Transparency must be guaranteed and it represents one of the most important elements which go along with traffic management. This is also the aim of the revised European Telecom Package, which imposes new transparency requirements vis-à-vis consumers.

Other fundamental aspect for consumers is their freedom and ability to switch the provider they use and end any contract they want. The regulation should aim to guarantee the maximum level of freedom of choice for all citizens in the framework of their internet or phone contracts.

On the other side, it has to be recognized that an excessive level of too detailed information can be counterproductive for the consumers. High levels of detail are certainly confusing and, what is worse, misleading for most of the people to whom the information is addressed. It is important to make traffic management policies as clear and complete as possible, but it is also fundamental to bear in mind that different consumers will benefit from different levels of details. Moreover, the consumer shall not be informed about every single possible traffic management technique. Indeed, as traffic management can also be deployed in order to fight against viruses and botnets, disclosing this information would be too risky and non effective.

In order to avoid problems of information overload, a minimum level of transparency and information requirements has to be set in the legislation, both on a EU and Member States level. After that, every provider or organization should be free but not obliged to go further providing a deeper and more detailed information.

Q5. What are the potential competition's concerns arising from the spread of new forms of traffic management? Are the rules to protect transparency of economical and technical conditions of the services offered sufficient to prevent the implementation of anti-competitive conduct in the markets for data services? Where regulation to protect competition is proved to be necessary, which would be the tools policy makers should use to regulate?

As already pointed out, we are convinced that the existing rules aiming to protect transparency and competition, both in Europe and in the Member States, are sufficient to prevent anti-competitive behaviors in the market. As already noted, transparency rules have been even reinforced with the new European Telecom Package.

Moreover, it has been observed both by the European Commission and by the Body of European Regulators that the European competition framework is strong and perfectly adapted to protect consumers from anti-competitive behaviors that ISPs can deploy.

Another element, already underlined, is the existence of additional solutions in case of ISPs anti-competitive behaviors. First of all, European National regulators are competent to prevent and sanction any anti-competitive practices. Furthermore, the media can also be an important asset, as negative coverage in this sense can have a strong impact, pushing ISPs to end any anti-

competitive behaviors. This was the case for several European operators, and it has proven to be effective.

Q6. What are the structural elements that characterize the ecosystem of the network that may be relevant, if potential competition problems and specific market circumstances make an intervention of the policy makers to protect competition appropriate? Which factors affect prices and quantities produced by data services, as well as by the ability to innovate and incentives to invest by the various stakeholders? How is the relationship between economic growth and net neutrality and what is the impact of the Internet economy on the development of the society?

We recognize that it is fundamental to ensure the same conditions for all the participants to the internet ecosystem, namely ISPs, content providers and consumers.

In particular, content providers and ISPs have to both benefit from an optimal regulatory framework which can help them in stimulating innovation and investments, creating new jobs and producing economic growth. Imposing net neutrality regulation would imply higher costs for ISPs which, as a consequence, would not be able to realize a satisfactory level of investments in order to foster the Internet economy.

The European Commission recognizes that the ICT sector in Europe is responsible for 5% of the GDP, but it contributes much more to the overall productivity growth, because of the high levels of dynamism and innovation inherent to the sector. At the same time, the revolutionary social impact of Internet development has to be underlined, given the fact that today there are more than 250 million daily internet users in Europe and virtually all Europeans own mobile phones. This development is even more significant in Italy, where 15 million people have a smartphone and 10 million use it to surf the Internet.

In this context, it is fundamental to underline that one of the most important objectives of the Digital Agenda is broadband deployment aiming to cover 100% of the citizens (developing basic broadband for 100% of citizens by 2013 and fast broadband by 2020). Moreover, what is important is not only to geographically increase broadband deployment, but also to create and develop 'smart networks' which will be more and more adapted to the consumers' needs, e.g. in terms of performance, security, privacy protection, energy savings.

Such ambitious targets need investments, which can be primarily realized by ISPs and private companies. Imposing any net neutrality regulation will disincentive ISPs both because it will impose further costs and limit a market which should be dynamic and growing as much as possible.

Q7. More generally, given the profiles related to the protection of the consumer and to the protection of the competition, what are the methods of intervention and regulation that allow protecting the principle of net freedom, namely, that free and open nature that distinguishes the Net?

Intervening in the market imposing strict principles of net neutrality, in any national or supra national regulatory framework, is not only unnecessary, but also counterproductive.

Indeed, this regulation would suffocate investment, therefore innovation, and it would threat the essence of Internet freedom.

Q8. What forms of intervention are deemed most appropriate and effective, without prejudice to the principles of appropriateness, necessity and proportionality of the intervention respect to the objectives pursued under the new regulatory framework?

No intervention should be imposed as the current system has proven to work so far without any additional regulation. Internet has been characterized so far by *freedom* especially in the sense of ‘absence of regulation’ and it is this freedom which contributed to give to the Internet the characteristics it has nowadays. Internet is an open network of networks which have autonomously decided to create interconnections between each others in order to foster communications, exchanges and innovation.

For this reason, one of the main goals of public policy is to protect this freedom structure in order to let the internet developing further its characteristics of an open and innovative platform.

In the last couple of years, new services have flourished one after the other, more and more innovative, and this is the evidence that the model we have now is perfectly working. Imposing any regulation to ensure net neutrality will break this model with negative effects on openness, innovation and freedom.

Q9. How would the full implementation of the principle of net neutrality impact on the social, cultural and political life of the country? What are the general values associated with debate on net neutrality that should be taken into account to ensure the full implementation of the principle of net neutrality? In this regard, what tools can be used by the Authority?

Strict net neutrality regulation would have a negative impact on the society. The first reason, as already pointed out, is that imposing net neutrality will slow down and paralyzes the Internet market limiting investments, innovation and therefore preventing the citizens to take advantage of new opportunities that the Internet can offer.

The Internet has a significant impact in the whole Italian economy. As emerged in the report by Boston Consulting Group on *How Internet is transforming the Italian Economy*, in 2010 there has been a 16% growth of Internet users, 15% growth of online advertising and 14% growth of e-commerce services. The Italian internet economy in 2010 was worth 32 billion euros (10% more than in 2009). This figures become even more important considering the difficulties for the Italian economy in the last years, characterized by almost no growth and high unemployment.

In this context, it is fundamental from the private sector to realize the investments necessary to stimulate the internet economy. Such investments will be reduced if regulatory constraints are imposed to the ISPs. The Report from the Boston Consulting Group foresees, with the current regulatory framework, a growth which will be even more pronounced. Indeed, in 2015, the share of Internet in the Italian GDP will double, reaching 59 billion euros, which corresponds to 3,3% of the Italian GDP.

As a consequence, the Authority should not impose any measure which may slower or stop this positive trend, such as strict net neutrality regulation.

Q.10 What is the relationship between the different aspects of the principle of Net neutrality and pluralism of information and, more generally, freedom of communication and of expression?

A highly ideological argument used by supporters of net neutrality regulation is the fact that only with net neutrality imposed by legislation it is possible to protect freedom of expression. Indeed,

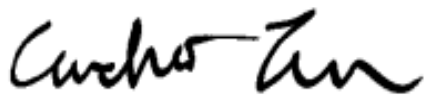
net neutrality regulation would prevent operators to manage and shape the traffic and therefore to limit or block particular type of content or information to limit the freedom of expression. Ensuring net neutrality would be also beneficial for pluralism of information, as it would avoid the biggest entities to take the control of the network limiting the existence and the activities of smaller, independent actors.

We consider this approach as misleading and dangerous. First of all, we think that net neutrality is an issue of economic nature, which concerns the Internet market and the choice of different business models. Freedom of speech is a more fundamental issues related to more general problems of human rights and democracy.

Second, it has to be observed that in the Western world examples of ISPs limiting the freedom of expression are anecdotal at best. Indeed, potential customer criticism and damage to the reputation of the ISP would certainly dissuade most ISPs from engaging in a limitation of the freedom of expression. Furthermore, even if net neutrality is not enshrined in the legal framework, in any European or US juridical system the parties potentially affected by a violation of their freedom of expression could bring their case before a judge.

Third, in relation to pluralism of information, net neutrality would diminish it rather than increase. Indeed, the possibility for ISPs to shape the traffic on the basis of cost-differentiation will introduce more media diversity since different offerings can co-exist and have more opportunity to grow. Once again, nobody could deny that Internet is today free, open and pluralist event without net neutrality regulation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew Langer', with a stylized, flowing script.

Andrew Langer  
President  
Institute for Liberty