

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Traffic Management and “Net Neutrality”

To (Ofcom contact): Stephanie Peat

Name of respondent: Aileen Boyd

Representing (self or organisation/s): Scottish and Southern Energy plc

Address (if not received by email):

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Whole response	No	Organisation	No
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Signed (if hard copy)



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Dear Stephanie

Traffic Management and 'Net Neutrality'

As you may know, SSE is primarily an energy company. We do have interests in the communications market and, in particular, have developed a retail telephony business over the last few years, based on the available wholesale products such as wholesale line rental. We have also started to provide a retail broadband service relatively recently – again based on high level wholesale products – and at this stage of product development, numbers of subscribers are very small on a national scale.

We welcome Ofcom's discussion paper, which comes at an opportune time amidst growing international attention to the subject and ahead of the transposition of the Revised Framework, which is set to give Ofcom further powers with respect to traffic management. The paper is helpful in setting out the relevant background and arguments, as well as highlighting the complex structure of the industry, the policy issues and the main regulatory considerations which could arise.

Our response to the specific consultation questions is set out as an appendix to this letter and below, following a couple of general comments, we set out our thoughts under three headings that reflect our perception of the areas that Ofcom is focussing on:

- Potential anti-competitive discrimination;
- Consumer transparency; and
- Minimum quality of service levels.

General Comments

1. We believe it would be useful for Ofcom to extend the range of types of communications provider (CP) described in the context of traffic management – for example, in the value chain discussed in Annex 1 of the document – to include suppliers using wholesale services. This is SSE's role in providing "broadband" access to our customer base and although we may be thought of as an "internet

service provider” (ISP) in doing this, we clearly do not have the range of technical capabilities for traffic management that is implied by some parts of the document e.g. in paragraph A1.2, “the network directly managed by the consumer’s ISP”. This is significant when Ofcom comes to consider potential regulatory obligations and we consider this further below under the heading of consumer transparency.

2. It seems to us that at the heart of the supply chain linking end customers with the services they wish to use and access over the “broadband” capacity communications link they are connected to, there are a distinct set of CPs who are capable of exerting technical control over the customer experience through technical traffic management. These appear to include both “technical ISPs” and network operators such as BT, whose access infrastructure is in many individual cases used to provide the underlying communications capability. Given the power of these CPs to affect the experience of end customers, we believe there is justification in Ofcom being able to identify who they are and to develop a regulatory framework around their traffic management activities for the benefit of consumers and citizens. This need not be intrusive – we discuss further below ideas around a co-regulatory framework and the promotion of competition at the level of services presented to consumers over their “broadband” link.

Potential anti-competitive discrimination

We consider that Ofcom’s analysis of this potential concern about the effect of traffic management is a helpful presentation of the issues that could arise and support Ofcom’s proposal to keep a watching brief on market developments but not to impose ex-ante regulation at this stage. However, we do consider that there are related areas where Ofcom could take action that would reduce the likelihood of anti-competitive outcomes.

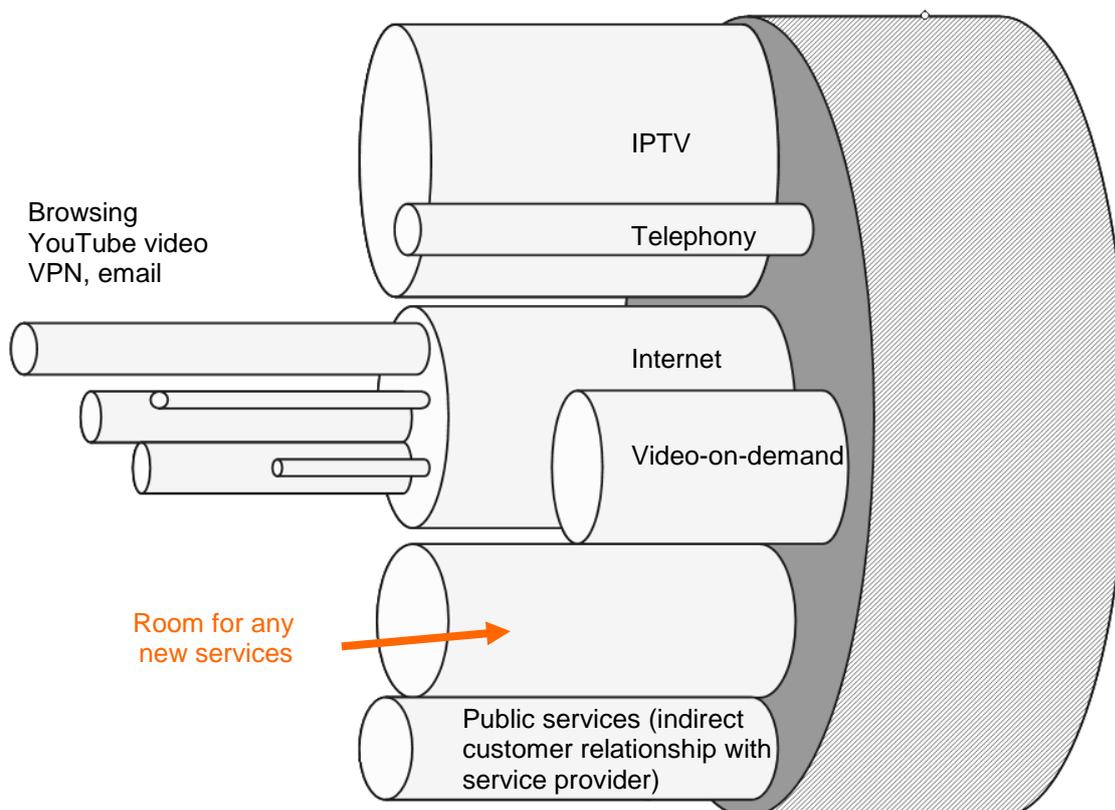
The first of these is in relation to customer switching mechanisms. We share Ofcom’s view, expressed at paragraph 4.21, that vibrant competition between ISPs is a most effective way of minimising the risks of anti-competitive behaviour by any ISP. We look forward to the promised consultation on consumer switching processes and note that as the losing provider led process that is currently in use for some broadband products acts as a barrier to ISPs entering the market and gaining market share, competition in this area cannot yet be said to be “vibrant”.

A second area where we believe Ofcom could promote a more competitive approach is in the development of wholesale access to an individual consumer’s “broadband” communications link. We are aware that the Government is interested in promoting the sharing of “broadband” infrastructure and considers that the Revised EU Framework could enable the imposition of access obligations without a finding of significant market power.¹ We believe that this would be a helpful avenue to pursue, in order to seek to establish an effective choice for consumers between a healthy variety of different ISP/service combinations, no matter where they live or what “broadband” infrastructure is locally available.

Building on this, we have developed the concept of a “multi-channel” access model that cuts across the current notion of a single ISP providing all internet-related services at an end-user premises. Our model would allow different contractual services to be provided

¹ As discussed in the BIS consultation on ‘Broadband Deployment and Sharing Other Utilities’ Infrastructure’ at paragraph 29

by different suppliers over the same link, allowing a customer to tailor the services they wish to receive from different ISPs and suppliers. This model is illustrated below and we believe it is compatible with the active line access standards that Ofcom promoted in 2009.



The segmentation of the individual communications link to a customer could allow for the best features of both sides of the debate on “net neutrality”: differentiated, managed quality of supply for the different channels, reinforced by the customer’s choice in relation to its effect on the specific service using the channel; and net neutrality for data travelling within the different channels.

Consumer transparency

We agree that customer understanding of the effect of their supplier/ISP/network operator’s traffic management policies on their own use of services is vital, along with the measures considered above, in reducing the risk of anti-competitive use of such policies by any party. It is also clearly a complex area that is not straightforward to put into succinct and useful information for consumers, who range from those who have little understanding of how the internet works to those whose use and understanding of it is very sophisticated.

Providing relevant information to customers about their service is normally undertaken by a “supplier” who holds the direct relationship with an end customer. However, with regard to explaining the complexities of traffic management, we consider that suppliers would need some support from their “technical ISP” and potentially also from the “network operator” supporting that ISP. Ofcom’s own discussion in paragraph 5.8 refers to both

these entities and we have highlighted in the first of our general comments above the need to consider that a supplier could be a separate entity from either of these CPs.

As a supplier in both broadband and telephony retail markets, SSE has seen an increasing tide of detailed, prescriptive regulation on the types of information that has to be made available to end customers and we are concerned about the prospect of further regulatory burdens in this area. We note that the term “supplier” is used in paragraph 2.21.1 describing Ofcom’s existing power on the provision of consumer information.

If regulatory obligations were to be necessary, we are strongly of the view that the obligations should be designed in a complementary fashion to impose only requirements that each of the parties in the value chain can actually meet. For example, a “technical ISP” could be required to provide technical information about the traffic management policies that they actually carry out, with suppliers who use that technical ISP merely required to make reference to where this more detailed information is available rather than being directly responsible for providing it. Similar considerations would apply to potential technical requirements such as real-time monitoring facilities. Failure to accurately target regulatory obligations risks undermining their effectiveness as the party who has the means to fulfil them has the choice of not doing so without any corresponding enforcement risk. In this context, we note that in the Canadian approach discussed in section 5, there is reference to “primary” and “secondary” ISPs, which may be an attempt to make these distinctions.

What we would prefer to see is a pragmatic, evolutionary approach to developing best practice in this area, recognising that some standardisation of approach is likely to be of benefit to customers. Ofcom has set out a range of options for consumer information provision in section 5 and, at paragraph 5.33, mentions the possibility of a co/self regulatory approach. We would support a co-regulatory approach to developing both the debate on the implications of traffic management and on how best to communicate the effects of its use to consumers and see this as entailing the establishment of a market body empowered to develop standards and solutions in this area. We see the following benefits to such an approach:

- inclusion of all relevant sectors (network operators, technical ISPs, suppliers and potentially consumer advocates and content providers);
- transparency of debate/outcome to all interested parties;
- identification and promotion of best practice;
- ability to set standards of communications approach that are developed as “carrots” to attain rather than “sticks” to be used for enforcement;
- ability for solutions to evolve as the market develops;
- proportionate approaches for smaller ISPs/suppliers can be incorporated;
- a single body for Ofcom to deal with on this complex subject;
- the work undertaken by the co-regulatory body would save Ofcom’s direct costs

The existence of such a co-regulatory body may also make Ofcom’s monitoring of the market for anti-competitive concerns somewhat easier.

Minimum quality of service

The document refers to the fact that the new EU Framework, when transposed, is likely to provide Ofcom with powers to set minimum quality of service requirements on public communications networks with respect to traffic management, with the implication that

this would avoid any type of traffic becoming ultra-degraded due to priority being given to other services. Such a move would have significant implications for investment requirements in networks and we support Ofcom's caution in considering use of any such powers.

It is apparent that a framework for setting minimum standards of this type would need considerable further discussion with industry as to how it would be accomplished and its effectiveness monitored as well as what conditions might trigger the need for such measures. This, therefore, is in our view another reason for developing the co-regulatory arrangement we have discussed above. All interested parties should have a chance to input to and monitor the debate and the existence of a constituted co-regulatory forum would allow Ofcom to develop its ideas informally with a single industry body and perhaps arrange to trial some approaches to the matter.

Referring back to our multi-channel model above, we believe that the establishment of such a framework would facilitate the development of customer preferences for the appropriate quality of supply standards for different communications activities using the "broadband" capacity available:

- telephony may require a relatively small bandwidth but high standards with respect to latency; IPTV would require a greater bandwidth and high standards on latency;
- internet browsing might generally require only moderate bandwidth - perhaps with the possibility of "boosts" to view particular content;
- emailing would perhaps only require small amounts of capacity with little need for other dimensions of quality; and
- this level of standard might also suit certain "public service" applications such as smart metering.

Over time, some industry "CAT standards" might evolve for describing the technical service levels underpinning the different types of service supplied by different supplier/ISP/network operator combinations. Equally, where services are provided at a lower standard of quality than the prevailing standard, this could be explained in the consumer-oriented information. In this way, the existence of a framework for sharing "broadband" capacity to a consumer's premises could allow the market to sort out the quality of service needs and the existence of the co-regulatory body we have suggested would allow Ofcom to stay in touch with the evolution of the quality framework without necessarily having to intervene directly.

Conclusion

In paragraph 3.55 of the document, Ofcom refers to a joint paper from a number of European stakeholders on the subject of traffic management and net neutrality² which includes the statement that "smart, managed networks are essential to ensure a robust and efficient functioning of the network and to support the provision of innovative services in the interest of users". We agree with this and believe that a certain amount of coordination of industry players – overseen by regulation – would do much to establish the efficient management of networks and capacity and therefore allow for the development of "smartness" for the benefit of consumers. In particular, our experience in other markets convinces us that maximising customer choice in a competitive service market delivered over a governed infrastructure framework will indeed deliver innovation

² http://www.gsmeurope.org/documents/Delivering_openness_innovation_and_choice_for_consumers.pdf



in service provision and protect against anti-competitive concerns. In this response, we have presented some specific ideas on how the UK communications market could evolve towards this structure and would be interested in discussing them further with Ofcom.

Yours sincerely

Aileen Boyd
Regulation Manager.

Questions for discussion

i) How enduring do you think congestion problems are likely to be on different networks and for different players?

We have little direct knowledge of this. It seems commonly understood that traffic volumes are on the increase and therefore also the likelihood of network congestion. This would suggest that the development of further price signals to customers about exactly how much traffic they generate could play a role in reaching a solution to this problem.

ii) What do you think are possible incentives for potentially unfair discrimination?

We believe that in cases of vertical integration, where one entity has control of the networks as well as providing retail services, there could be both incentive and ability for that entity to discriminate against traffic providing similar retail services. Similarly, entities controlling traffic may be able to secure payment from some content providers which could incentivise them to prioritise that content and degrade rival content.

iii) Can you provide any evidence of economic and or consumer value generated by traffic management?

We have no specific evidence to provide but tend to agree with Ofcom that traffic management can benefit consumers. We see benefits including: prioritisation of video streaming for those consumers wanting to access such services; blocking of illegal content; insulating consumers from the effect of a subset of users employing a disproportionate share of available capacity at peak times. We also believe there may be economic benefits in harnessing consumers' willingness to pay more for better quality access and thereby allowing differentiated tariffs.

iv) Conversely, do you think that unconstrained traffic management has the potential for (or is already causing) consumer/citizen harm? Please include any relevant evidence.

No comment

v) Can you provide any evidence that allowing traffic management has a negative impact on innovation? **No**

vi) Ofcom's preliminary view is that there is currently insufficient evidence to justify *ex ante* regulation to prohibit certain forms of traffic management. Are you aware of evidence that supports or contradicts this view? **No**

vii) Ofcom's preliminary view is that more should be done to increase consumer transparency around traffic management. Do you think doing so would sufficiently address any potential concerns and why?

More transparency may have a role to play in better preparing consumers to exercise their choice in a competitive market, but please note the concerns in our covering letter about prescriptive regulation as well as our suggestion for a co-regulatory framework to develop measures in this area. However, we consider that it is even more important for Ofcom to address the underlying competitiveness of the retail market so that customers can easily exercise choice. Practical areas of work here, as discussed in our covering letter, include: developing consumer switching arrangements and fluidity in retail market so that customers can readily change supplier/ISP if they are unhappy; and promoting the maximum access for

alternative ISP/supplier combinations to any consumer-reaching “broadband” infrastructure, as in the “multi-channel model” we have highlighted.

viii) Are you aware of any evidence that sheds light on peoples’ ability to understand and act upon information they are given regarding traffic management? **No**

ix) How can information on traffic management be presented so that it is accessible and meaningful to consumers, both in understanding any restrictions on their existing offering, and in choosing between rival offerings? Can you give examples of useful approaches to informing consumers about complex issues, including from other sectors?

We are not aware of any examples of similar complexity.

x) How can compliance with transparency obligations best be verified?

We believe this should be relatively easy if the obligations relate to having certain types of information available on websites but please see the discussion in our covering letter about what type of CP should be subject to such obligations. Any organisation monitoring the subject matter of consumer complaints could also identify trends suggesting that particular suppliers were not providing what their customers required.

xi) Under what circumstances do you think the imposition of a minimum quality of service would be appropriate and why?

This is a complex area and, as discussed in our covering letter, we think such a move would need considerable further discussion with industry as to how it would be accomplished and its effectiveness monitored as well as what conditions might trigger the need for such measures. We believe that the sort of co-regulatory body we have suggested could keep this question under review – thereby helping Ofcom in its deliberations about use of any relevant new power in this area.