

**Title:**

Ms

**Forename:**

Angela

**Surname:**

Daly

**Representing:**

Self

**Organisation (if applicable):**

European University Institute

**What do you want Ofcom to keep confidential?:**

Keep nothing confidential

**If you want part of your response kept confidential, which parts?:**

**Ofcom may publish a response summary:**

Yes

**I confirm that I have read the declaration:**

Yes

**Ofcom should only publish this response after the consultation has ended:**

You may publish my response on receipt

**Additional comments:**

**Question 1: How enduring do you think congestion problems are likely to be on different networks and for different players?:**

One of the problems surrounding the issue of congestion is that it is difficult to discern the extent to which congestion problems exist and, if so, the extent to which they require traffic management practices. Research from sources independent of Internet Service Providers (ISPs) and online service providers would be useful in this

regard. It is unclear how much more investment in the network infrastructure would be needed to permit enough bandwidth for all applications using the Internet. Research from the Internet Society (ISOC) suggests that network capacity is growing by about 50% each year, so 'there does not seem to be a problem in catering to Internet traffic growth, at least at the macro level'.<sup>1</sup> Nevertheless, the increasing use of mobile broadband Internet may well entail more congestion problems there than access via fixed lines, and so traffic management practices could be more appropriate in that context. In any event, it would seem that more research, particularly from independent sources, is necessary in order to discern the enduring nature of any congestion problems, and the best ways to remedy them.

1. Mat Ford &ldquo;The Bandwidth Bandwagon&rdquo; IETF Journal Volume 5, Issue 3, January 2010. Available at:  
<http://www.isoc.org/tools/blogs/ietfjournal/?cat=21#post-1488>

### **Question 2: What do you think are possible incentives for potentially unfair discrimination?:**

A response to this question depends very much on what Ofcom means by 'unfair discrimination'. If this means discrimination against certain content, services or applications in an anti-competitive fashion i.e. by an ISP favouring the content of its subsidiary, then surely there are the usual incentives for anti-competitive behaviour. If, however, 'unfair' means more than just anti-competitive, then there are also incentives for ISPs to behave unfairly beyond anti-competitively. Indeed, in Canada Telus was not just discriminating but actually blocking Internet content for its subscribers, namely the Telecommunications Workers Union's website in July 2005 when the company and union were in the course of a dispute.<sup>1</sup> Although such instances of ISPs managing traffic for ideological reasons may be rare in liberal democracies, nevertheless ISPs may have incentives to do this and the Canadian example shows that this can indeed happen in reality. Indeed, ISPs are in a powerful position not just economically but also socio-culturally inasmuch as they possess the means to control what information users actually see, and thus they may well have incentives to abuse this position in more than just an anti-competitive fashion, especially in the absence of a condition imposed upon them to guarantee users access to the content, platforms and applications of their choice (unlike the approach of some other regulators).<sup>2</sup>

1. CBC News Telus cuts subscriber access to pro-union website 24 July 2005.  
Available at: <http://www.cbc.ca/canada/story/2005/07/24/telus-sites050724.html>

2, For example, ARCEP and the FCC plan to include such a guarantee for users, and the NPT in its non-enforceable Guidelines stipulates the same thing.

### **Question 3: Can you provide any evidence of economic and or consumer value generated by traffic management? :**

**Question 4: Conversely, do you think that unconstrained traffic management has the potential for (or is already causing) consumer/citizen harm? Please include any relevant evidence. :**

**Question 5: Can you provide any evidence that allowing traffic management has a negative impact on innovation? :**

**Question 6: 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? :**

**Question 7: 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?:**

**Question 8: Are you aware of any evidence that sheds light on peoples' ability to understand and act upon information they are given regarding traffic management?:**

**Question 9: 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?:**

**Question 10: How can compliance with transparency obligations best be verified?:**

**Question 11: Under what circumstances do you think the imposition of a minimum quality of service would be appropriate and why? :**