



OFCOM

TRAFFIC MANAGEMENT AND 'NET NEUTRALITY': A DISCUSSION DOCUMENT

TALKTALK GROUP RESPONSE

September 2010

A. INTRODUCTION AND SUMMARY

1. This is TalkTalk Group's (TTG) response to Ofcom's discussion document about traffic management and 'net neutrality'¹. TalkTalk Group provides broadband to over 4 million residential and business broadband customers under the TalkTalk, AOL, 00opal and Pipex brands. We are the UK's biggest local loop unbundler and operate the UK's largest next generation network (NGN). TalkTalk welcome the opportunity to input to Ofcom at an early stage about this issue.
2. Net neutrality advocates are effectively calling for regulation to prohibit / restrict ISPs from prioritising traffic and charging content providers for carriage. Traffic prioritisation and carriage charges are perfectly normal and legitimate business practices that benefit consumers. Traffic prioritisation and differentiation / discrimination is widespread across the Internet today (in other words, the Internet is not neutral). This non-neutrality has been a key factor in driving innovation and investment e.g.
 - Different customers can purchase a range of different access products that provide different speed, capacity and bandwidth caps. Business customers, for instance, use products that prioritise their traffic. Such innovation and choice has allowed new services to develop and has driven broadband uptake
 - Content providers purchase products (to link their services to the Internet) with a range of different speeds and capabilities. Some content providers also buy CDNs to bypass some of the more congested parts of the Internet or link direct to ISPs to ensure their users a better experience
 - Almost all ISPs prioritise and discriminate between traffic on their network e.g. blocking VoIP, shaping P2P / streaming, prioritising voice in NGN
 - Charging content providers is a normal business practice that allows lower prices to consumers and can increase uptake and economic efficiency. This so-called 'two-sided' market approach is widely used in newspapers and TV distribution (though is limited on Internet)
3. These practices are unequivocally beneficial to customers and content providers since competition between ISPs (which is strong in the UK) ensures that any harmful practices would result in customers moving to other ISPs. In effect, market forces create strong incentives for ISPs to operate in consumers interests. Therefore, unsurprisingly even though there is widespread differentiation today there is no evidence of any harm - the market is working effectively. Effective competition also ensures that charges levied on content providers result in lower consumer prices. The net neutrality lobby's arguments that differentiation deters innovation are mere conjecture and lack any *a priori* logic or empirical evidence.
4. The need for and benefits of prioritisation and differentiation will increase with the growth of IPTV services which require more stable and reliable services.

¹ If there are any questions regarding this submission please contact Andrew Heaney (HeaneyA@talktalkgroup.com or 07979 657965).

5. 'Net neutrality' regulation to restrict prioritisation / charging (including imposing a minimum QoS) would have a large number of detrimental impacts:
 - Would replace consumers own choice with a regulator's imposed (and probably ill-informed) view of what is right for customers and consequently would restrict choice
 - Would unequivocally result in economic losses and would hamper innovation and investment
 - Would likely have harmful unintended consequences since regulation cannot hope to adapt with the fast moving market
 - Would be a wholly unwarranted constraint on the ability of ISPs to operate their businesses freely (seemingly driven by a desire by content providers to prevent legitimate charging and/or ideologists who wrongly think the net is neutral today and believe that neutrality supports innovation)
6. We agree that for competition to be effective there must be transparency and we are willing for regulation to step in to ensure this. Any obligations in this area must:
 - Apply equally to mobile as well as fixed ISPs
 - Be comprehensive across all ISPs both small and large
 - Given the almost non-existent or low level of consumer concern today, the general approach to providing transparency should be to start simple (and quickly) and refine the approach over time
7. Our response is split into four sections:
 - the benefits or harm that result from ISPs prioritising traffic and/or charging content providers for carriage on their networks (section B)
 - the necessary conditions that allow customers to benefit from traffic prioritisation and charging content providers - we see three conditions: a competitive ISP market, transparency and easy migrations (section C)
 - other related issues such as difference in approach between fixed and mobile (section D)
 - lastly, we respond to each of the specific questions that Ofcom posed in its consultation (section E).

B. TRAFFIC PRIORITISATION / CHARGING FOR CARRIAGE

8. Net neutrality advocates seem to want to prohibit ISPs from two normal and legitimate business practices. The practices that it wants to forbid are:
 - certain / all forms of traffic management / prioritisation
 - charging content providers for carriage on their networks
9. The underlying reasons for it are rather unclear though they seem to suggest that prioritisation/charging would be harmful based on the notion that the claimed

'neutral' nature of the Internet and content innovation will be hampered if these were allowed. However, these groups have provided no tangible examples of the problems that might result and their complaints are mere conjecture. In part, (certainly in the case of some the net neutrality advocates) the rhetoric seems to be little more than a self-serving attempt to have regulatory supported free carriage on ISPs networks.

10. Ofcom appears to be of the view that there is no need to prevent charging content providers and restrict traffic prioritisation provided that the relevant economic (retail ISP) market is competitive and that ISP traffic management policies are transparent to consumers. We wholeheartedly agree. We expand on our reasoning below.
11. Traffic management / prioritisation (i.e. differentiating and discriminating between traffic / services) is a widespread feature of the Internet today. The Internet is not and has never been 'neutral' or provided 'equal access'. For example:
 - Consumers purchase a range of different access products that provide different speed, capacity and bandwidth caps. Business customers, for instance, use products that prioritise their traffic
 - Content providers purchase a wide range of different products to link their servers to the Internet. These links provide a choice of different speeds and capabilities. Some content providers also buy CDNs to bypass some of the more congested parts of the Internet or link direct to ISPs to ensure their users a better experience
 - ISPs prioritise and discriminate between traffic on their network
 - NGN operators discriminate core voice traffic
 - Some mobile operators block VoIP traffic
 - most ISPs discriminate between different types of traffic particularly during periods of network congestion² e.g. P2P and streaming
 - some ISPs block traffic when customers breach their usage cap (and/or charge extra)
12. Providing such choice to consumers and content providers and prioritising and discriminating between traffic, is beneficial to both customers and content providers and is a sign of a well functioning market. It allows customers and content providers to select the service that suits their particular needs and the value they attribute to it. For instance, content providers that value higher speed / lower latency can pay for the additional quality if they so wish rather than having to make do with 'one size fits all' - for example, prioritisation would allow them to provide a more attractive IP TV service to be provided (supporting innovation and investment in that area). Alternatively providers who don't value higher quality

² Congestion is inherent where demand for bandwidth exceeds capacity. All telecoms networks are operated to allow some congestion. To do otherwise would be highly inefficient. During periods of congestion all traffic can be treated equally (i.e. best efforts) or alternatively certain traffic can be prioritised

don't have to pay for it. Prioritisation also allows ISPs to manage their networks and provide attractive services and increase uptake.

13. A market that differentiates in this way supports innovation and investment - it does not discourage it (as the net neutrality lobby suggest). Two examples of the incorrect and baseless assertion from two of the prominent members of the net neutrality lobby are below:
 - *"Net neutrality means simply that all like Internet content must be treated alike and move at the same speed over the network. The owners of the Internet's wires cannot discriminate. This is the simple but brilliant "end-to-end" design of the Internet that has made it such a powerful force for economic and social good"* . Lawrence Lessig & Robert W. McChesney³
 - Vinton Cerf has argued that *"the Internet was designed with no gatekeepers over new content or services"*⁴ and *"allowing broadband carriers to control what people see and do online would fundamentally undermine the principles that have made the Internet such a success"*⁵ – [30]
14. These assertions are inconsistent with both empirical evidence and basic economic principle. The Internet is not neutral today, content is not treated alike - contrary to the claim that neutrality is required to foster innovation, in fact non-neutrality has been a mainstay in fostering the huge innovation and economic good we have seen. Further, all economic theory supports the view that economic benefits and innovation are maximised when there is service differentiation and all revenue sources are tapped into - constraining differentiation and revenue sources will inhibit innovation and economic good.
15. Prioritisation will be increasingly important with the growth in IPTV services (such as Canvas) and voice over IP services. These services are particularly time sensitive and service quality will suffer without the ability to prioritise this traffic and discriminate in favour of it.
16. Just as prioritisation is beneficial so too is charging content providers for carriage. Charging is necessary to be able to effectively discriminate between traffic - if there is no charging mechanism then in effect it will be impossible to decide which traffic to prioritise.
17. As Ofcom highlight the model of access platforms charging content providers (in a so-called two-sided market) occurs in other markets such as newspapers (e.g. advertising), TV (TV channels paying cable operators for carriage) and App Store (application providers pay for access and visibility). Though it does not occur to a large degree today in the Internet access market, it may well be economically efficient for ISPs to recover revenue from content providers. To prohibit or restrict

³ Lawrence Lessig & Robert W. McChesney (8 June 2006). "No Tolls on The Internet". Columns (Washington Post).

⁴ Davidson, Alan (8 November 2005). "Vint Cerf speaks out on net neutrality". The Official Google Blog. Google

⁵ Vinton Cerf in testimony before Congress February 7, 2006

charging would inhibit the market from working efficiently and force all costs to be recovered from customers.

18. It is important to recognise that charging content providers as well as customers does not (in a competitive market) result in excess profits since the additional revenues from content providers will be competed away through lower retail prices to consumers. Furthermore, ISPs cannot extract excessive rents from content providers since content providers have countervailing buying power and can withdraw their content thereby diminishing the attractiveness of the ISPs service.
19. Prioritisation and charging will only be beneficial if the market is competitive since the discipline of the market ensures that any prioritisation or charging is in consumers' interests. For instance:
 - if an ISP introduces traffic prioritisation or blocking policies that are against consumers interests this will be punished by consumers voting with their feet (or mice) and defecting to other ISPs
 - any additional revenue resulting from charging content providers will be competed away through lower retail prices to consumers
 - if an ISP tries to charge excessive prices to a content provider (or block their service) then the content provider may withdraw the service in which case customers may defect to other ISPs in order to access the content / service
 - if an ISP prioritises its own content services over those of competitors (or blocks the competitor service) then the competitor content providers may withdraw their services causing customers to defect to other ISPs
20. At this point it is worth addressing a couple of the other arguments that are peddled by the net neutrality lobby: that neutrality is required to allow small content providers to develop; and that neutrality is required to ensure freedom of expression. They argue that small innovators may be prevented from gaining access to customers by ISPs and in the case of freedom of expression they fear that individuals will be unable to put across their views across. In both these cases, if access to these services / content were important to customers and they wanted unrestricted access, then any ISP which blocked or degraded access would see subscribers defect to other ISPs rendering such blocking / degradation unprofitable. The idea that allowing prioritisation and charging will prevent small innovators and inhibit freedom of expression is an absurd nonsense that has seemingly been peddled by the net neutrality lobby to make its view more appealing.
21. As well as competition, transparency is also important so that consumers⁶ are aware of any prioritisation that is occurring to create a clear incentive against harmful behaviour. We think the market provides reasonable transparency today, but notwithstanding this, TTG is happy to engage in Ofcom-supported industry discussions about how transparency can be improved and how it can be consistent. It is important that transparency is provided by all ISPs, whether fixed or mobile,

⁶ There is equally a need for transparency for content providers

small or large. We think that this information should be provided by ISPs though, as it does today, we expect that the market (through blogs, forums etc) is likely to highlight unusual and/or unreasonable practices.

22. Therefore, given a competitive / transparent marketplace there will be no benefit from any form of regulatory intervention to restrict prioritisation or charging⁷ (including setting a minimum QoS level⁸). Regulatory intervention would:

- Reduce choice for consumers and content providers since ISPs will be less able to develop different approaches. Restricting prioritisation and charging will limit choice by forcing a 'one size fits all' approach on consumers, ISPs and content providers. This might in theory ensure that everyone / all traffic get treated equally - however it effectively means that they all get treated equally badly
- Reduce economic efficiency since it will force all costs to be recovered from consumers rather than allowing some costs to be efficiently recovered from content providers
- Hinder innovation and efficient investment in networks and services. For example:
 - There will be less revenue available for ISPs to invest in new capacity and new network
 - Service levels will be dumbed down to a 'one size fits all' level restricting innovation and investment in new services
 - Content providers will have no / fewer options to have their traffic prioritised to ensure a better experience for their service
- Result in harmful collateral effects⁹, be impractical and expensive to administer. For a regulator to intervene would require determining a minimum QoS level and / or allowable levels of charges to content providers.
 - It is unclear how or on what basis a regulator would decide what discrimination would be allowable - in essence it would be arbitrary
 - Similarly, setting charges would likely be wholly arbitrary since there is no sound economic method (accounting for two-sided market dynamics) that would allow prices to be set robustly¹⁰ thus the price is likely to be inefficient
 - Any regulation will be slow to adapt to changing circumstances (meaning that any regulation would be outdated and so result in further detrimental impacts)

⁷ prioritisation / charging practices that should not be restricted include charging different content providers different prices for a similar service (such discrimination is welfare enhancing) and blocking

⁸ Setting a minimum QoS level would indirectly restrict traffic management and charging (see §49)

⁹ For example, if say regulation dictated which traffic could be prioritised it may unintentionally prevent the prioritisation of traffic that would be beneficial. Alternatively, if regulation prohibited charging of content providers it might result in overall service degradation

¹⁰ Efficient prices are likely to reflect a complex level of bargaining between content providers and ISPs reflecting the value of the content

23. More generally, introducing regulation in this area would run counter to the Government's overall approach of trying to minimise the burden of regulation on businesses and individuals¹¹ and ensure that there is a sound evidence base (and good reason) to introduce regulation and burdens.
24. The call by net neutrality advocates for restrictions of this type on normal business operation is wholly unjustified. There is nothing unique about the Internet or Internet content that would mean that the normal principles of economics and market forces should be abandoned and replaced with a regulator-specified set of rules about what can and cannot be done. The idea that regulation should prohibit prioritisation and charging has about as much economic logic as:
 - Preventing differentiated levels of customer care
 - Preventing newspapers from charging advertisers for space in their newspapers
 - Preventing TV channels from getting revenue for channel sponsorship
 - Stopping Apple charging for access to its App Store
 - Imposing a must-carry obligation on a (non-dominant) TV platform forcing them to carry certain channels
25. We see it far better that customers set the services and traffic management they want and value through the mechanism of the market rather than having a (poorly-informed) regulator dictating it for them.
26. Prioritisation and charging content providers are perfectly and legitimate, necessary and efficient tools for network operators to manage and operate their businesses. We believe Ofcom must make a clear public statement regarding the acceptability of these practices.

C. COMPETITION, TRANSPARENCY AND MIGRATIONS

27. As Ofcom rightly highlights traffic prioritisation and charging for carriage will only be beneficial if the market is competitive and there is transparency. We also consider that easy migrations is also a necessary condition to ensure that prioritisation and charging do not cause harm. We discuss each of these points (competition, transparency, migrations) below.
28. We agree with Ofcom that the ISP (both fixed and mobile) markets in the UK are competitive. Furthermore, certainly in the fixed arena, the level of competitiveness shows no signs of reducing.
29. We agree with Ofcom that transparency needs to be ensured. In order for the market to be competitive consumers need to be informed (in a meaningful and relevant way) about the variety of services on offer and / or service they receive. Regarding the actual approach, we are concerned that Ofcom is trying to engineer

¹¹ <http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=414871&NewsAreaID=2>

a theoretically perfect solution that in reality will be overkill. Given that there is relatively little consumer concern today about traffic management¹² we think a far better approach would be to start simple (and quickly) and refine the approach in time. Our comments on the transparency are included in the answer to consultation question (ix) below (§47 *et seq*).

30. We think as well as transparency it is also necessary for migrations between different ISPs to be reasonably easy. Having information about an ISPs traffic management approach is of little use if a customer is unable to easily move to another ISP if they dislike their current ISPs traffic management policy. In respect of migrations, TalkTalk believe that the current MAC-code process used for broadband only migrations (which requires customers to obtain a code from their existing provider) adds unnecessary hassle and the alternative 'advice of transfer' process is more customer friendly. We are pleased to note that Ofcom agrees (in Ofcom's Strategic Review of Customer Switching). It is important that changes are made quickly to ensure that competition is effective and harmful prioritisation / charging practices do not arise.

D. OTHER ISSUES

31. We have a number of other issues that are relevant.
32. There is a relatively noisy debate ongoing in the USA regarding net neutrality. It is important that the UK (and Europe) does not blindly adopt the approach in the US without considering the differences in context. The differences are very significant and are likely to lead to a different approach to regulation:
 - The reason as to why there are concerns over prioritisation and charging in the US is because they do not have a competitive ISP sector (in each area there is effectively a duopoly between the incumbent telco and the cable operator)
 - The legal framework in the USA is very different which means that, for instance, transparency cannot be easily ensured. Further, the concerns are magnified by the legal uncertainty over whether and how broadband services should be or might be regulated
 - The issue has become highly politicised (which hopefully it will not in the UK and Europe)
33. Another important consideration in assessing the approach to traffic management and net neutrality is the respective treatment of fixed and mobile ISPs and services. We believe there is no reason for any difference in treatment between different providers / types of ISPs. In particular, any regulation (or non-regulation) should apply equally to mobile as well as fixed services¹³. So there must be no situation where, for instance, fixed services are required to provide transparency

¹² TTG is not aware of any complaints to Ofcom by consumers or content providers

¹³ In the case where, say, a minimum QoS was applied this may need to differ between fixed and mobile

but mobile are not (or visa-versa). Unfortunately, Ofcom has adopted an inconsistent approach in respect of Ofcom's broadband speed code which unreasonably only applies to fixed operators. An inconsistent approach would be incompatible with Ofcom's general technology neutral approach.

34. A number of ISPs - notably France Telecom, Deutsche Telecom, Telefonica and Tiscali (before they were purchased by TTG) - have argued at certain times that content providers should be required to pay for access else they will be freeloading on ISPs networks. We disagree with this view. We see any form of regulatory intervention in the commercial relationship between ISPs and content providers as unnecessary and harmful whether it is to prevent any charging or to require payment. The complex bargaining should be left to the market to resolve and there should be no regulatory intervention at all.
35. In its discussion of transparency and consumer understanding Ofcom discusses the question of consumers expectations regarding speeds. Ofcom (at §§5.18-5.19) imply that one of the reasons for expectations not being met is that they were mis-sold at the point-of-sale. This is simply incorrect. Most customers (certainly those who take a TTG service) are provided with an estimate of speed at the POS. The actual speed varies from this estimate because the information provided by BT that ISPs use to estimate speeds is inaccurate. To suggest that ISPs mis-sell the service is simply mis-leading.

E. CONSULTATION QUESTIONS

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

36. Almost all telecoms networks are today operated with some degree of congestion. It would be economically highly inefficient to avoid all congestion by building capacity to meet peak demand. Congestion will certainly continue to some degree. The level of congestion will depend on a number of factors such as overall growth in demand, sensitivity of service to congestion / willingness to pay and cost of capacity. For instance, if the cost of additional capacity falls but the value of that extra capacity increases (given a shift to 'time-sensitive' services such as IPTV) then it may be that congestion falls. However, irrespective of the trend congestion will continue to some degree and therefore prioritisation / charging will continue to be relevant.
37. We would expect a higher degree of congestion on mobile networks given the higher cost of additional capacity. Indeed this has already happened and as a consequence mobile networks deploy heavier traffic management than fixed networks (e.g. blocking VoIP, usage caps)

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

38. We are unclear what Ofcom means by '*unfair*' discrimination - for the purposes of this answer we assume Ofcom means discrimination that is harmful i.e. against consumer interests. Provided there is effective competition, transparency and easy migrations we do not envisage there being any incentive for ISPs to engage in harmful discrimination that is against customer interests since if it did engage in practices that were against customer interests then the market will punish such behaviour and render it unprofitable.

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

39. We do not have any empirical evidence of the economic / consumer value generated by traffic management. However, given that most ISPs engage in traffic management it must *a priori* be valuable and economically efficient because it reduces costs and/or allows the provision of more attractive services.
40. In addition, traffic management / prioritisation and charging creates further economic value by tapping into new revenue streams and enabling innovation and investment.

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.

41. We are unaware of any traffic management that has caused consumer / citizen harm¹⁴. We are not aware of any complaints made to Ofcom regarding TTG. Further, (as we explained above §19) we consider that *a priori* harm is unlikely in a competitive market since it would be unprofitable.
42. It would be useful for Ofcom to identify examples or types of discrimination or prioritisation that it considered harmful.

v) Can you provide any evidence that allowing traffic management has a negative impact on innovation?

43. We are unaware of any traffic management that has caused a negative impact on innovation. As we explained above (§12), prioritisation and service differentiation

¹⁴ When we refer to harm, this refers to the overall level of harm / benefit. Though some customers may be disgruntled by certain traffic management (for seemingly ideological reasons in some cases) our view is that in aggregate there is no net harm

enable innovation and investment rather than hinder it. The fact that there already exists substantial innovation and investment in an environment where there is significant traffic management contradicts the claim that traffic management has a negative impact on innovation.

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?

44. No. There is no harmful prioritisation that we are aware of. There is currently no need for any regulation of any traffic management.

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?

45. We agree that transparency is important and that it would be appropriate to improve transparency. We see no reason as to why transparency improvements combined with a competitive market will not be sufficient to disincentivise harmful practices. There is no reason to presume that consumers cannot be well enough informed to be able to select what is right for them. In any case, it is clearly preferable to try to improve transparency and see whether there are any harmful practices rather than to impose regulation on the basis that there might be hypothetical (but unspecified) problems in future and transparency might not be effective enough to address the problems.

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?

46. 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?

47. We see there several key considerations when assessing the appropriate approach to providing transparency
- We do not believe that there is a significant problem with transparency today since there is little interest or concern about traffic management form

customers. For instance, we are not aware of any Ofcom complaints. However, there is likely to be increasing levels of prioritisation in future with growth of IPTV and VoIP which will increase the need for transparency. We have little doubt that sufficient transparency could be provided to provide consumers with sufficient information to make informed choices and so ensure effective competition and thus render harmful prioritisation unprofitable

- There are two broad approaches to providing the type of information that could be provided: one based around the traffic management approach (i.e. what actions ISPs take) or the alternative based around the impact on the experience. Both have their pros and cons:
 - The experience impact is more relevant to customers but cannot be accurate since the actual impact will vary between customers. For example, customers on a service with a 2Mbps line speed will notice the impact of IPTV traffic being prioritised over their web traffic (e.g. slower page upload) whereas a customer on a 12Mbps service will see little tangible difference on their web browsing experience
 - The traffic management approach is more accurate and specific yet (since it is highly technical) is likely to be difficult for customers to understand and translate into how it will affect their actual experience
- There is a clear need for consistency amongst ISPs both in terms of what is conveyed but also in terms of the language used. This will allow customers to more easily compare approaches of different ISPs and also avoid the need for customers to 'learn several languages'.
- Any transparency approach must be comprehensive in the sense that it applies to all ISPs (including smaller ones and mobile ISPs). If it is not it will potentially lead to harmful traffic management and be competitively distortive
- Given the non-existent or low level of consumer concern today we think the general approach should be to start simple (and quickly) and refine the approach over time. Some of Ofcom's suggestions indicate that it is trying to engineer a theoretically perfect solution - we think that such an approach would be overkill
- In terms of the approach we think that the use of 'behavioural economics' (see §5.51 *et seq*) is probably excessive at this stage. There is today relatively little concern about traffic management and therefore we see it as more appropriate to test out an approach and evolve it in future (rather than attempting to design the theoretically perfect approach today). Spending time and effort on this would be wasteful (particularly in a time of spending cuts)
- There could be a number of different approaches to how the information is distributed e.g. on ISPs own sites or on a central 'one stop shop' site. We strongly favour information being provided on ISPs own sites as is all other information about an ISPs service e.g. price, product capabilities, features, options, line speed estimate etc.
 - the idea that a central site will allow one stop shopping (§5.35) is nonsense. All the other (far more important) information that a consumer would use to make a decision is on ISPs' own sites

- the TopComm experience has shown that central sites are of limited use to customers (even if the information is important, which in this case it is not)
- the idea of requiring the provision of real-time data is absurd. To require that level of cost for such a relatively unimportant issue is wholly disproportionate
- We think the best way forward is a focused stakeholder group to develop a voluntary code that is representative of ISPs, consumer groups and other relevant stakeholders and is facilitated by Ofcom. We think this is better than the approach that Ofcom adopted for the broadband speed code of practice where Ofcom developed the code and then tried to impose it on ISPs through coercion.

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

48. Since the transparency obligations are likely to include a requirement that traffic management policies / impacts are easily accessible it is likely to be reasonably easy to access the policies. Verifying compliance will depend on what the precise 'rules' are but it should not be difficult. Furthermore, it is likely that other ISPs may well raise concerns of non-compliance by other ISPs with Ofcom. We do not consider that monitoring compliance would be difficult.

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

49. Imposing a minimum QoS in effect restricts ISPs' ability to prioritise traffic and charge content owners - it effectively mandates a must-offer free form of carriage. This would distort ISPs' ability to charge for carriage. It also limits the type and amount of prioritisation that can be deployed. The degree of restriction on charging for carriage and prioritisation obviously depends on the actual minimum QoS level - a high level would be more restrictive.
50. For the same reasons that we think regulating prioritisation and charging would be harmful (reduce economic efficiency and reduces innovation / investment), we also think setting a minimum QoS level will be harmful. Imposing a minimum QoS would be like saying to newspapers, Google or Yahoo that they *must* offer free advertising for certain adverts (e.g. small adverts).
51. The concept of a regulatory-set minimum QoS also highlights the practical difficulties of regulating in this area. If a minimum QoS was to be set then the minimum level would need to be decided upon. What method would be used to assess the level? The consequences of getting it wrong would be severe. For instance, if it were set too high it would force ISPs to inefficiently add capacity and it would also restrict (or possibly totally prevent) ISPs charging content providers thereby forcing all costs to be recovered from customers (which would also be inefficient).

52. We see it far better that customers set the quality standards they want through the mechanism of the market rather than having a (probably ill-informed) regulator dictating it for them.