

Representing:

Self

Organisation (if applicable):

N/A

What do you want Ofcom to keep confidential?:

Keep name 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?:

Market forces mean that congestion problems will inevitably continue. The market for broadband provision is highly competitive. Cost needs to be kept to an absolute minimum, and therefore as long as the cost of bandwidth is not negligible, ISPs will make maximum use of existing bandwidth assets and congestion is inevitable.

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

Where an ISP or other provider in the chain also offers additional services, there are strong incentives for that provider to unfairly prioritise traffic. A clear example is voice over IP services, where subtle degradation of service to rivals could influence customer choice towards what they see as a higher quality (but in reality an unfairly prioritised) service.

The same issue could apply where there are close relationships between an ISP and content or service providers.

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

I will use the example of PlusNet's product range to illustrate this answer. PlusNet is an ISP that actively manages traffic and is extremely open about its traffic management policies. They offer a range of products with various traffic management regimes. For example, they provide very low cost products with heavy traffic management, particularly during peak periods. It is of clear benefit to consumers to have an option for such a product, or to be able to choose a higher performance product at higher cost. I suspect offering such low cost products would simply not be possible without aggressive traffic management.

PlusNet also offers an "unlimited" product at low cost. Again, it is of clear benefit to consumers to have an option for this choice if it suits their needs.

On a slightly different topic, ISPs also have the option to provide reliable, high quality services on congested networks. For example, it should be possible to provide a credible voice over IP service on a significantly congested network (and therefore at reasonable cost) through the use of 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. :

Damage can occur to the consumer when traffic management is applied without full transparency and without due notice. This should be interpreted as a contractual change and consumers should be allowed ample notice and the ability to exit the contract without penalty.

I used to work from home frequently and used a VPN to access my place of work. My ISP at the time introduced traffic shaping which damaged the performance of the VPN at busy times. This was particularly noticeable as I used the VPN to provide telephony connectivity to the office. The ISP never admitted to making the change, but complaints on forums from other customers made it clear that the introduction of traffic shaping was the likely explanation. Eventually I moved ISP and the problem was fixed. However, the change wasted time and damaged my productivity.

A further concern is that consumers who do not fully understand what they are buying could sign up for a very heavily managed product, and find performance completely unacceptable at busy times. This is potentially particularly damaging as certain ISPs are offering long (18-24 month contracts) and marketing these aggressively to get consumers to sign up.

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

I have no evidence to support this. Indeed, the evidence supports the converse argument.

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? :

I believe the only form of traffic management that should be prohibited is the favouring of traffic to one provider over traffic to another provider using the same service/port/protocol. This has the potential to skew the market and prohibit open competition. For example, if a large provider were to favour one voice over IP provider's traffic and de-prioritise another, it would be anti-competitive, skew the market, and damage consumer choice.

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?:

Transparency around traffic management is key. This allows the consumer to make an informed choice and to select a product that best suits them and their needs. However, simply transparency is not enough. ISPs should also be monitored to ensure they are sticking to their advertised policies. The temptation to employ subtle additional traffic management without declaring it could give an unfair advantage to an ISP at the detriment of their customers.

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?:

PlusNet provides a good example here. As a consumer, I was able to examine their traffic management policies in some depth, and pick a product that matched my needs.

PlusNet do a credible job of providing a fairly simple high level overview of their different packages and the traffic management regimes that apply to them. Then for the knowledgeable consumer, they are able to drill down and find out in some detail how different classes of traffic will be prioritised and at what times of day.

Clearly PlusNet sell products across their range implying that consumers are able to make choices based on traffic management policies as well as usage caps and price.

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?:

The banking industry now uses 'key facts' documents for many of their products aimed at consumers. Something like a 'key facts' document for a broadband

product, in a standard format, and using standard scores to indicate levels of traffic management for various services would allow easy comparison between one product and another.

Careful thought would need to go into this, as it is important to avoid ISPs innovation effort being focused on obtaining the best possible 'scores' on a key facts document while providing the worst possible (most heavily managed) service.

Alternatively, innovation in certain areas could be stifled if ISPs, keen to achieve a certain rating, do not push certain boundaries to offer innovative products that may suit certain consumers very well.

So a continuous rating scale (a number) may be more appropriate than a 'traffic light' system, as ISPs may simply aim to just meet the criteria to achieve a certain category (colour of traffic light) and will ignore innovative solutions that would take them out of that category,

Full transparency with associated technical details should also be mandatory. While of no direct benefit to the majority of consumers (who will find the information largely incomprehensible) This will allow expert reviewers to provide reviews of a provider's packages, assess their value and suitability for different consumers, and to pick out specific advantages or concerns in those reviews.

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

Testing is the only way to verify obligations. A monitoring system similar to that provided in various performance tests by 'Samknows' to continually monitor a small, random selection of consumers / customers would seem to be the only credible way to ensure compliance.

This may need to be backed up by occasional, more detailed tests conducted on specific lines.

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

I do not believe an absolute minimum is appropriate. Imposition of an absolute minimum is likely to constrain innovation. With monitoring to verify compliance, and a simple 'key facts' system, standardised across all providers, the market should be allowed to decide. However, minimum standards should be set as part of the 'key facts', so that, for example, a ratings of 'no traffic shaping', or 'moderate traffic shaping', for example, have specific, defined meanings.