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**Response from the Mobile Broadband Group to Ofcom's discussion document on Traffic management and 'Net Neutrality'.**

The Mobile Broadband Group ("MBG", whose members are O2, Three, Vodafone and Everything Everywhere [which operates the Orange and T-Mobile brands in the UK]) welcomes the opportunity to respond to Ofcom's discussion document on Net Neutrality.

**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?**

The MBG agrees with Ofcom's general stance that, while remaining vigilant towards any anti-competitive behaviour, they should avoid being prescriptive about providers' traffic management policies before any consumer need for regulatory intervention has been established and keep open all options for new business models in this relatively new, highly dynamic and important market.

When considering transparency matters against any potential consumer concerns, there are three categories of 'traffic management' which, we would expect, involve different aspects of transparency.

- 1) Traffic management policies that are applied to some customers to manage customer compliance with fair use policies or data caps;

Customers are already broadly familiar with this type of traffic management. They are already informed of their usage rights and limits from the point of marketing and transparency is assured as policies are highlighted in key terms and conditions. This type of traffic management is purely a matter of contractual rights and enforcement and arguably, therefore, falls outside the real issue of 'net neutrality' which is at the centre

of this debate. The market has clearly demonstrated that it already applies a successful and customer-friendly approach to this sensitive area and consequently no regulatory intervention is required.

- 2) Traffic management policies that are applied to all customers in order to prioritise traffic in the network so that it works properly; and

Traffic prioritisation has become a necessary tool to ensure the most efficient use of the network and that customers receive and content providers deliver the best possible service. It is not a contentious topic consumers, demonstrating that none of the potential concerns about which Ofcom are wary, have arisen. This is because the competitive pressure to deliver good speeds and access to all content has been sufficient to ensure that any concerns about consumer harm and choice have been kept at bay. Indeed, traffic management in today's market is driven by competition: in order to deliver low cost/high quality broadband it is necessary to manage the network to reduce network cost and maximise the availability of those services demanded by the majority.

In terms of the transparency of these policies, our members are already signatories to the Broadband Speeds Code and/or the Mobile Broadband Speeds Code. However, the MBG also supports Ofcom's view that the right approach is to place more emphasis on improving transparency of these traffic management policies and improving the consumers' ability to make informed comparative choices between providers' offerings. The MBG discusses this in more detail in response to Question ix.

- 3) The potential future use of traffic management policies to create managed services with a view to broadening the range of services available to consumers and upstream content providers.

We support the view that the industry should take steps now to develop a robust, clear and universal platform for translating current traffic management policies in a way that is easy for consumers to understand and use. In turn, this will ensure that any potential concerns arising from other future possible applications of traffic management can be managed and, should the services ever be developed, that industry can communicate rapidly and transparently what consumers can expect from the services.

This approach, though, has to be carefully thought through as no-one wants policies or regulations that could, unintentionally erect barriers to innovation or a level of standardisation that would adversely impact providers' ability to differentiate themselves from each other.

It is also worth noting that it is not just ISPs that are able to manage traffic – content providers are able to limit download speeds too, and so it would be appropriate that the discussion also covers content providers.

Information and transparency requirements placed on ISPs should not be overly onerous or risk placing too heavy a burden on one sector of the industry and therefore distorting a technologically neutral playing field.

**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?**

The MBG is confident that the issue of traffic management can be explained to customers in a manner that is meaningful to non-technicians, including the reasons for it and practical consequences. We support this information being communicated clearly, in a readily accessible form and in a way that is easily comparable across operators.

Nevertheless, in designing appropriate methods of delivering such information, there are certain factors that need to be borne in mind:

- Customers often do not use much of the information that is produced for them (sometimes at great expense).
- Traffic management is quite a complex topic – it is often very localised, it's very fluid and often simply reactive to temporary situations. Delivering precise, real time information about traffic management on-line is likely to be expensive and of limited use to customers, both for comparative purposes and for managing personal use.
- If services are perceived by the customers to be running slow it is often difficult to identify whether bottlenecks are at the web-site end, in the Internet core networks or on the access network or on the device. Any information about the access network, therefore, gives only a very limited picture.

In spite of these factors and challenges, the MBG, like Ofcom, though, believes there are measures that can be taken to improve transparency about traffic management.

While there may be some discussion over the optimal way to improve transparency, the objective should not be to get every customer using the information provided. Experience tells us that only a sub-set of customers will use this type of information, however straightforward it is. But this does not matter, as long as there is enough at the margin using it to exert pressure on the competitive process. Other customers can 'free-ride' on the activism of customers that avail themselves of information on traffic management.

The motivation for providing improved information on traffic management is twofold:

1. To make the market for broadband, which is already working well, work more effectively by providing appropriate information to customers in advance of purchase.
2. To give transparency to customers using the service, so that they are in a position to optimise their personal usage – both in terms of amount spent and user satisfaction (e.g. knowing to avoid very high bandwidth applications during peak hours).

In this paper, the MBG considers the options in two sections: a) information given prior to purchase and b) information given in use. There will be elements common to both scenarios.

### **a) Information prior to purchase**

The issues at stake are not only what information is given but where and when.

The MBG supports Ofcom's list of 'what' information (as set out in answer to question x below) and so consideration in this section focuses on how, 'when and where' that information can best be delivered.

Ofcom has proposed 4 methods: the tiered approach, one stop shop, comparison web sites and real time information. This latter suggestion is not really relevant to the 'prior to purchase' situation and so is not considered in this section.

Some principles underpin our answers:

- Transparency: it is right that providers set out, in general terms, their traffic management policies. Indeed, this may form a point of competition as providers respond to demand and evolve different tariffs for particular user groups.
- Comparability: there should be an element of standardisation agreed among providers, as to how information is given. This will facilitate like for like comparisons.
- Usability: the form of information should not be technical and should be set out in a way that is intelligible to the average (although not necessarily every) consumer.
- Authority: the information must be provided in a context that the consumer will use and can be expected to rely on.

#### *The tiered approach*

The MBG supports Ofcom's suggestion of the tiered approach, whereby summary, simple information is set out prominently by the providers themselves on their web sites, linking to more detailed information for those that require it.

As a matter of principle, providers should be doing this. The information can be fairly general – e.g. *“certain protocols are ..... at peak periods in order to ensure a fair allocation of bandwidth to each customer”* and *“customers are recommended not to use*

*high bandwidth applications, such as video streaming between the hours of x and x, in order to optimise the user experience".* Such an approach might risk altering customer behaviour to the extent that the times of peak periods themselves shift but the MBG's judgement is that this is unlikely.

The MBG would not support any more detail than fairly generalised information being required, at the high level nor for prescribing requirements at the detailed level as there are details, for example, about particular localities or protocols where the information is too dynamic and specific for this to be proportionate to provide or indeed useful to the customer.

The tiered approach should be a useful place for customers to access relevant, basic information.

#### *The one stop shop*

The MBG does not support the 'one stop shop' approach. Our long experience (and Ofcom's) is that these sources of information are not used by customers to the extent that the time and effort spent in delivering them is worthwhile. 'Comparative Performance Indicators' for fixed telephony providers, Top Net for mobile operators are just two examples of initiatives that have not matched expectations. The MBG is uncertain why this is the case but our perception is that a) regulators have never had the resources or the commercial incentive to really build awareness among sufficient users and b) customers use other criteria and information sources to make their choice of provider.

#### *Price comparison sites*

Price comparison sites (and, in this context, the independent retailers that cover all the major operators could be considered as such), on the other hand, very much have the commercial incentive to build awareness and some have been very successful at doing so.

Provided the sites are authoritative and trustworthy and cover all the mobile networks (customers are increasingly sceptical about sites in other sectors that do not cover all the significant providers), the MBG believes that they are a useful channel through which to deliver comparative information to general consumers. The MBG would support Ofcom encouraging them, through the accreditation scheme, to increase transparency by extending the range of data provided to cover traffic management policies. It should be possible for providers to agree to make available key information in a reasonably standardised form and for providers of price comparison sites to make use of the data provided in a way that is useful and relevant to consumers.

For example a site might provide information on the following parameters:

1. Limitations on applications or protocols, distinguishing between absolute limitations (e.g. VOIP) and possible limitations at busy times, with additional information about which services are prioritised at busy times.

2. Congestion management techniques in operation (in general terms)
3. Indicative peak hours to avoid using high bandwidth applications
4. Costs/actions taken in relation to exceeding fair use or data allowances.
5. Method of checking geographical availability of mobile broadband

Care needs to be taken not to overburden the customer or price comparison site providers with information that may not have direct and practical value for the customer. For example, a customer experiencing service that he/she perceives is slower than normal may not really be interested in whether this is because of congestion on the network, traffic management or some other factor and so being overly precise is a somewhat superfluous if does not assist the customer in improving his/her speed of connection or experience. We therefore suggest that information is limited to the items set out above.

In addition care must be taken to ensure that any comparison sites and accreditation scheme do not inadvertently create a harmonised set of parameters for competition. It is important to ensure that consumers and providers have the scope to evolve different services etc, failing which innovation and services will be hindered. Accordingly, any form of transparency agreed by industry/the regulator should be primarily principles based since it is inevitable that the Internet will evolve more quickly than any form of regulation imposed upon industry.

#### **b) Information given in use**

The MBG agrees with Ofcom that it would be expensive and disproportionate to require providers to supply on-line detailed real time information about traffic management actually in process.

However, there are some items of information to which it would be reasonable for customers to have access in real or near-real time on-line:

- a) If a customer is on a tariff that offers a limited data bundle, he/ she should be able to ascertain how much data has been consumed and when the data limit has been reached, and of any additional charges for further data usage, if such charges are applied.
- b) For wireless connections, the on screen dash board should indicate which technology is being used (e.g. 2G, 3G, HSUPA). (It should be noted that customers also have available to them a wide of 3<sup>rd</sup> party speed checker applications)

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

Ofcom set out in its discussion paper the main points of the information it would require:

- price of the package and what it includes i.e. connection speed rate and services you can receive at different times throughout the day;
- description of traffic management practices;
- if traffic management is used, why and how;
- how traffic management can affect a user's internet experience for different types of internet services;
- any changes made to their existing traffic shaping practices;
- information on usage caps and costs of exceeding that usage cap;
- options for upgrade; and
- telephone number for technical support helpline.

In June 2009, the Mobile Broadband Group published a code of good practice for the responsible marketing of mobile broadband services. Most the information requirements suggested above are contained within the terms of the Code. Ofcom has also been informally reviewing compliance with the Code and feeding back its finding to mobile operators.

The mobile operators are willing to conduct a review of its self-regulatory code and, where it does not come up to fulfil the information requirements suggested above, make appropriate amendments. After a suitable period for implementation, we would be open to Ofcom feeding back its assessment of compliance on a more formal and transparent basis. However, as this is a relatively complex and dynamic component of our general consumer offering, we would wish the Code to remain rooted in self-regulation, albeit with oversight from the regulator. The approach of formal review and published outcomes was successfully employed by Ofcom for the review of the mobile operators' self-regulatory content code. Together with enhanced transparency to inform purchase decisions, we believe that this will deliver the optimal balance of flexible and responsive regulation, while giving the public the confidence that the self-regulatory system is subject to independent and robust scrutiny.