

Q&A ON TRAFFIC MANAGEMENT IN THE TELECOMS SINGLE MARKET REGULATION



Last September 2013, the Commissioner responsible for the Digital Agenda, **Neelie Kroes**, tabled a Regulation aimed at completing a European single market for electronic communications and to achieve a Connected Continent (also known as **the Telecoms Single Market proposal**), in which she proposed to include provisions on the “open internet”.

An important part of the net neutrality debate centers around **the management of internet traffic by Internet Service Providers (ISPs) and what constitutes “reasonable” traffic management (Article 23 of the proposed Regulation)**. This Q&A addresses this crucial aspect of the debate, in particular, the confusion around the need, scope, and limits of traffic management measures.

1. WHAT IS TRAFFIC MANAGEMENT?

Traffic management is a range of techniques used by internet access providers and network operators to administer their networks. In brief, “traffic management” involves interfering in the normal flow of internet traffic to prioritise, slow down or block certain data.

In practice, the tools of traffic management allow companies, to control the maximum speed or volume of user connections to various types of online content, amongst other measures.

2. WOULD NET NEUTRALITY PROHIBIT TRAFFIC MANAGEMENT?

Net neutrality does not prevent access providers from managing their networks. It does, however, prohibit traffic management that imposes arbitrary restrictions and discriminatory practices, including blocking, throttling, or altering of specific content, application, or services. The final Regulation should outlaw cases where traffic management measures are imposed for anticompetitive reasons, whether to hurt competing services or provide an unfair commercial advantage to access providers’ own services or those of their business partners.

3. WHEN IS TRAFFIC MANAGEMENT “REASONABLE?”

Traffic management techniques are reasonable if used on a **temporary** basis, during exceptional moments of congestion. Then, the impact of network management must be **necessary, proportionate, and targeted** to solve a particular problem. Finally, companies should have to **transparently and in an easy to understand manner** disclose to their users their traffic management policies and practices **in accordance with the law**.

Examples of **reasonable uses** of traffic management include the prevention of spam, blocking malware, or any other purpose to **limit the effects of temporary congestion or preserve the integrity and security of the network**.

4. ARE TELCOS EXPERIENCING PERMANENT CONGESTION PROBLEMS?

The Body of European Regulators for Electronic Communications (BEREC) defines congestion in its [guidelines for quality of service in the scope of net neutrality](#). Congestion is the situation in IP networks when traffic increases to a level at which routers run out of buffer space and are forced to start dropping some IP packets. Congestion can occur as a result of **unpredictable and unavoidable situations**, or as a result of a failure of the ISP to invest in building sufficient capacity.

Congestion is not a permanent condition and only happens in exceptional circumstances. As a result, it might require intervention in the network in the form of “reasonable traffic management.”

5. LEGAL FAILURE IN THE COMMISSION TELECOMS SINGLE MARKET PROPOSAL

One of the most problematic issues of the proposed Regulation is the exception for traffic management measures used to “prevent or impede serious crime,” included in Article 23.5. a.

Due to the lack of a definition of “serious crime,” this provision could lead to ISPs turning into private police forces outside of the rule of law, which is in direct violation of Article 52 of the [Charter of Fundamental Rights of the EU](#).

Moreover, this provision falls outside the scope of “reasonable” traffic management, as it is neither necessary, targeted, proportionate, nor temporary. **As a consequence, this provision in Article 23.5.a should be deleted.**