

Update on Developments in Network Neutrality

Telecommunications Regulatory Affairs Advisory Committee
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Purpose of this Paper

- ✚ To provide Members with:
 - an overview of network neutrality related issues
 - an update on the latest development of network neutrality regimes in some overseas jurisdictions such as the United States, the European Union, the United Kingdom and Singapore

Overview (1)

- ✚ Definition of network neutrality:
 - Same treatment should be applied to the delivery of all lawful electronic communication irrespective of their origin, content and destination

- ✚ Two main camps of thoughts on network neutrality:
 - For (incl. consumers, over-the-top (“OTT”) application & content providers)
 - ensure freedom in telecommunications
 - promote fair competition among service and content providers
 - encourage innovations and investments in broadband access
 - Against (mainly network services providers (“NSPs”))
 - OTT application and content providers are free-riding on NSPs’ network facilities
 - legitimate for NSPs to recover their investment by charging their customers in the form of tiered services

Overview (2)

- ✚ Examples of deviations from network neutrality:
 - Access blocking
 - Degradation of service or content
 - Discriminatory prioritisation of service or content
- ✚ Concerns arising from deviations from network neutrality:
 - Vertically-integrated NSPs may have incentives to discriminate against other applications and content
 - Prioritisation of Internet traffic may lead to degradation of service and blocking of disfavoured applications/content
 - Network and traffic management may be used as a justification to discriminate certain traffic
 - Zero-rating certain services by NSPs may be a form of anti-competitive price discrimination

Overseas Situations - The United States (“US”)

- ✚ Promulgated by the Federal Communications Commission (“FCC”), the Open Internet Order 2015 came into effect on 12 June 2015, including the following high-level principles:
 - Clear, bright-line rules
 - no blocking
 - no throttling
 - no paid prioritisation
 - No unreasonable interference or unreasonable disadvantage (enforced on a case by case basis)
 - Transparency required
- ✚ The current US network neutrality regime is being challenged by a lawsuit filed by the US Telecom Association, arguing the FCC had overstepped its authority.

Overseas Situations - The European Union (“EU”)

- ✚ The EU-wide rules on network neutrality have come into effect as of 30 April 2016, following the adoption of the EU network neutrality regulations in November 2015.
- ✚ Under the new rules:
 - users will be free to access the content of their choice
 - users will not be unfairly blocked or slowed down
 - paid prioritisation will not be allowed
 - NSPs will still be able to offer specialised services of higher quality, as long as NSPs have informed subscribers about the speeds they can expect to get and about how traffic management and the provision of specialised services may affect the quality of the Internet access service
- ✚ National regulatory measures must eventually be aligned with the European legislation by end 2016.

Overseas Situations - The United Kingdom (“UK”)

- ✦ A voluntary industry code of practice called the Open Internet Code of Practice was published in July 2012. Signatories of the code have agreed to:
 - provide full and open Internet access products as the norm
 - commit against negative discrimination
 - commit to transparency requirements for any restricted products
- ✦ In respect of the adoption of the EU network neutrality regulations:
 - an independent review of the UK’s industry-led approach to the open Internet was launched in August 2015
 - the review found that the industry code had been effective and would continue to add value over and above the requirements laid out in the EU network neutrality regulations, though a number of amendments will be required to ensure full compliance

Overseas Situations - Singapore

- ✚ Infocomm Development Authority of Singapore (“IDA”)’s policy framework for network neutrality in June 2011:
 - NSPs are prohibited from blocking legitimate Internet content
 - NSPs must comply with IDA’s competition and interconnection rules in the Telecom Competition Code
 - NSPs must comply with IDA’s information transparency requirement
 - NSPs must meet the minimum broadband QoS standards
 - NSPs are allowed to offer niche or differentiated Internet service offerings
- ✚ Consultation paper on “*The Internet Protocol Transit and Peering Landscape in Singapore*” in February 2015:
 - includes a high-level assessment of the competitiveness of the IP Transit and IP Peering landscape in Singapore and the impact on the QoS for end users
 - decisions pending

Potential Network Neutrality Issues in Hong Kong

- ✚ A number of OTT video streaming services were recently launched in Hong Kong.
 - Is there any concern that NSPs may exercise traffic management and flow control arrangements for certain OTT service providers such that the quality of these OTT services provided to subscribers of the NSPs would be impaired?
 - Are consumers well informed of any traffic management and flow control arrangements affecting their access to the content services?

Past Experience in Handling Network Neutrality Related Case

- ✚ Limitations imposed by operators in “unlimited data plans” due to Fair Usage Policy (“FUP”)
 - In 2010 and the first 10 months of 2011, the former OFTA received 160 and 74 FUP-related customer complaints respectively
 - In 2012, the former TA issued a set of mandatory guidelines on FUP under Special Condition (“SC”) 1.2 of the unified carrier licence or the equivalent condition in other relevant types of telecommunications licences
 - NSPs implementing FUP by applying traffic control measures are required to inform their customers (a) the conditions for triggering the traffic control measures, and (b) the type of the service restrictions imposed
 - Contravention of the FUP guidelines is rare

Our Existing Approach to Deal with Network Neutrality Issues (1)

- ✚ Through promotion and maintenance of effective competition in the telecommunications market
- ✚ Safeguards under the existing laws or legal instruments:
 - the Telecommunications Ordinance
 - **ss.36A & 36B**: determine terms of interconnection & issue direction
 - **s.7I**: information
 - **s.24(1)(c)**: telecom officer wilfully detains or delays any message
 - licence conditions of the telecommunications service licences
 - **General Condition (“GC”) 5, GC 9 & SC 3**: requirement for provision of service as well as control of interference & obstruction
 - **GC 8 & SC 6**: obtain information from licensees
 - **SC 1.2**: issue guidelines in respect of, among others, the provision of satisfactory service

Our Existing Approach to Deal with Network Neutrality Issues (2)

- ✚ Safeguards under the existing laws or legal instruments [*cont'd*]:
 - the Competition Ordinance
 - **s.6**: the First Conduct Rule prohibits agreements, concerted practices or decisions having the object or effect of preventing, restricting or distorting competition in Hong Kong
 - **s.21**: the Second Conduct Rule prohibits the abuse of a substantial degree of market power by an undertaking in a market which has the object or effect of preventing, restricting or distorting competition in Hong Kong
 - the fair trading sections of the Trade Descriptions Ordinance
 - **ss.7A and 13E**: prohibit unfair trade practices such as false trade descriptions and misleading omissions

Way Forward

- ✚ Members are invited to give views on the following:
 - 1) Are there any legitimate concerns about network neutrality in Hong Kong?
 - 2) Is there a need for adoption of any new measures to protect and safeguard network neutrality (e.g. enhancing transparency of service information to customers)?
 - 3) Should the Communications Authority issue relevant guidelines or code of practice so as to provide practical guidance to NSPs in regard to network neutrality issues?

Thank You