

# Net Neutrality in New Times: Revisiting the Open Internet Regulation in the UK

## Summary

- There is very limited analysis of net neutrality rules in the UK and EU since they were introduced in 2015. The paper summarises the EU/UK rules and how they have been enforced / interpreted to date and calls for further work to establish whether they remain fit for purpose given emerging digital realities. The paper is a timely contribution to the debate given Ofcom's recently announced review.
- It finds general compliance with net neutrality rules, especially the prohibition on blocking (legal) content, applications and services. However, it notes that zero-rating remains a thorny issue – it is not prohibited per se but has fallen foul of national enforcement e.g. in the UK and CJEU decisions at the EU level
- The paper notes that content delivery networks are increasingly used, improving customer experience, but that these can produce advantages similar to those prohibited by net neutrality. The paper asks whether there is a case for a more liberal interpretation of the net neutrality rules where similar effects can be produced through alternative means.
- The current net neutrality rules have not prevented the growth in power of digital intermediaries and platforms – the paper questions whether the net neutrality rules have however helped facilitate this situation?
- The paper concludes by posing three questions for further research:
  - (a) **Could the net neutrality rules be 'softened'?** - Soft net neutrality may reflect a more permissive approach, allowing some instances of commercial traffic management so long as there is no blocking of content, services or programmes. Such instances would be subject to strict regulatory control, and their scope would be defined by legislation, and subject to ex ante competition rules. This is likely to be controversial from a pluralism and rights perspective and may only be appropriate in a context of competitive IAS markets.
  - (b) **Can soft net neutrality still protect citizen and consumer interests, and media pluralism?** Can a transition from hard to soft net neutrality rules be made in a way which does not compromise the key societal objectives and benefits behind net neutrality rules while introducing a new competitive dynamic to digital markets?
  - (c) **Does the new approach to digital regulation as embodied in the DMA/DMU reforms in EU/UK demand, in parallel, a new approach to net neutrality?** The increasingly recognised power of large content and platform providers, or 'gatekeepers', may prompt a reconsideration of net neutrality rules as to whether they are truly addressing power concentrations and imbalances in the digital sphere. However, prospects for rolling back or adjusting net neutrality rules such as transitioning to 'soft' net neutrality may not align with these proposals, which in various ways seek to impose further ex ante obligations on players – mainly platforms and other intermediaries.