NET NEUTRALITY: YET MORE TRANSPARENCY AND SWITCHING

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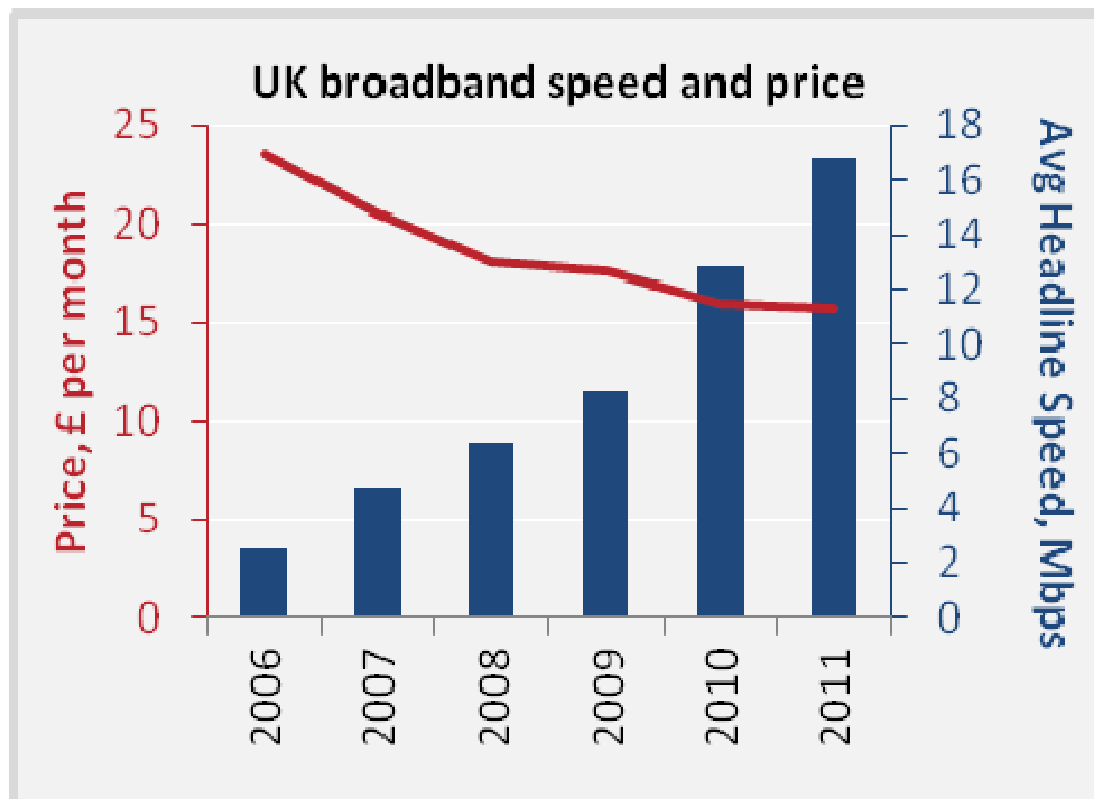c.marsden@sussex.ac.uk @ChrisTMarsden www.chrismarsden.blogspot.com

Network neutrality policy influences

- Ofcom, government – anti-NN

- Particular and unique network topology.
  - universal service,
  - why Ofcom has not taken on any disputes
  - substantial user disquiet about throttling/blocking

UK broadband market has relatively low competitive intensity

- 1 wholesale network for the majority
  - BT network typically ADSL (some ADSL2/VDSL)
- Weak cable competitor (US owned)
- Late LTE adoption in mobile
- Slower rollout to lower speeds than
  - United States, Korea or Netherlands
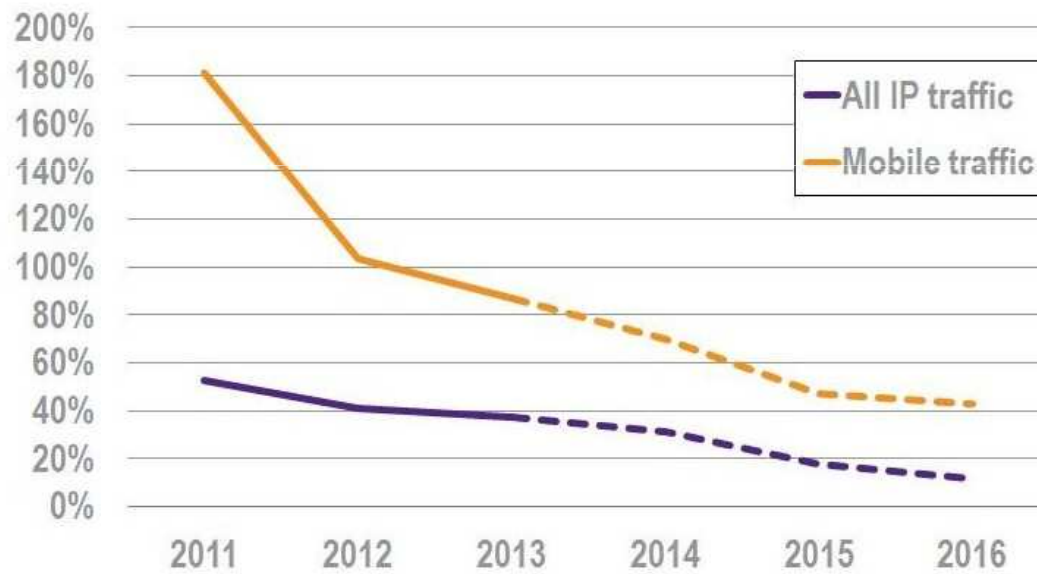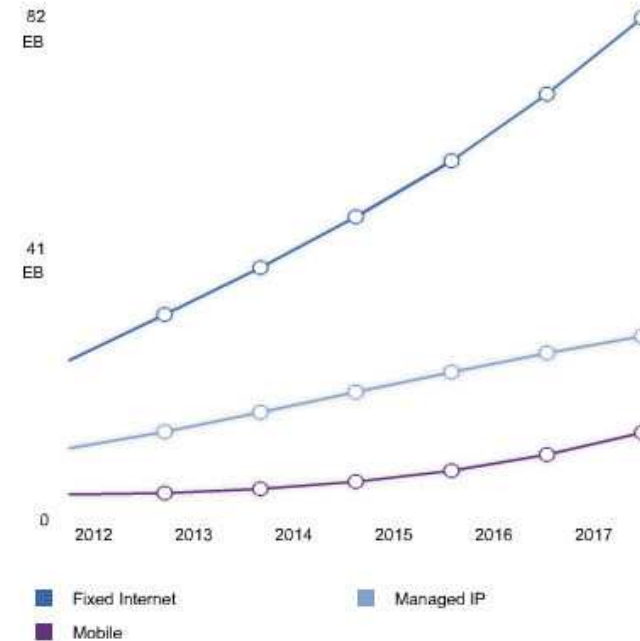 - But decent downstream speed within E5

UK broadband: quite cheap/slow

UK broadband speed and price

- Source OECD Broadband Portal: http://www.oecd.org/sti/broadband/oecdbroadbandportal.htm

CAGR reducing below historic levels

Data growth rate for Western Europe (Y/Y)

— All IP traffic
— Mobile traffic

Source: Plum Consulting, Cisco

Fixed Internet   Managed IP
Mobile

*Cisco VNI, May 2013

Government and regulator concern has been to encourage investment

- Direct state aid c. £1.5billion 2013-2015
- European Commission very concerned about potential for illegal disguised state aid
  - Finally agreed to state aid in December 2012
  - Benefits to be seen 2013-17

Charlie Dunstone, Chairman, TalkTalk
Ofcom Conference, November 2006

- "We shape traffic to restrict P2P users. It's a commercial decision, not because of security.

- "I get hate mail at home from people when we restrict their ability to play games.

- "I have 2 people currently threatening to kill me."

Evidence of throttling/discrimination

- Plagued network since broadband introduced
  - Press reports of BT throttling P2P in 2001…

- Direct attention of Ofcom in 2006 by both
  - TalkTalk: consumer anger at throttling P2P

- British Broadcasting Corporation
  - peer to peer video streaming throttled by BT

Regulator and government response

- Self-regulation by ISPs
    - greater transparency to end-users

- Regulation should be limited to
    - theoretical possibility to switch
    - should blocking and throttling occur
    - At the end of the customer's contract
    - Subject to ISP agreeing to hand over MAC code
        - Arbitration not regulator enforcement

Ofcom has so far responded

- denial that there was a problem until 2006,
- regulation of customer switching problems between ISPs since 2006
  - highly bureaucratic, 2013/14 consultation
- light touch attempt to persuade ISPs to offer greater transparency to users
  - Co-regulation disguised as self-regulation?

DIRECTIVE 2009/136/EC

New Articles 20 and 22, Recital 26:

- ☐ Consumer protection/citizen rights NOT SMP
  - ■ http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:EN:PDF
- ☐ Requirements to notify customers & NRAs
  - ☐ But will need civil society activists
  - ☐ To detect discrimination
  - ☐ To notify higher-end consumers of problems
- ☐ Added to interoperability requirements
- ☐ Article 5 Interconnection Directive

Declaration: Neutrality 2009/140EC

The Commission attaches high importance to preserving the open and neutral character of the Internet,

- taking full account of the will of the co-legislators
- to enshrine net neutrality as a policy objective and
- regulatory principle to be promoted by NRAs

Kroes new Commissioner 9Feb 2010

- "Commission shares the support of [net neutrality] and will protect it.
- The core issue is that internet providers
  - "shouldn't be allowed to limit the access to service or content out of commercial motivation
  - but only in cases of security issues and spamming".
- "She was happy to come along and underline her commitment to the portfolio."

Net neutrality laws 2013 update

- 19 December 2012: Slovenia net neutrality law

- 1 January 2013: Netherlands enforce 2012 law

- March 2013: France proposes net neutrality

  - And search neutrality? 'all intermediaries'

- That would be 4th country in Europe

Net Neutrality Statement 2011

- Very odd if detailed Ofcom document
- Ofcom expects ISPs to play fair
  - Hopes they don't block or throttle
- But no regulatory consequences if they don't
  - No immediate intention to apply 2009 EU law
  - Which in any case was optional for QoS

Ofcom light touch? No!

- Ofcom tried to strong-arm ISPs into self-regulation
  - Broadband Code of Conduct in 2009/10
  - BSG transparency code of practice 2011
- Minister Ed Vaizey had to do same for BSG Code
- Ofcom research with SamKnows
  - Painting a real picture of speeds/service
- Ofcom has regulatory powers:
  - Transparency —information on throttling and peaktime speeds
  - Minimum Quality of Service

EC new net neutrality regulation

- *ConnectedContinent* proposal 11 Sept 2013
  - would impose regulatory requirements on UK,
  - July 2013 UK 'consultation paper' obsolete
- UK to fiercely resist Commission's plans
  - from within the Council of Ministers in 2014?

COM(2013) 627 final 2013/0309

- Proposal for a Regulation laying down measures

- concerning the European single market for electronic communications

- and to achieve a Connected Continent,
  - and amending
  - Directives 2002/20/EC, 2002/21/EC and 2002/22/EC
    - Regulations (EC) No 1211/2009 and (EU) No 531/2012