

INCA response to:

Ofcom's
Open Communications
consultation

November 2020

Contents

| | | |
|-----|--|---|
| 1 | Introduction & Executive Summary | 3 |
| 1.1 | Executive summary | 3 |
| 1.2 | Introduction | 4 |
| 1.3 | About INCA..... | 4 |
| 2 | Scope and benefits of Open Communications..... | 5 |
| 2.1 | Open Communications data | 6 |
| 2.2 | Precedents from other sectors | 7 |
| 3 | Accredited Open Communications parties | 7 |
| 3.1 | Communications providers | 7 |
| 3.2 | Third-party comparison sites | 7 |
| 4 | Cost and complexity..... | 8 |

1 Introduction & Executive Summary

1.1 Executive summary

1. INCA supports Ofcom's aim of improving transparency for customers to make informed switching decisions in the electronic communications sector. Our members are market entrants, that compete with the incumbents in their respective markets and face the impact if complex switching processes and targeted loyalty initiatives from incumbents to retain customers.
2. We are, however, concerned that the proposals contained in the Open Communications consultation may simply lead to increased financial and resourcing burdens on providers with limited benefits to customers.
3. We are, in fact, concerned that some of the Open Communications proposals may lead to an illusion of clarity, given the risks that third-party comparison sites may not operate in a way that will serve customer interests. There is evidence from other sectors that third-party comparison websites have not included all available providers in their comparison, have entered into 'most favoured nation' agreements with some providers and have used algorithms that favour some providers over others.
4. We are also concerned that allowing providers access to their competitors' sensitive network coverage and performance data as part of Open Communications data from prospective customers could lead to abuse of that data.
5. We acknowledge Ofcom's proposals for mandatory accreditation of parties who can receive the Open Communications data but remain concerned it would be extremely difficult to guarantee against inappropriate behaviours in such a complex area.
6. Whilst the consultation document identifies areas where customers could benefit from easier access to data, a number of recent initiatives have not yet been in place for sufficient time for Ofcom to assess their impact. Additionally, Ofcom cites data that in some cases predates such interventions.
7. INCA is disappointed that, given Ofcom's evident concern over customer confusion that inhibits informed switching, Ofcom has not actively worked to prevent services that are delivered over a hybrid of copper and fibre (e.g. FTTC) being marketed as 'fibre' making it extremely difficult for full fibre operators to sell fibre services to customers who (wrongly) believe that they already have a fibre service. We encourage Ofcom to work with full fibre providers to eliminate this deliberate and misleading behaviour in the market.
8. INCA will work with Ofcom and other stakeholders to continue improving transparency and ease of switching for customers, but at present we have concerns about unintended consequences, lack of specific objectives and potential abuse of the Open Communications proposals set out in the consultation document.

1.2 Introduction

9. INCA welcomes the opportunity to respond to Ofcom's Open Communications consultation. Our members are market entrants and believe strongly in assisting customers in making informed decisions about which electronic communications services they purchase and from whom.
10. INCA looks forward to engaging with Ofcom in the process to evaluate whether Open Communications can deliver tangible benefits to consumers of electronic communications services in a manner that is secure and which is proportionate in its demonstrable benefits versus the costs and resource requirements on electronic communications networks and service providers.
11. INCA's members are typically market entrants, competing with the incumbents in their respective market segments. Enabling consumers to make informed switching decisions is therefore something we support wholeheartedly and Ofcom will be aware that INCA is an active contributor to the working groups developing the UK response to the European Electronic Communications Code (EECC) requirement for gaining provider led switching.
12. The views expressed in this response are therefore based on a genuine desire to see increased transparency for customers and the facilitation of unencumbered switching in the sector.

1.3 About INCA

13. INCA is a trade association. Its members are supporting, planning, building and operating sustainable, independent and interconnected full fibre and wireless networks that advance the economic and social development of the communities they serve and permit the provision of applications and services through open competition, innovation and diversity.
14. INCA's aims are to:
 - support the development of sustainable independent networks through collaboration on the provision and procurement of products and services and adoption of common standards.
 - support collaboration between members to create new, independent digital infrastructure that can be shared by operators and suppliers.
 - support mutual trading between members.
 - represent the interests of independent networks.
 - promote the advantages and successes of independent networks.
15. INCA has more than 150 members, including: network owners, operators and managers; access and middle mile networks; public sector organisations actively promoting the development of 21st century digital infrastructure; vendors, equipment suppliers, and providers of services that support the sector.

16. Although this response focuses primarily on the conditions for building competing fibre networks, many of INCA's members build both fibre and wireless networks or wireless networks only. It is important that Ofcom does not focus only on the benefits of fibre networks and effectively ignore the benefits of very high speed and high quality fixed wireless networks.

2 Scope and benefits of Open Communications

17. We have carefully reviewed the consultation document, noting that Ofcom considers that Open Communications could assist customers in a number of scenarios, with the overall objective of ensuring that they can confidently choose the electronic communications services that best meet their needs and that offer the best value for money.
18. We also note that Ofcom has undertaken a number of other recent initiatives, with similar objectives including the review of pricing practices in broadband; the implementation of a gaining provider led switching platform; accreditation of digital comparison tools; as well as the forthcoming work on a digital wallet prototype.
19. We are concerned that the objectives for the Open Communications initiative are not clearly scoped and defined and, in several instances, may overlap with some of the other initiatives mentioned above. Additionally, we have some concerns that the other recent initiatives have not yet been in place for sufficient time to demonstrate whether some of the issues identified in this consultation paper are still relevant.
20. We note that several of Ofcom's source documents for the customer problems identified either predate Ofcom's recent initiatives, or are concurrent with those, and therefore cannot represent the current market conditions.
21. Ofcom mentions in the consultation document, that Open Communications could enable customers to switch provider through the third-party comparison site, without the need to contact the customer's existing provider. INCA is puzzled at this ambition as Ofcom has actively sought to prevent the forthcoming gaining provider led switching platform from enabling customers to switch without the need to contact their existing provider. The risks and complexities of enabling such switching using a third-party comparison site would likely be substantially higher than if the switching were controlled by the gaining provider.
22. Further, Ofcom refers throughout the consultation document to the need to protect and support vulnerable customers. It is our strong view that the Open Communications initiative could lead to exploitation of vulnerable customers. Unsolicited calls from parties stating that they are accredited by Ofcom and asking customers to divulge their confidential data, including operator data, may well be a direct consequence of the introduction of Open Communications.
23. The reason for the concerns expressed above is that we believe the implementation of the Open Communications proposals is likely to be complex and impose considerable financial and resourcing burdens on providers. It is critical that the Open Communications initiative, if implemented, identifies clear and measurable objectives and that the expected benefits should be incremental to other initiatives and assessed against the financial and resourcing burden imposed on providers.

24. One significant cause of confusion to customers is the ability of providers of broadband services use the copper network to label those services as 'fibre'. This is an issue that is causing providers of full-fibre services significant problems and it is difficult to explain the benefits of fibre to a customer who believes she already has fibre. INCA is disappointed that Ofcom has not taken a more active stance on this matter and believes doing so would likely provide more benefits in terms of customers being able to make informed switching decisions, that some of the components of Open Communications.
25. INCA refers Ofcom to its Gold Standard¹, which ensures that those accredited by it describe their services very clearly to avoid customer confusion and to assist informed switching decision.

2.1 Open Communications data

26. We understand that the intended scope of Open Communications is private individuals and SMEs, not larger businesses/corporates.
27. At present, Ofcom collects network coverage and performance data from network providers and network and service providers publish their product offerings on their websites. What we understand to be the scope of the additional data Ofcom suggests should be made available by network and services providers are data pertaining to the specific products and services consumed by individuals, the network conditions at their individual addresses, their consumption and spend levels, and other similar customer-specific data.
28. The purpose of providing access to these data would be for individuals themselves, or third parties on their behalf, can select which services and providers would be best suited to an individual's needs and budgetary constraints.
29. As clearly stated by Ofcom in the consultation paper², a large number of customers use their own invoices or online facilities provided by their existing providers to monitor their consumption. It would therefore be easy for those customers to share that data with whichever third party they may select to assist in an assessment of potential alternative services and providers.
30. For mobile networks, there are on-line data available to determine the level of signal strengths of. These can be accessed by the customer or third-party advisors with no difficulty³. Additionally, Ofcom itself offers information on mobile and broadband availability by postcode⁴. It is not clear whether the existing data sources are insufficient, or whether Ofcom is simply focusing on ease of access.

¹ <https://www.inca.coop/quality-mark/the-sign-of-quality#:~:text=The%20INCA%20Gold%20Standard%20is%20an%20independent%20scheme,Ofcom%20codes%20and%20offer%20the%20latest%2C%20future-proofed%20connectivity.>

² See for example paragraph 4.26.

³ See for example: <https://www.which.co.uk/reviews/mobile-phone-providers/article/mobile-phone-coverage-map-alm7Z6y0yO4Z>.

⁴ <https://checker.ofcom.org.uk/>.

31. If the focus is primarily ease of access, then we believe there are a number of options for how this could be improved and streamlined, none of which would involve the level of financial and resource commitments from providers that are envisaged for Open Communications.

2.2 Precedents from other sectors

32. Whilst versions of the proposed Open Communications initiative have been implemented in other sectors, some with some demonstrable success, it should not be assumed that the learnings from those sectors can be readily read across to the electronic communications sector.
33. Ofcom refers extensively to the banking sector, but it is important that Ofcom understands that the equivalent scheme in banking does not involve disclosure of sensitive competitive information between competitors and/or to third parties. The proposal that address-specific network coverage and performance data should be disclosed as part of Open Communications means that the risks and complexity of Open Communications is likely to exceed the equivalent banking scheme substantially.

3 Accredited Open Communications parties

34. We understand Ofcom's proposals to be that a number of different parties could become accredited to receive Open Communications data. The consultation paper specifically identifies communications providers and third-party comparison sites but does not make it clear whether other parties could also be accredited.

3.1 Communications providers

35. Information about coverage and network performance is carefully guarded beyond what is shared with Ofcom and other statutory bodies. These are key competitive parameters that can work for and against individual providers.
36. INCA's members are concerned that access to competitor data, through Open Communications data from prospective customers, could be abused and used for purposes for which the Open Communications initiative does not intend, which could result in market distortion, not increased transparency. The establishment of Chinese walls to prevent inappropriate sharing of such sensitive data will be extremely difficult to police, given the large number of small providers in the sector.
37. We do not believe that it would be appropriate to disclose sensitive network coverage and performance data to competing providers. Customers have access to their own product and usage data, which they can share with potential new providers.

3.2 Third-party comparison sites

38. Third-party comparison sites can offer a valuable service to customers wanting to review the services they currently use (or taking up a new service), but they have also been demonstrated in recent years and on numerous occasions to produce recommendations

to customers that are biased depending on: the number of providers used in the analysis performed; the algorithms used for the assessment; and a number of other parameters.

39. INCA is aware that the Competition and markets Authority (CMA) found inappropriate use of the 'most favoured nation' principle, when investigating the Comparethemarket insurance comparison website⁵. Likewise, the CMA has recommended that customers use several comparison websites before making a purchasing decision.
40. We understand that Ofcom has launched an accreditation service and that the accreditation would be mandatory for participating parties, but we are concerned that it would not be possible for Ofcom to police comparison websites in a manner that would ensure that customers would receive objective and unbiased recommendations.
41. It is important to understand that comparison websites often generate revenues from sales commission from the providers they recommend. This type of revenue model does not lend itself to transparent and unbiased assessments and recommendations.
42. Given that consumers can access and provide their own data to comparison sites, should they wish to use such a service, and that comparison sites may have incentives to share such data with providers from whom they receive the highest sales commission, we do not have confidence that customers would receive recommendations that genuinely optimise the utility for the individual customer and ensures that that customer receives the best value for money in communications services.

4 Cost and complexity

43. Whilst Ofcom acknowledges that the provision of standardised data would be complex and costly⁶ for network and service providers, there is no discussion of this in the consultation paper. We understand that Open Communications is still at an early stage, but believe it would be a mistake to focus only on what customers may want/need without at the same time considering how this could be implemented and what the costs and benefits are likely to be.
44. In order that a more balanced process can be undertaken, INCA recommends that Ofcom sets out specific and measurable objectives for the Open Communications initiative, then considers means of achieving those objectives and assesses the impact on providers of an obligation to implement and operate the necessary systems and processes. INCA looks forward to working with Ofcom on this process.
45. Ofcom refers in passing to the use of the upcoming gaining provider led switching platform, as a vehicle to support Open Communications. That platform is due for deployment within the next 18 months or so and will need to be specified and approved early in 2021. We do not see how this timeframe allows for inclusion of functionality to

⁵ <https://www.gov.uk/government/news/comparethemarket-home-insurance-deals-could-deny-people-better-prices>.

⁶ Paragraph 7.19.



support an open Communications obligation that presently appears to be at the early stages of conception.