



Open Communications

Sky's response to
Ofcom's consultation

November 2020

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Executive summary

Intrusive intervention by a regulator should never be taken undertaken lightly - the threshold is high, as recognised by Ofcom's usual statutory bias against such intervention. However, in this Consultation, Ofcom displays a clear bias towards implementing Open Communications, which has hindered its ability to carry out an objective assessment of the *need* for such a measure. By failing to meet its regulatory duties and conduct the necessary critical analysis, Ofcom has fallen far short of the required standard. As such, the Consultation is incapable of forming the basis for any recommendation to Government to proceed with an Open Communications initiative.

In contrast, when imposing the Open Banking remedy, which has clearly inspired Open Communications, the CMA conducted a lengthy 18-month investigation before publishing a 766 page report and critically assessing a range of possible measures to address the specific adverse effects on competition which it identified.

Notably, the key features that prompted the CMA to act included materially lower switching rates (over a third of customers had not switched their current account for more than 20 years, over half had not switched in more than 10 years), low consumer engagement and indefinite contract durations. That situation is simply unrecognisable when compared with the communications and TV sectors today. It does not follow that, because the CMA decided that Open Banking was a suitable remedy for the personal current account market, the case for Open Communications is similarly and automatically made.

In addition to failing to identify a clear target for this intervention, Ofcom has not carried out an adequate cost-benefit assessment. The purported benefits that Ofcom put forward in the Consultation are highly speculative and not evidenced. Ofcom's consideration of costs in section 8 is only 6 pages long and does not even attempt to quantify the magnitude of those costs.

If Ofcom were to apply the correct framework for assessing the case for Open Communications, it would find that:

- the sector is highly competitive:
 - it is delivering good outcomes for consumers and consumers have access to extensive information;
 - Sky, together with other operators, provide a wealth of information to customers which is widely used and appreciated; and
 - communications providers already work with price comparison websites and other affiliates to help them to innovate and develop a range of well used services and information tools;
- recent and proposed regulation such as the EECC and voluntary measures such as the Fairness Commitments which providers have already taken to support consumers mean any incremental benefits would be small; and
- the costs of such structural change would be very significant and would ultimately result in higher prices for consumers.

Open Communications is neither necessary nor proportionate. Ofcom should strongly recommend that the communications and TV sectors are excluded from Government's Smart Data initiatives. Instead it should focus upon monitoring the impact of the recent interventions it has already made and, if required, take more targeted measures to promote consumer engagement and the protection of vulnerable customers.

1 Ofcom has failed to scrutinise the proposal for Open Communications

In its consultation “*Open Communications – Enabling people to share data with innovative services*”, published on 4 August 2020 (the “Consultation”), Ofcom states that its objective is to “*examine the case for Open Communications*”.¹ Yet taking this task at its most basic, Ofcom has failed. Instead, it appears Ofcom has sought to *put* the case for the Open Communications initiative, and has made no attempt at objective assessment: the Consultation takes a speculative and unsupported approach to making the positive case for intervention, with lip service paid to the need to ensure that “*the requirements of any future regulation to implement Open Communications are proportionate to the benefits*.”²

Such an approach is inconsistent with Ofcom’s regulatory duties, particularly as, if implemented as set out in the Consultation, Open Communications would be the most significant intervention in the communications and TV sectors since Ofcom’s creation, costing the industry many millions of pounds; costs that will ultimately be borne by UK consumers, in return for the possibility of further improvements in available information about communications services.

Ofcom’s approach is contrary to its statutory duties and regulatory best practice

When considering the case for regulatory intervention, Ofcom has a legal duty to have regard to regulatory best practice, namely “*the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed*”³.

Ofcom’s own guidance on policy making is clear:

*“One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate. If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition.”*⁴

Any recommendations to Government must be consistent with Ofcom’s own regulatory principles, which state that it will: (i) operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required; (ii) strive to ensure its intervention will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome; and (iii) always seek the least intrusive regulatory mechanisms to achieve its policy objectives.

Fundamentally, therefore, the framework is based on the following steps:

- (i) a problem is identified;

¹ Consultation, page 1.

² Consultation, page 1.

³ Communications Act 2003, s.3(3)(a)

⁴ https://www.ofcom.gov.uk/data/assets/pdf_file/0029/45596/condoc.pdf

- (ii) a range of possible solutions to that problem is identified;
- (iii) the costs and benefits of those potential solutions are evaluated; and
- (iv) the option with the greatest net benefit is chosen.

The proper application of this framework, together with Ofcom's bias against intervention, may lead to a conclusion that the best course of action is not to implement a proposal at all. The framework is critical because it prevents the adoption of policies that are poorly targeted at problems, are inferior ways of addressing a problem and/or have costs that outweigh the benefits.

To the extent that Ofcom's consultation purports to consider the possible costs and benefits of an Open Communications regime, its analysis is fraught with vague speculation, erroneous assumptions and key data gaps. For instance, Ofcom states that the design of Open Communications can create the right incentives for a range of innovative third-party services that use the data to emerge,⁵ but it does not attempt to explain how this would happen or what it would mean in practice. The Consultation is littered with one-sided conjecture. Ofcom has not fulfilled its obligations.

The threshold for intervention is high

The application of this framework would have resulted in Ofcom conducting a more critical analysis of Open Communications, starting with an examination of the current state of competition in the relevant markets in order to identify whether there is a problem in need of remedy. The lack of such analysis is stark, in particular when compared to the Open Banking initiative which appears to have heavily influenced government thinking and the July 2019 consultation on 'Smart Data'.⁶

Open Banking originated in the Competition & Markets Authority's ("CMA") remedy in the retail banking market investigation ("Retail Banking Review").⁷ The CMA's Retail Banking Review, published in August 2016, followed an 18-month investigation which included numerous hearings with providers and consumers, many working papers, multiple consultation phases (including into remedies), and resulted in a 766-page report, excluding appendices. This review was, however, only the most recent examination of the sector in a long litany of reviews and inquiries stretching back to 2000,⁸ which included OFT market studies in 2008⁹ and 2013,¹⁰ identifying numerous issues relating to the personal current account ("PCA") market in the UK. There was therefore a considerable body of evidence supporting the CMA's findings

⁵ The Consultation, paragraph 7.46.

⁶ BEIS Consultation: "Smart Data - Putting consumers in control of their data and enabling innovation" - June 2019 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808272/Smart-Data-Consultation.pdf

⁷ <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>

⁸ See paragraph 6 of the Retail Banking Review.

⁹ OFT market Study: "Personal current accounts in the UK" - July 2008 - https://webarchive.nationalarchives.gov.uk/20140402172142/http://oft.gov.uk/shared_oft/reports/financial_products/OFT1005.pdf

¹⁰ OFT's "Review of the personal current account market" - January 2013 https://webarchive.nationalarchives.gov.uk/20140402182200/http://www.oft.gov.uk/shared_oft/reports/financial_products/OFT1005rev

that there were problems identified that could only be remedied by a significant intervention in the market.

In its Retail Banking Review, the CMA concluded that there were features of the market for the supply of retail banking services to PCA customers that prevented, restricted or distorted competition in connection with the supply of those services resulting in an adverse effect on competition.¹¹

The CMA identified those features as being a combination of low customer engagement, barriers to searching and switching and incumbency advantages, and crafted a remedies package to address those features. In particular, the CMA stated that:

“As the weak customer response plays such a central role in our diagnosis of the competition problems in the retail banking markets, measures to engage, empower and inform personal and business customers are at the heart of our remedies package.

This weak customer response does not have a single cause. There is therefore not a single 'magic bullet' that puts everything right. We are proposing a package of remedies the strength of which lies in the fact that the whole package is more than the sum of its parts.”¹²

The Open Banking initiative was one of the ‘Foundation Measures’ designed to “promote customer engagement and help customers make reliable and easy comparisons between banks based on their products’ prices and features, quality of service and customers’ own transaction history.”¹³ It was intended to be transformative, alongside measures to increase published information on service quality and a requirement to periodically prompt customers to review their arrangements given the absence of contract end dates.

These Foundation Measures underpinned further remedies targeted at other problems identified during the review: Current account switching measures; PCA overdraft measures, and measures for small businesses.¹⁴ These remedies were carefully curated to address the specific concerns identified by the CMA, which rejected other measures which might have been effective but were more costly than the measures adopted or were likely to produce adverse and disproportionate effects.

Open Banking was therefore just one aspect (albeit a key one) of a broader package of remedies to address specific features of the relevant markets that were found to have an adverse effect on competition following not only the CMA’s review, but a whole sequence of reviews and earlier attempts to address similar concerns. Only in light of this weight of evidence and forensic analysis did the CMA consider that

¹¹For example, Retail Banking Review, paragraph 149.

¹²Retail Banking Review, paragraphs 154-155.

¹³*Ibid*, paragraph 164.

¹⁴Retail Banking Review, paragraph 161 and section 13.

an intervention as significant as this was justified and proportionate to the costs to the industry (estimated to be £1.5bn to date).¹⁵

Ofcom has made no attempt to assess whether Open Communications is similarly justified. Instead it appears to start from a position identical to that of Government: that Open Communications is entirely beneficial and must be implemented. Its only question is “How should this be done?”.

As Ofcom itself puts it:

“We are consulting on our initial thinking to further understand the potential uses and benefits of Open Communications, how it could best work for people and businesses and associated costs.”¹⁶; and

“The purpose of this consultation is to set out potential objectives for Open Communications and initial views about how it would best operate to meet them.”¹⁷

It is incumbent on Ofcom to have regard to regulatory best practice when assessing the case for Open Communications as it would for any other regulatory intervention. Ofcom cannot abandon its legal responsibilities, regulatory principles and best practice guidance simply because there is Government appetite for an initiative. Ofcom is independent of Government and must act as such.

Sky notes that in the Smart Data Review, Government stated its intention to “legislate, ... to introduce an ‘Open Communications’ initiative with the objective to stimulate innovation and promote the development of new services that improve outcomes for consumers in the communications market.” That intention was justified in part by the “scale of the loyalty penalty” referenced by the CMA in its publication “Tackling the loyalty penalty: Response to a super-complaint made by Citizens Advice”, published 28 September 2018. In its original super-complaint, Citizens Advice argued that there was a ‘loyalty penalty’ across several markets, which in the broadband market it estimated to be over £1bn.

No mention is made in either the Consultation or Government’s subsequent statement in September 2020¹⁸ that this figure has, on further examination by Ofcom, been halved, and then materially reduced again following the pricing measures and commitments made by providers.¹⁹

Accordingly, the Consultation cannot form the basis of a recommendation to Government to proceed with Open Communications. Indeed, for the reasons set out in this response, Ofcom should strongly recommend that the communications and TV sectors should be excluded from Government’s Smart Data initiatives.

¹⁵ Fintech Direct, ‘UK Finance seeks silky smooth stability for open banking’, 19 June 2020 - <https://www.fintechdirect.net/2020/06/19/uk-finance-seeks-silky-smooth-stability-for-open-banking/>

¹⁶ Consultation, Overview.

¹⁷ Consultation, paragraph 2.24.

¹⁸ “Next steps for Smart Data”, September 2020 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915973/smart-data-consultation-response.pdf

¹⁹ <https://www.ofcom.gov.uk/about-ofcom/latest/media/media-releases/2020/broadband-customers-to-save-millions>

Intervention is not justified on the facts

As is demonstrated below, intervention in the communications and TV sectors under the proposed Open Communications regime is not justified by any market failure or consumer harm. Indeed, the opposite is the case.

As has been noted above, Open Banking, on which Government and Ofcom base the Open Communications initiative, was one element of a broader remedies package designed to address, in a targeted and proportionate manner, specific competition problems in the retail banking sector identified following a number of lengthy studies and reports by the competition authorities. Open Banking represented one of the foundational measures targeting low customer engagement, resulting from certain key (and unique) features of the PCA market, including:

- that switching rates for PCAs were “*materially lower*” than for other products. Over a third of survey respondents had not switched PCA for more than 20 years; over half had not switched in more than 10 years; 8% had switched in the last three years, and 3% in the last 12 months;²⁰
- that there were a lack of triggers prompting PCA customers to make a conscious choice about whether to switch provider: for example, PCAs have no contract end dates, and life events, such as moving house, have no significant effect on propensity to switch (either searching for alternatives or actually doing so);²¹
- PCAs are a relatively low-cost product (particularly where customers remain in credit), resulting in customers seeing little benefit in switching;²² and
- Price comparison websites (“PCWs”) were found to play a “limited role”.²³

As explained below, this is in stark contrast to the communications and TV sectors, where:

- the relevant sectors are highly competitive, providing good outcomes for consumers, leading to high levels of consumer satisfaction and engagement;
- this is facilitated by consumer access to relevant data, in part driven by competition, in part as a result of regulation, with contracts typically having a duration of between 12, and no more than 24 months, and new obligations on providers of communications services to issue end of contract and annual best tariff notifications;
- increasing participation by PCWs, including those accredited by Ofcom;
- Ofcom has failed to provide meaningful evidence of any incremental benefit from Open Communications, but merely posits hoped-for hypotheticals;

²⁰ Paragraph 65 of the Retail Banking Review.

²¹ Paragraphs 70(a) and 175 of the Retail Banking Review.

²² Paragraph 70(c) of the Retail Banking Review.

²³ Paragraph 70(d)(iii) of the Retail Banking Review.

- to the extent that Ofcom does identify desirable outcomes (e.g. in relation to vulnerable customers), there are other, more proportionate means of achieving such outcomes; and
- the complexity and highly differentiated nature of communications and TV services, as well as the high rate of innovation and developments in products, would likely increase the development and implementation costs substantially (and inevitably result in increased prices for consumers), before considering the complexities of deriving comparable data and formats for all providers.

Ofcom has also failed to appreciate the need to examine existing evidence and instead relies on specifically commissioned qualitative and quantitative surveys to justify a starting position “for Open Communications”,²⁴ prejudging its consultation.

Added to this, the use cases identified by Ofcom are poorly evidenced and do not bear close scrutiny. In section 5 of the Consultation, Ofcom identifies four ‘use cases’, which it states:

“illustrate the potential of Open Communications to help customers to navigate the communications market and manage their services.”²⁵

In fact, Ofcom’s four identified use cases fall far short of that ambition. Each one is described in only two or three brief paragraphs, accompanied by a pair of mocked-up screenshots. In the descriptions of each use case, Ofcom makes a series of assertions that an Open Communications initiative *may* or *could* support certain aspects of each use case, but none of these assertions are backed up by evidence.

Ofcom also references work carried out by the Open Data Institute, which included “a workshop for industry and regulators to help develop potential use cases for Open Communications”.²⁶ The key detail that Ofcom fails to mention is that the workshop was for members of the open data industry (i.e. beneficiaries of Open Banking), consumer organisations, and regulators, and that communications providers themselves were not invited to attend this workshop.²⁷ We do not understand the rationale for excluding communications providers from this evidence gathering exercise, particularly given the questions posed in the workshop can only be meaningfully answered with input and insights from communications providers. Absent this perspective, the Open Data Institute is simply not in a position to assess which use cases will deliver the greatest benefit to either consumers or providers; which are ‘quick wins’; or identify any risks, despite its attempts to do so in its report.

In summary, Ofcom’s work to date on Open Communications does not represent a sound basis for making any recommendation to Government.

²⁴ Consultation, page 1.

²⁵ Consultation, para.5.2.

²⁶ Consultation, para.5.4.

²⁷ Open Data Institute, ‘Open Communications – An open trustworthy data ecosystem for the telecommunications sector’, August 2020, page 8.

2 Communications sector is highly competitive and delivering good outcomes for consumers

Communications and TV markets are highly competitive and delivering good outcomes for consumers. As set out above, this is in marked contrast to the situation in retail banking that led to Open Banking being introduced, and challenges the erroneous assumptions underlying the Consultation that there are problems in the communications and TV sectors that need to be addressed, and can only be addressed through Open Communications.

Competition is delivering good outcomes for consumers in the form of lower prices, innovative and better-quality products and services, and greater choice. Mobile prices have fallen and list prices for home broadband and landline bundles remain stable despite rapidly increasing data consumption. Consumers' needs are well served by the market – as Ofcom recognises in the Consultation, people can choose from a wide variety of packages to suit their needs.²⁸ This is reflected in the high level of customer satisfaction reported both by Ofcom and third party survey providers, and the continued decline in the number of customer complaints in all relevant sectors.

One of Ofcom's justifications for introducing an Open Communications regime is lack of customer engagement. However, even if this were an issue, there are less costly and more effective means of engaging customers than onerous regulatory interventions. For example, as described in further detail in section 3.3 below, [REDACTED]

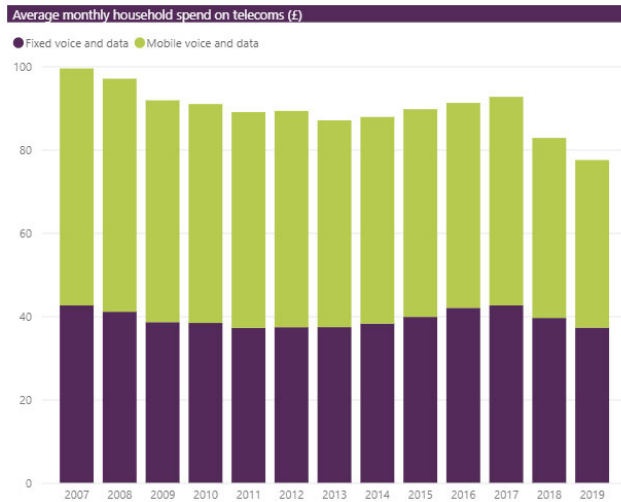
Highly competitive communications sectors are delivering value to consumers

The sector is highly competitive - customers are getting more, in terms of both speeds and usage, whilst paying less. Ofcom reports that average household spend on both mobile and fixed services has fallen, as illustrated in Figure 1 below. The average UK household spent £77.50 per month on telecoms services in 2019; a 6% decrease since 2018, and equivalent to 3% of total average monthly household spend.²⁹

²⁸ Consultation, paras.3.3-3.4.

²⁹ Ofcom, Communications Market Report 2020, Key findings. https://www.ofcom.gov.uk/data/assets/pdf_file/0026/203759/cmr-2020.pdf

Figure 1 - Average monthly household spend in telecoms

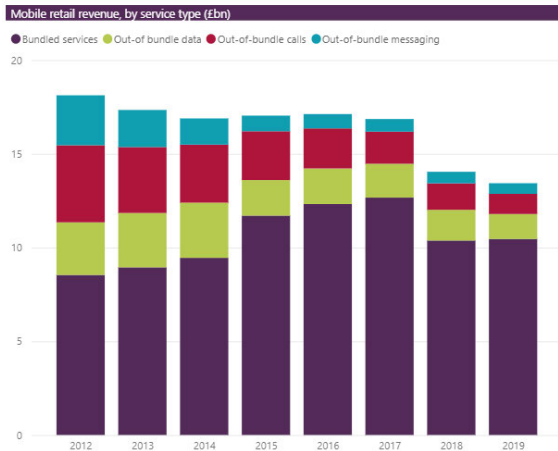


Source: Ofcom / operators / ONS Note: Adjusted for CPI at 2019 prices. Historic figures have been restated so are not comparable to those published in previous reports. Mobile telecoms household spend from 2018 does not include spend on handsets due to a change in accounting standards.

Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

Furthermore, provider revenues have decreased. For example, this downward trend is clear when we look at mobile retail revenues in 2019, illustrated in Figure 2 below. The proportion of revenues generated by each service type have also changed over time, with revenues generated from out-of-bundle charges significantly decreasing over time. By 2019, 78% of total mobile retail revenues were from in-bundle services. From this, we can conclude that customers are increasingly on the right package to suit their needs and usage.

Figure 2 - Mobile retail revenue by service type



Source: Ofcom / operators Notes: In 2015 one of the major operators redefined how it reported bundled and out-of-bundle revenues, so figures not directly comparable before 2015; from 2018, bundled revenues are reported according to the new IFRS15 accounting standard and do not include any device revenues; includes estimates where Ofcom does not receive data from providers; adjusted for CPI (2019 prices).

Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

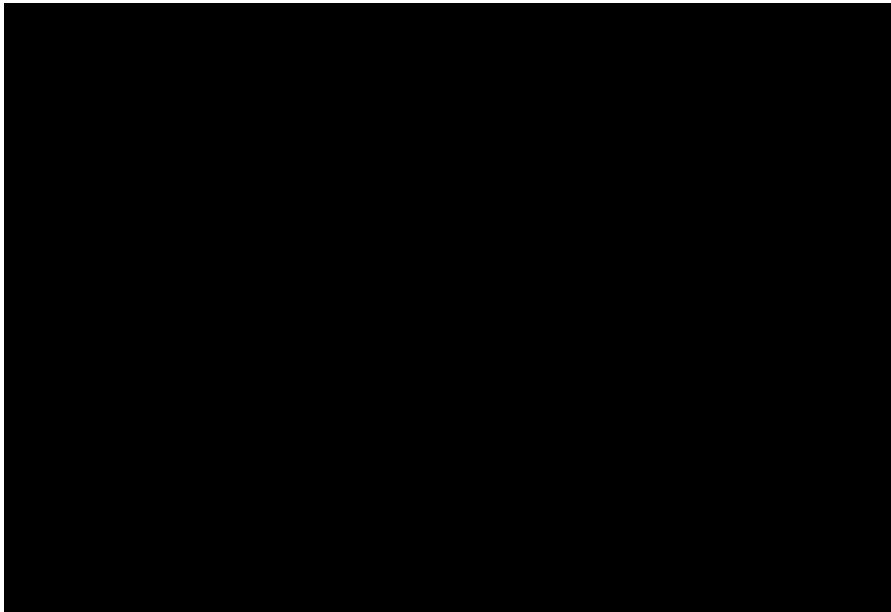
In the mobile market, two key trends can be observed which are delivering greater value to year-on-year consumers in the UK:

- First, as illustrated in Figure 3 below, both MNOs and MVNOs are competing harder on tariff pricing particularly in the high-end data

packages [REDACTED]
[REDACTED]

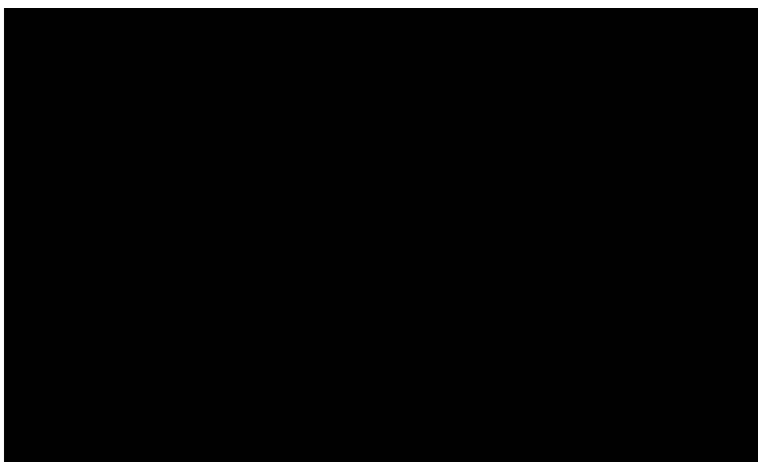
- Second, as illustrated in Figure 4 below, there are stable price points but with more data included [REDACTED]

Figure 3



[REDACTED]

Figure 4



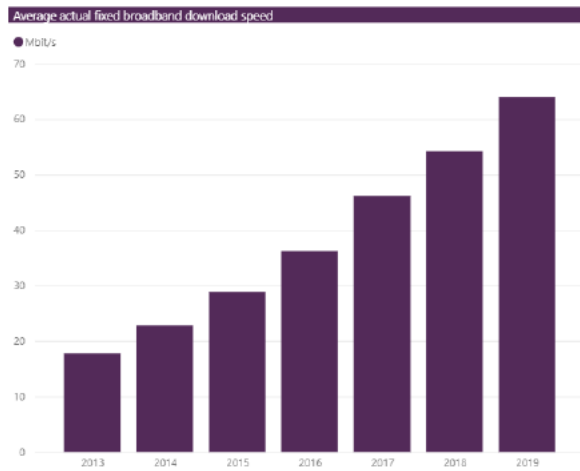
[REDACTED]

In the broadband market, the speed of internet connections is increasing each year as illustrated in Figure 5 below. [REDACTED]

[REDACTED]

Consumers are also continuing to use more data, as illustrated in Figure 7 below.³⁰ Average data use per fixed broadband connection increased by 75GB per month (31%) to 315GB in 2019.

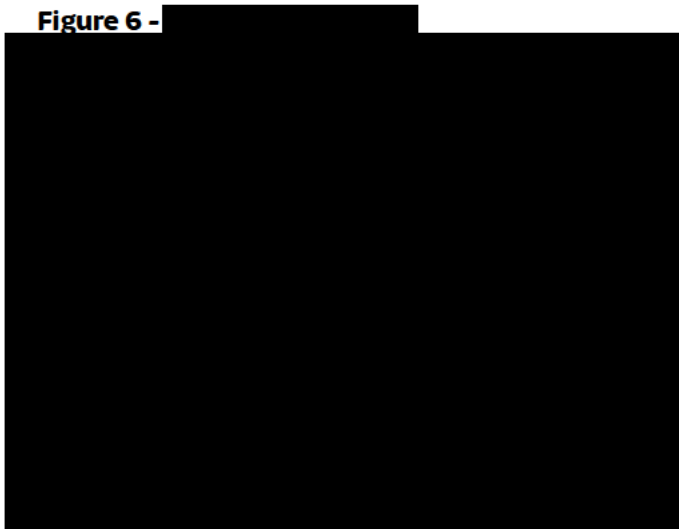
Figure 5 - Average actual fixed broadband download speed



Source: Ofcom / operators Note: Measurements taken in Q4 of each year

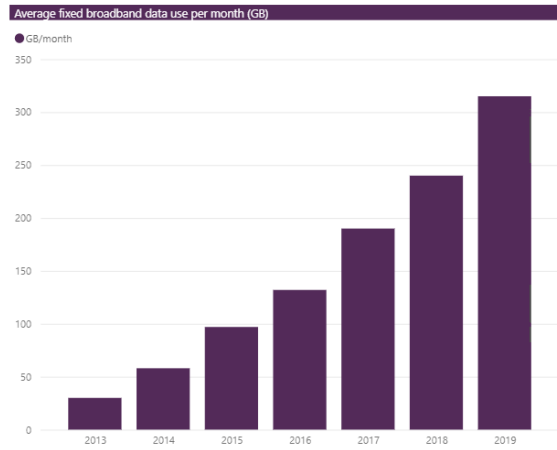
Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

Figure 6 -



³⁰ Ofcom, Communications Market Report 2020, pages 2-3.

Figure 7 - Average fixed broadband data use per month (GB)

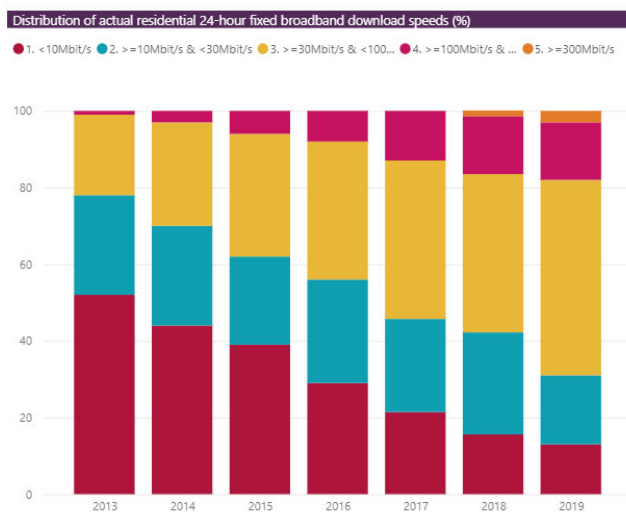


Source: Ofcom / operators

Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

Alongside this trend towards increasing value, there is a broad distribution of customers across different broadband speeds, as illustrated in Figure 8 below. The proportion of customers receiving the lowest speeds continues to fall, but there is clearly a range of products available in the market to service diverse consumer needs.

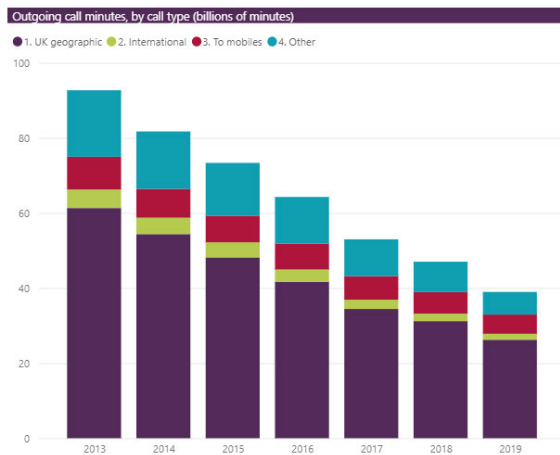
Figure 8 - Distribution of residential fixed broadband speeds



Source: Ofcom / operators Note: Measurements taken in Q4 of each year

Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

Ofcom’s own research findings also show that there has been a move towards data from traditional call and SMS services, with the result that call volumes continue to decline. The total volume of outgoing calls from fixed lines fell by 17% in 2019, as illustrated in Figure 9 below.

Figure 9 – Fixed telecoms - outgoing call minutes by call type

Source: Ofcom / operators Note: VoIP call volumes are not fully captured in this data and the figures above are likely to be understated

Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

Net promoter scores across communications and TV services are far higher and more varied than in the retail banking sector

The CMA considered net promoter scores (“NPS”) across a range of banking services as part of its Retail Banking Review. Figure 10 shows that NPS for PCA providers were higher than for providers of home insurance, credit cards, personal savings and mortgages respectively, and similar to motor insurance providers.³¹

When the CMA then looked at individual NPS for each PCA provider in the Retail Banking Review, as illustrated in Figure 11 below, it found that:

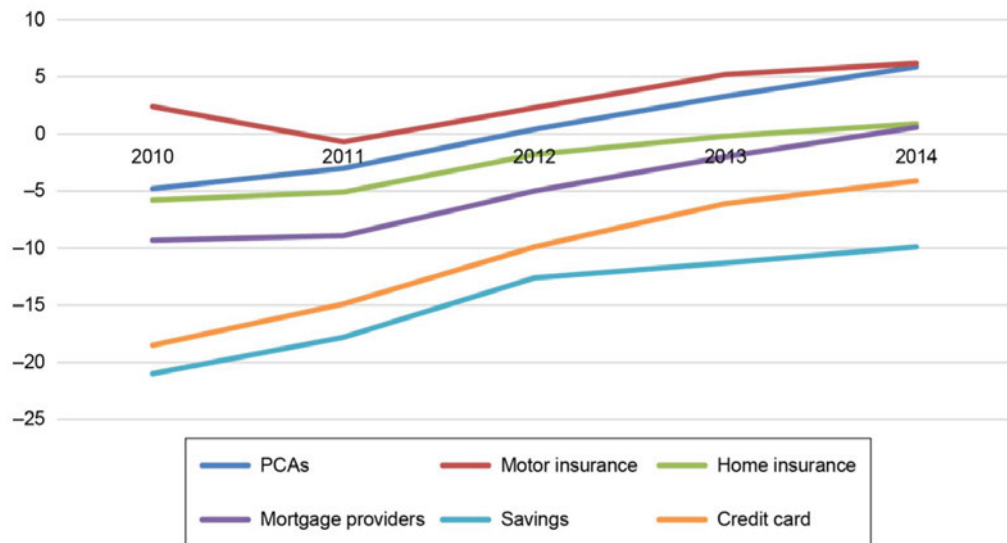
“It is notable that there is a large cluster of providers with above-average prices and below-average quality. Indeed, while eight brands are in this category, there are only two providers that have both above-average prices and above-average quality. In a well-functioning market, we would expect to find that customers are prepared to pay higher prices only in return for higher quality. Insofar as some providers are offering below-average quality products and above-average prices, we would expect these providers’ share to decline rapidly as customers switch to better quality/lower priced providers.”

The fact that some providers, particularly the largest providers, were able to charge higher prices despite offering lower quality was a key consideration in the CMA’s finding that competition in PCA markets was not working well, and their decision to implement a range of remedies, including Open Banking.³²

³¹ Retail Banking Review, paragraph 5.98.

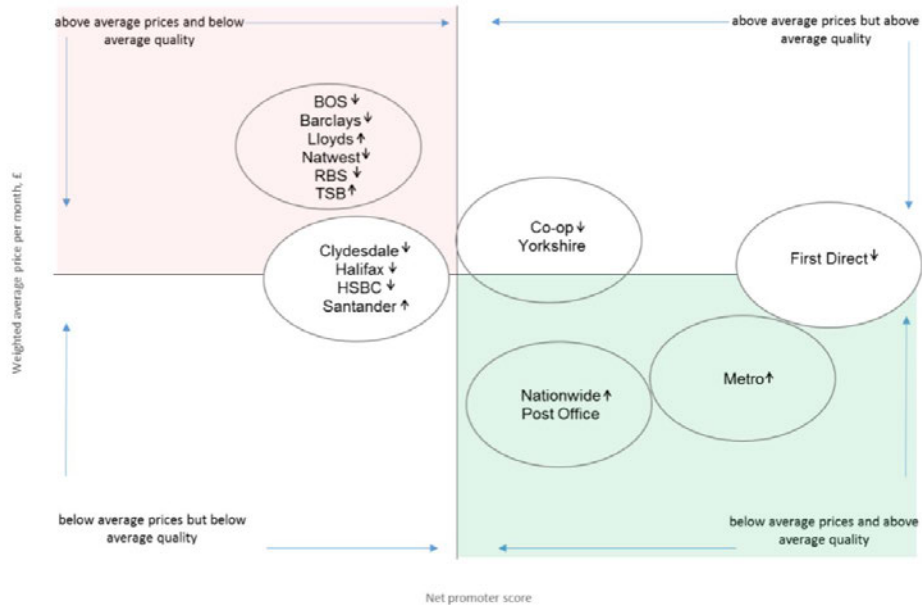
³² Retail Banking Review, paragraphs 54-56, 84 and 166.

Figure 10: CMA’s Comparison of GB NPS across sectors, 2010 to 2014



Source: CMA Retail Banking Market Investigation, Final Report, Figure 5.7

Figure 11: Comparison of NPS and PCA pricing by brand

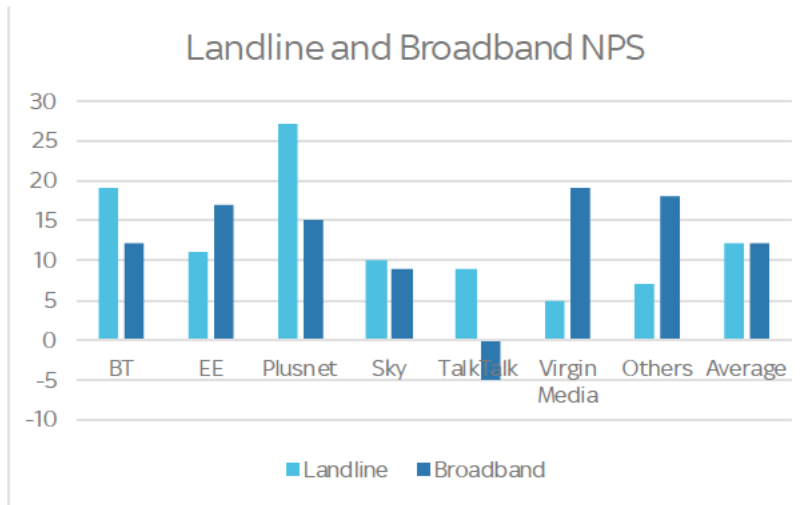


Source: CMA Retail Banking Market Investigation, Final Report, Figure 5.14

By contrast, NPS in the communications and TV sectors reveal a very different position, as illustrated in Figures 12, 13 and 14 below.

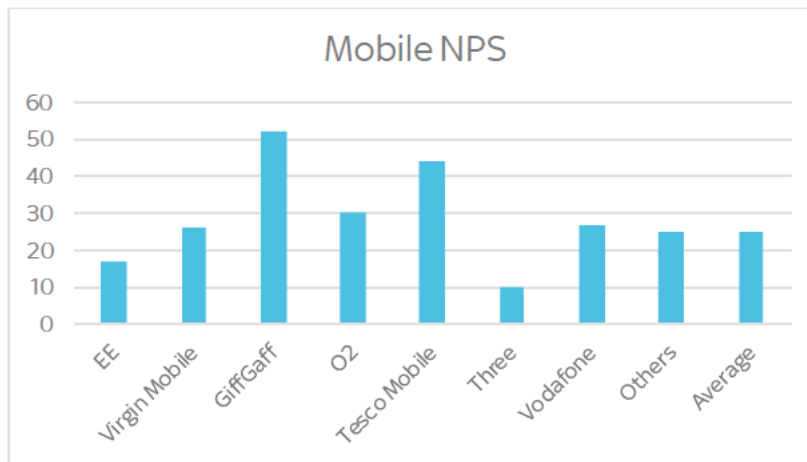
First NPS scores are generally higher across all sectors than in the PCA sector. Second, there is no evidence of any market failure similar to that found by the CMA – in fact, many of the largest providers have some of the highest NPS. The communications and TV sectors are highly competitive, and there is no evidence that providers are able to charge higher prices despite offering lower quality.

Figure 12: Landline and Broadband NPS



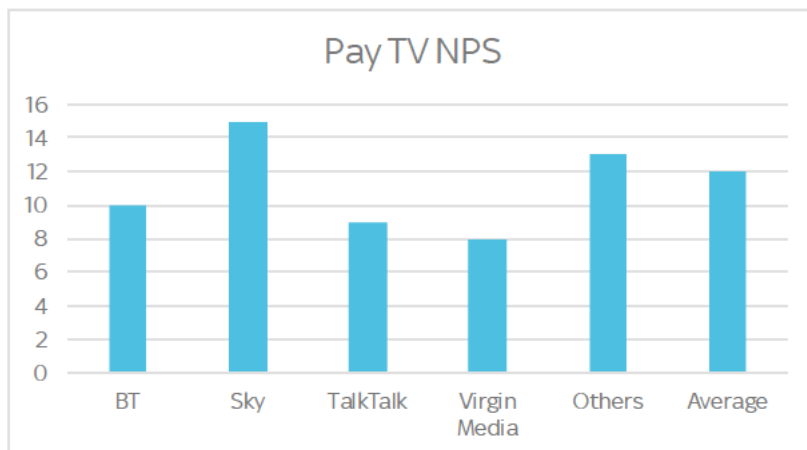
Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

Figure 13: Mobile NPS

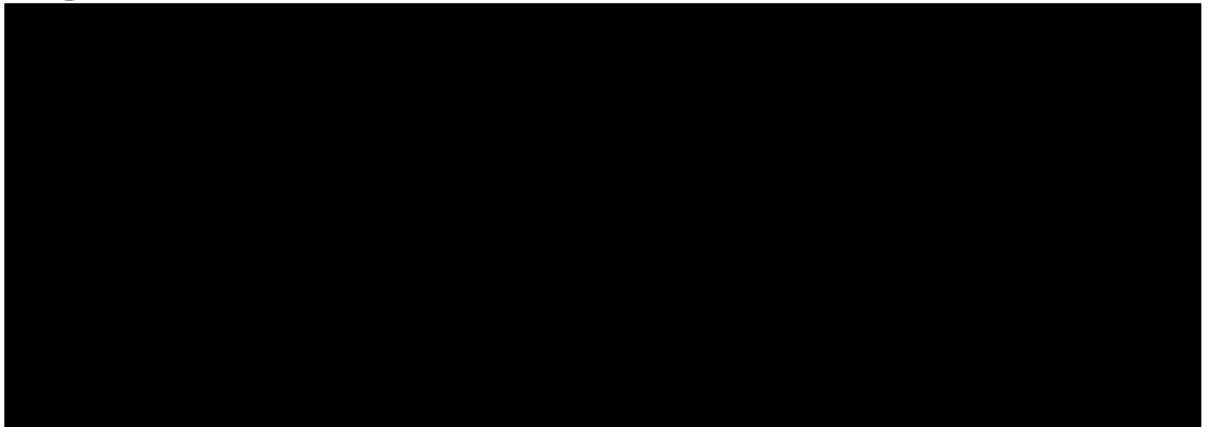



Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

Figure 14: Pay TV NPS



Source: Ofcom Customer Satisfaction Tracker, 25 March 2020

Figure 16

 Operators can clearly differentiate themselves on service. This is in marked contrast with the CMA's findings in retail banking. It found an inverse relationship between quality of service and market share.³³ As a result of its flawed analytical framework, Ofcom has failed to consider the benefits that Sky VIP, and other similar schemes, deliver to customers today, and whether such benefits would still be fully realised if an Open Communications regime were to be introduced in the UK.

³³ Retail Banking Review, paragraph 5.103.

3 Consumers have access to extensive information in the communications market

Open Communications is founded on the idea that if consumers had more information about the services they use, presented in a way they understand, then they would be more engaged and make better decisions as consumers, thereby increasing competition. Whilst this might have been a necessary step in relation to retail banking, it is not the case for communications and TV.

Sky, together with other operators, have developed a range of information tools that are widely used

Sky and other providers already make a significant volume and breadth of information available to consumers about their current usage, spend and product features. Information is made available to consumers in a variety of ways via easily accessible and intuitive formats. [REDACTED]

Sky's digital account management tools are widely used by its consumers. [REDACTED]

[REDACTED] These levels of engagement show that Sky is addressing customer needs and enabling them to understand their usage of its communications services.

This trend towards online account management is reflected across the sector, with similar tools made available by other communications providers. Ofcom's own quantitative research found that such tools are widely used by consumers:

- i. 42% of broadband customers and 43% of mobile customers checked and managed or paid their bills online, using their provider's website or app; and
- ii. nearly a quarter of broadband customers, and 44% of mobile customers, used their provider's website to check their usage.³⁴

This was also reflected in Ofcom's qualitative research.³⁵

Price comparison websites have already innovated to develop a range of well-used services and information tools

UK consumers already have the means by which they can understand their options before, during and at the end of their contract. For example, they are using PCWs to compare products/services in order to decide what products/services are best for them.

³⁴ Consultation, para.4.26.

³⁵ See "Open Communications: Research Findings" by PWC, dated August 2020 at page 44.

Ofcom's assessment fails to take account sufficiently of the role that PCWs already play:

- 'One in four adults have used a PCW for communications services in the last 12 months.'³⁶
- 'PCWs are considered by most users to be informative and time-saving, as well as being easy to use and navigate.'³⁷
- 'The top reason why some consumers don't use PCWs is a perceived lack of the need to compare deals.'³⁸

These PCWs offer an increasingly standardised and consistent way that comparisons between the offerings of different communications providers can be made and deals can be accessed (as illustrated by the uSwitch example in Figure 17 below).

Sky supports an industry-led approach to help consumers find the best deal for them.³⁹ To further assist consumers in comparing a variety of offers, Sky has:

- i. convened roundtables between operators and price comparison websites to foster the development of common interfaces between the two;
- ii. led efforts to standardise operators' approaches to providing customers with broadband speed information; and
- iii. made its own coverage and service quality data available to providers and third parties.

Ofcom posits that, by giving third parties access to smart data, Open Communications will allow them to develop innovative new services. Clearly, PCW services are already delivering sophisticated, customisable services at that level of the value chain. It is not clear what further innovations Open Communications would deliver.

[REDACTED]

[REDACTED] As such, contrary to the implication in the Consultation (see Table 1), Open Communications is not a pre-requisite for price comparison websites to have access to [REDACTED]

Ofcom has chosen to present evidence via a particular lens in an attempt to demonstrate a lack of engagement in the communications sector. However, this approach does not accurately reflect either the actual findings of Ofcom's own research or the reality of the role that operators' own information tools, and the

³⁶ Ofcom, 'Open Communications' (produced by Populus), 4 August 2020, page 3. https://www.ofcom.gov.uk/data/assets/pdf_file/0025/199150/open-communications-2020-survey.pdf

³⁷ Ofcom, 'Open Communications' (produced by Populus), 4 August 2020, page 3.

³⁸ Ofcom, 'Open Communications' (produced by Populus), 4 August 2020, page 3.

³⁹ See Section 4 of Sky's response to BEIS Smart Data consultation, at Annex 2.

innovative services that are offered by PCWs, already play in driving competition in the communications sector.

Figure 17 – Example search from uSwitch - Broadband

The screenshot shows a search results page on uSwitch.com for broadband packages. The page is filtered to show 10 of 67 deals, sorted by 'Uswitch rated'. The results are displayed in a list format with filters on the left.

| Package | Average speed | Downloads | Contract | Price | Buttons |
|---|----------------------|-----------|-------------------|--------------------------|---|
| sky Sky Superfast Broadband | 59Mb average speed* | unlimited | 18 month contract | £25.00 p/m no setup cost | Buy now or call 0800 759 1467 More info |
| Virgin Media Virgin Media M100 Ultrafast Fibre Broadband & Phone | 108Mb average speed* | unlimited | 18 month contract | £26.00 p/m no setup cost | Buy now More info |
| plusnet Plusnet Unlimited Fibre Broadband & Phone Line | 36Mb average speed* | unlimited | 18 month contract | £21.99 p/m no setup cost | Buy now More info |
| plusnet Plusnet Unlimited Broadband & Phone Line | 10Mb average speed* | unlimited | 18 month contract | £17.99 p/m no setup cost | Buy now More info |

Filters on the left:

- Package:** Broadband (68) [checked], Broadband + TV (22)
- Average speed:** 0-30 Mb, 30-60 Mb, 60-100 Mb, 100+ Mb
- Broadband type:** Fibre broadband (47), Standard broadband (21)
- Provider:** EE (5), Plusnet (8), Sky (1), TalkTalk (3), Virgin Media (7), Vodafone (2)

4 No evidence an Open Communications regime would deliver incremental benefits to consumers

Ofcom's consultation does not provide any meaningful evidence that Open Communications would deliver incremental consumer benefits over and above those already delivered by competition or that will shortly arise from providers implementing the EECC and other regulatory interventions or voluntary operator commitments (see below).

Instead, Ofcom asks for views on its *"initial thinking on the different categories of potential benefit, to prompt views on how the design of the model could realise them"* having noted that *"the extent and distribution of the potential benefits of Open Communications are difficult to predict at this early stage"*.⁴⁰

As noted above, Ofcom appears to have already determined that Open Communications should be implemented, regardless of the extent and distribution of any benefit, and that the mere possibility of some benefits is sufficient justification. This approach is clearly flawed. In order to provide a meaningful examination of *"the case for Open Communications"* Ofcom must assess, identify and quantify the likely benefits of the proposed intervention in order to be in a position to weigh those benefits against the costs of implementation, which will be significant, as Sky explores in the next section.

Ofcom's failure to adopt a rigorous approach to this analysis when considering such a significant intervention as Open Communications belies an apparent lack of appreciation of the burden this initiative will place on the industries concerned, both in terms of direct costs and lost opportunity cost if industry is forced to prioritise replacement of existing IT and customer management infrastructure to support Open Communications instead of competing hard and innovating to attract more customers.

Ofcom's potential benefits are speculative

The consultation describes the following *"potential benefits"*⁴¹ that it considers would be incremental to the future benefits of other recent regulatory interventions such as end-of contract notifications and the provision of information to third parties:

- (i) Reducing the time and effort needed to search for a new deal;
- (ii) Increasing the benefits for customers of searching the market and finding a deal better suited to their needs;
- (iii) Enabling innovation and the introduction of new services;
- (iv) Enabling services designed to benefit people in vulnerable circumstances, for example people in financial difficulties; and

⁴⁰ Paragraph 6.3 of the Consultation.

⁴¹ Paragraph 6.1 of the Consultation.

- (v) More effective competition that could lead to better outcomes for people and businesses.

Ofcom has not provided any meaningful evidence to support these potential benefits, and whether Open Communications would in fact deliver them or assessed the degree to which these benefits are in fact “incremental” to other benefits arising from market developments or regulation (Ofcom merely asserts this as fact).

Ofcom’s qualitative evidence, based on 11 focus groups and 24 individual interviews, appears designed to confirm pre-determined outcomes, with groups reacting to mock-ups of comparison, aggregation and account management services which appear similar to existing price comparison websites and provider account management service, as is acknowledged by one respondent who notes in relation to the account manager service “I like this already. I have this with Sky which has everything in one place”.⁴²

All this evidence supports is the contention that, when asked, users are supportive of being given more information about the services they use. Ofcom has not attempted to assess the likelihood of users making use of that information or services, or tried to quantify those benefits, either for those consumers in terms of savings in time, savings in costs of the services, or improvements in the quality of the services acquired.

Ofcom’s quantitative research (which is focused on existing attitudes to PCWs) illustrates the risks for Open Communications: notwithstanding the existence of Open Banking, only 17% of UK consumers have used PCW for personal finance products, compared to 28% for communications products. As the CMA stated when setting out its remedy in the Retail Banking Review, there is no single cause of weak consumer engagement, and Smart Data is no ‘silver bullet’.

Ofcom has failed to take account of recent and upcoming changes in consumer regulation

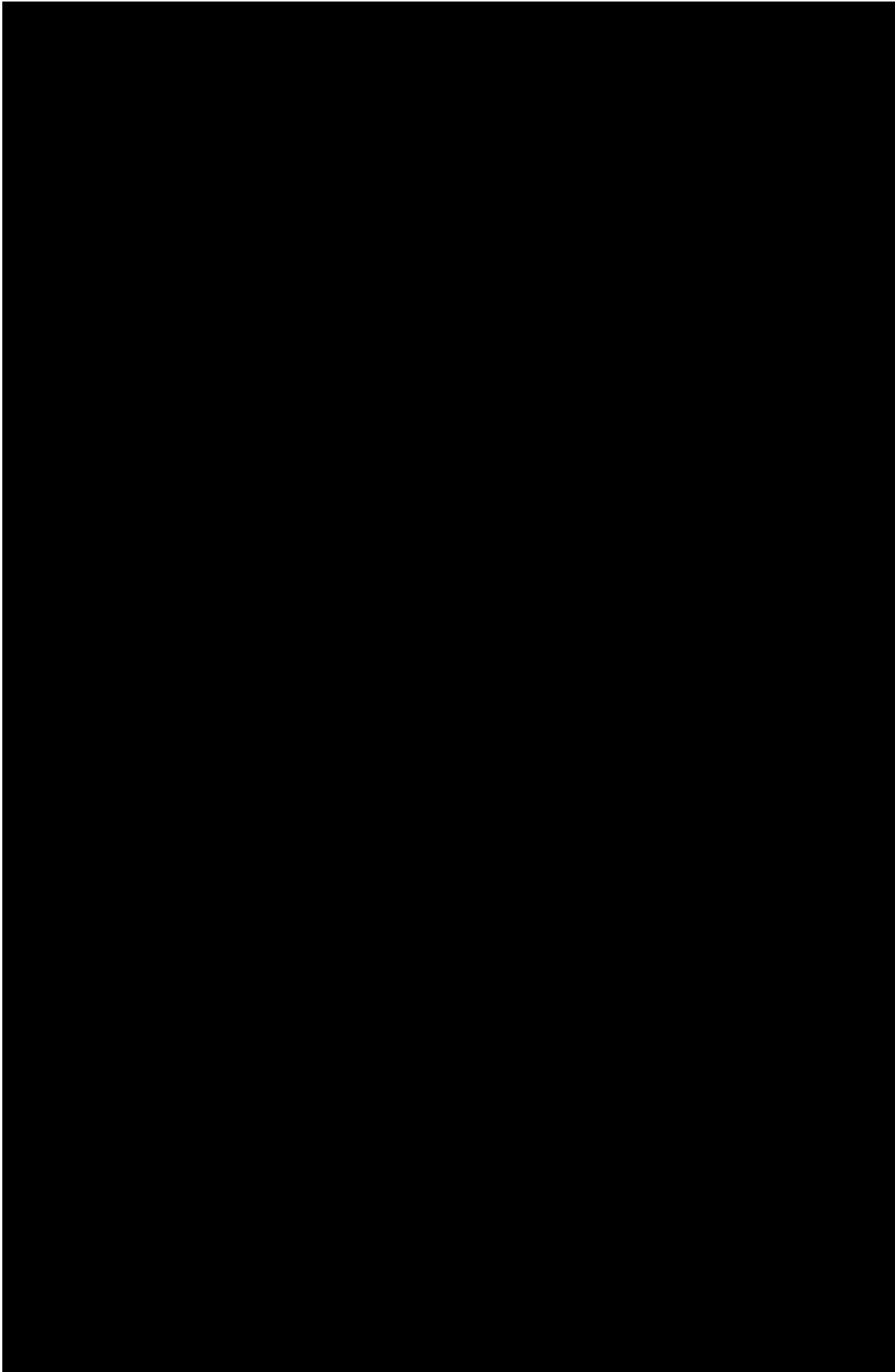
Ofcom states that:

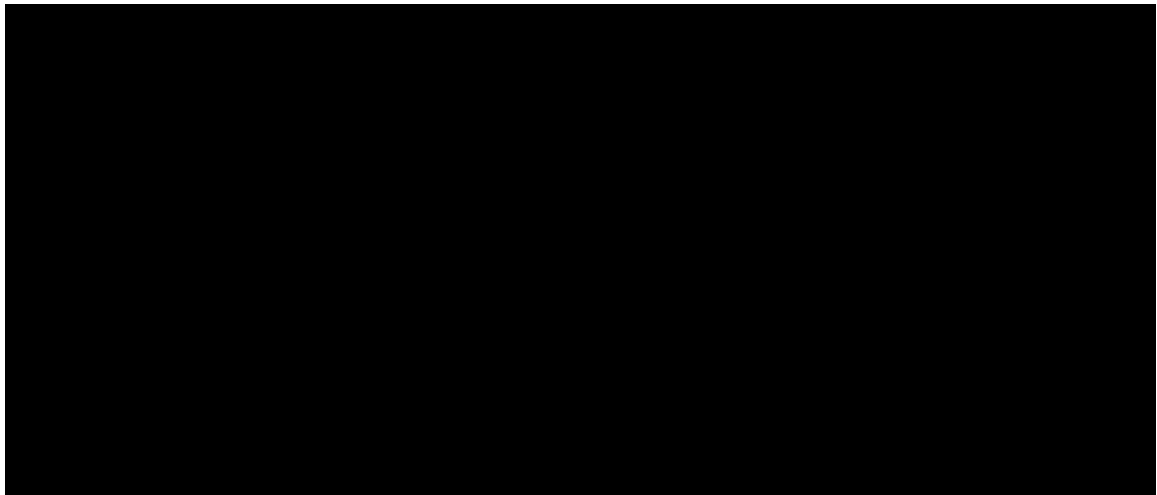
“Open Communications could deliver potential benefits for people and small businesses that would be incremental to the future benefits of other interventions, such as end-of contract notifications and the provision of information to third parties.”⁴³

However, Ofcom fails to adequately assess whether the extent of any additional benefits provided by Open Communications over and above those expected as a result of those other interventions, which are numerous, and designed to improve competition, increase consumer engagement and the treatment of vulnerable consumers. [REDACTED]

⁴² PWC, ‘Open Communications: Research Findings’, August 2020, page 44. https://www.ofcom.gov.uk/data/assets/pdf_file/0032/199148/open-communications-2020-qualitative-research.pdf

⁴³ Paragraph 6.1 of the Consultation.





Ofcom states that Open Communications “could complement the measures that Ofcom has already taken to improve the consumer journey for people” and “could build on the impact of these measures and offer further benefits.”⁴⁴ However, as a result of its flawed methodology in this consultation, Ofcom has no way of assessing whether Open Communications is complementary, accretive, duplicative or, by overloading customers with yet more sources of slightly different information that they will receive under the interventions above, could actually reduce the effectiveness of such interventions. This risk was a frequent concern of Ofcom when determining the content of notifications to consumers in its statement “*Helping consumers get better deals*”⁴⁵. Ofcom stated:

“We are mindful of the risk of requiring providers to give customers excessive amounts of information.... Our decision requires providers to outline their main options, so that customers are aware of, and can consider them. It balances the need for full information with the potential risk of overloading customers with too much detail.”⁴⁶

And in its 2013 research document: “*A Review of Consumer Information Remedies*”:

“Striking the right balance between detail and succinctness of information is critical, but difficult to achieve. Too little detail and consumers may make the wrong purchasing (or other) decisions; but too much detail can have the same result, since ‘information overload’ can drive consumers to make hasty decisions or to postpone their decision. There is also evidence that consumers make judgements about the ultimate value of investing time in reading or understanding information: if effort in finding or understanding information is disproportionate to the (perceived) benefits, consumers are less likely to engage with it”⁴⁷

⁴⁴ Paragraph 3.2 of the Consultation.

⁴⁵ Ofcom Statement, ‘Helping consumers get better deals’, 15 May 2019. https://www.ofcom.gov.uk/data/assets/pdf_file/0018/148140/statement-helping-consumers-get-better-deals.pdf

⁴⁶ Ofcom Statement, ‘Helping consumers get better deals’, 15 May 2019, para.4.94.

⁴⁷ Ofcom research document, ‘A Review of Consumer Information Remedies’, 12 March 2013. https://www.ofcom.gov.uk/data/assets/pdf_file/0033/91698/information-remedies.pdf

Ofcom has failed to consider the cumulative effect on consumers of Open Communications on top of these other measures which have just recently been introduced or will be introduced shortly. Sky believes Ofcom should allow operators to implement these measures first and only once they are in place, will Ofcom be able to assess where any gaps might be and what solutions may be appropriate to address them.

5 The costs of implementing an Open Communications regime would be significant

Ofcom acknowledges that an Open Communications regime is likely to impose significant costs on providers and third parties using the data.⁴⁸ However, despite having “discussed potential costs with stakeholders in the communications sector and the Open Banking ecosystem” Ofcom has not attempted to quantify even the order of magnitude of such costs. It instead cites the early stage of this work and extent to which costs will depend on design, before asking respondents for estimates of the costs of implementation.⁴⁹ Once again, Ofcom puts the cart before the horse. Since Ofcom has not identified any market failure, it is unable to say what an Open Communications regime looks like, and therefore unable to determine its costs. Respondents are in the same position.

It is, however, clear that on any reasonable assessment the financial costs of implementation, and opportunity costs of diverted resource, would be significant – not only for providers of services considered in scope, but also for Ofcom and Government. Sky’s experience from Ofcom’s previous attempts to impose technical switching solutions on mobile providers, discussed below, indicates that schemes like this are costly to implement and operate. Sky notes that, to date, the direct financial costs of Open Banking to Government are over £80m. Open Banking has so far cost its industry £1.5bn; take up remains low and the scheme continues to consistently miss its targets some four years since the CMA set up the Open Banking Implementation Entity to deliver Open Banking.

Implementing any Open Communications solution would be a major IT project for every existing and new operator in the relevant sectors (failure to participate in any proposed scheme would clearly be a disadvantage entrenching existing providers), requiring the review, and potential replacement of key IT systems and software to facilitate the secure disclosure of vast quantities of customer and product data in uniform or comparable formats. In rapidly changing and innovative technology sectors like communications and pay TV the opportunity costs will also be very significant for providers and for Ofcom. No detailed analysis needs to be done to conclude that such a project would be a huge drain on resources, whose delivery would come at the cost of other consumer-focussed initiatives. Sky’s experience is that a significant amount of management time and development resource is expended on dealing with regulatory change. Since such resources are finite, this inevitably means that other projects delivering innovations which would benefit consumers are deprioritised.

Furthermore, as compared to Open Banking, an Open Communications regime would likely be even more costly due to the complexity and differences between the services available. This is explored in more detail below.

⁴⁸ Consultation, para.8.1.

⁴⁹ Consultation, para.8.4.

The importance of Ofcom carrying out a close and detailed costs assessment, particularly when it is considering interventions to deliver better consumer outcomes, were evident in 2017 when Ofcom published its decision on reforming the switching of mobile communication services.⁵⁰

In March 2016, Ofcom had estimated that the setup and ongoing costs that mobile providers would incur to implement its proposals (over ten years) was £47.8 million for an Auto Switch process and £47.1 million for a Gaining Provider Led process (GPL).⁵¹ However, by the time Ofcom next consulted on its proposals, it had carried out a fair more detailed costs assessment, including looking at the costs of a central porting database, and revised its estimates to £62 million for Auto-Switch and £94 million for GPL.⁵² The estimated costs of the GPL solution had doubled, and now Ofcom assessed that the benefits of implementing such a system no longer justified these high costs. This example illustrates why accurately and carefully estimating costs must be a cornerstone of Ofcom evaluation of proposed regulatory interventions. In the case of the Open Communications proposals, it would, therefore, be inappropriate for Ofcom to conclude that the benefits (which it similarly has yet to identify and quantify, as discussed above) would outweigh the costs.

Communications services are complex and highly differentiated, increasing implementation costs

Unlike traditional utilities, such as water or energy, communications services are provided through a multiplicity of access networks, including mobile and fixed networks, using a range of different and evolving technologies. Innovation in the communications sector means that new services, offering features such as enhanced security and speed, regularly come to the market, alongside new handsets and routers with increasingly advanced capabilities. This stands in contrast to products such as water and electricity which are delivered in a homogenous manner leading to a largely uniform service for end users (and which has been the case for a significant period of time).

The diversity of technologies and networks allows for significant user choice over a range of factors such as broadband speed, mobile coverage, data allowances and mobile data speeds. This is reflected in the wide variety of competitive packages and service tiers available to consumers; indicative of a healthy market that provides customers with a broad range of choice. In the communications market, competition has been the key enabler of positive outcomes for consumers.

Demand for different communications services and technologies varies and is significantly price-sensitive, with reduced demand for more expensive cutting-edge offerings. The transition from ADSL to superfast broadband exemplifies this, with widespread consumer adoption of the higher quality service only occurring when

⁵⁰ Ofcom Statement, 'Decision on reforming the switching of mobile communication services', 19 December 2017.

⁵¹ Ofcom Consultation, 'Consumer switching: Proposals to reform switching of mobile communications services', 19 May 2017, para.5.68.

⁵² Ofcom Consultation, 'Consumer switching: Proposals to reform switching of mobile communications services', 19 May 2017, para.5.71.

wholesale prices had reduced to such a level that operators were able to price superfast broadband more in line with lower speed products.

Pricing of communications services is differentiated and, unlike utilities, is often not a straightforward reflection of service capabilities or the cost of the product or products in question

The differentiated nature of pricing in this area is a response to the fact that customers make different trade-offs between price and flexibility depending on their priorities. Sky also offers innovative pricing and packaging to provide offers that meet the real needs and priorities of customers.

Comparisons between offers from different communications providers are complex due to of high levels of product differentiation and innovation and the fact that there are a wide range of metrics and non-price characteristics that are relevant to consumer choice. The numerous factors at play are illustrated by the different features that suppliers choose to market to consumers, for example:

- i. faster broadband [REDACTED]
- ii. better mobile coverage [REDACTED]
- iii. faster mobile data speeds [REDACTED]
- iv. larger range of handsets on offer;
- v. service levels;
- vi. innovative pricing and packaging [REDACTED]
- vii. new products [REDACTED]
- viii. loyalty benefits [REDACTED]
- ix. zero-rated content usage with mobile data services [REDACTED]
- x. in-home performance [REDACTED]

Another dimension is added to this calculation by increased popularity of fixed-mobile bundles in the UK. Sky is steadily seeing more fixed-mobile cross selling and discounting across services. There is also evidence to demonstrate an emerging trend within the UK market towards single-price fixed-mobile bundles. Research by Analysys Mason in 2019 forecast that the proportion of fixed broadband connections taken as part of a fixed-mobile bundle is forecast to grow to 30% within

the next five years.⁵³ Such bundles are already standard in many other European countries, with fixed-mobile bundles accounting for over 70% of fixed broadband connections in Spain and 50% in France.⁵⁴

The multifaceted set of factors that influence a consumer's decision to opt for one provider or offer over another means that communications services cannot be meaningfully compared using simple data points. A comparison along such lines would fail to present the consumer with a complete understanding of the implications that changing offer might have for their service, equipment and bundles. As such, communications services are ill-suited to interventions targeted at straightforward comparison as set out in the Open Communications proposals.

Including Pay TV services further increases complexity

The Open Communications proposals purport to include pay TV services within their scope; however, the above considerations are even more important when it comes to pay TV services, which are yet more differentiated and complex. Pay TV services have fundamentally different economic characteristics to communications services which mean they are particularly ill-suited to data-based initiatives aimed at facilitating comparison or switching.

Pay TV services provided by different operators are highly heterogeneous, particularly when compared to largely homogenous products, such as utilities or bank accounts. Different providers have significantly different offerings, for example:

- i. innovative ways to watch TV [REDACTED]
- ii. different television programmes and movies (including new releases and original content);
- iii. different delivery and amalgamation platforms;
- iv. different equipment used to receive services;
- v. additional services, such as applications used to view content on multiple devices;
- vi. services available in high definition, or 4K;
- vii. the flexibility and range of packages available;
- viii. customer service levels; and
- ix. parental controls and other forms of content control and personalisation.

The lack of interchangeability between pay TV services is illustrated by the fact that it is increasingly common for households to take pay TV products from a number of providers simultaneously. Ofcom's 2020 Media Nations report found that 18 per

⁵³ Analysys Mason, 'FMC penetration continues to increase in many countries, aided by improving fixed wholesale rates', 3 April 2020. <https://www.analysysmason.com/research/content/comments/fmc-forecast-comment-rdcs0/>

⁵⁴ Analysys Mason, 'FMC penetration continues to increase in many countries, aided by improving fixed wholesale rates', 3 April 2020. <https://www.analysysmason.com/research/content/comments/fmc-forecast-comment-rdcs0/>

cent of adult subscribers to Netflix, Disney+ and Amazon Prime Video had a subscription to all three services.⁵⁵

If traditional pay TV services, such as those provided by Sky and Virgin Media were also factored into this, a very large number of households would have both a 'traditional' pay TV service and at least one OTT SVoD service. [REDACTED]

[REDACTED] Despite the large number of households who take multiple TV services, approximately 39.7% of UK households have only digital terrestrial TV.⁵⁶ Therefore, notwithstanding Sky's criticisms above, to provide any kind of meaningful information to consumers and maintain a level playing field between operators, any Open Communications scheme would need to include OTT providers (SVOD, AVOD and TVOD) and free to air digital terrestrial TV services as well as traditional pay TV services. Ofcom does not appear to have contemplated this level of detail or complexity, and its proposals are consequently under-cooked.

Finally, it must be recognised that, as with Open Banking, the costs of implementing and operating such schemes are ultimately borne by consumers through higher prices, increasing the level of incremental benefit Open Communications must deliver in order to overcome those increased costs.

Ofcom, 'Media Nations 2020 UK Report', 5 August 2020.
https://www.ofcom.gov.uk/data/assets/pdf_file/0010/200503/media-nations-2020-uk-report.pdf

⁵⁶ Ofcom, 'Media Nations 2019 UK Report', 7 August 2019.
https://www.ofcom.gov.uk/data/assets/pdf_file/0019/160714/media-nations-2019-uk-report.pdf

6 Conclusion

Open Communications is neither necessary nor proportionate. Ofcom should strongly recommend that the communications and TV sectors are excluded from Government's Smart Data initiatives. Ofcom's focus should be monitoring the impact of the recent interventions it has already made and, if required, taking more targeted measures to promote consumer engagement and the protection of vulnerable customers.

In the Consultation, Ofcom starts from a flawed premise that Open Communications is a 'magic bullet', guaranteed to deliver benefits, and without adverse effects. It has leapt several steps ahead, to consider how to implement Open Communications, without carrying out the initial and necessary step of examining the sectors closely to understand whether any intervention is required. Open Communications is a potential remedy to help correct identified harms, and should be treated as such. It is not an end in itself.

Ofcom's consideration of the core principles for the design of the Open Communications initiative is premature. For the reasons set out above, Ofcom must first comply with its regulatory duties and apply the correct framework for assessing whether intervention is justified. Ofcom must operate with a bias against intervention, and any intervention must be proportionate.

We are concerned that, if Ofcom continues unchecked along the course it has set itself, and recommends Open Communications to Government, the sector will be burdened with implementing a prescriptive and intrusive Open Communications regime, at substantial cost to industry and consumers, that is simply not justified by the limited and speculative benefits. This is particularly the case when the communications sector is already highly competitive and delivering good outcomes for consumers.

Sky

November 2020

Annex 1 - [REDACTED]

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Annex 2 – Sky response to BEIS Smart Data consultation



Smart data Sky
response.pdf

Annex 3 – Sky’s response to Ofcom’s specific questions

Question 1: Do you agree with our assessment of the challenges that people and SMEs face when engaging with the market, which Open Communications might help to address? Please explain and provide evidence.

No – Ofcom displays a clear bias towards implementing Open Communications, which has hindered its ability to carry out an objective assessment of the need for such a measure. By failing to meet its regulatory duties and conduct the necessary critical analysis, Ofcom has fallen far short of the required standard.

Question 2: Is there additional evidence of problems that people and SMEs face when engaging with the market that you would expect Open Communications to help address? Please explain and provide evidence.

No – the communications and TV sectors are highly competitive and delivering good outcomes for consumers, see section 2 above.

Question 3: Do you agree with our view of the benefits for people and businesses that Open Communications could generate?

No – see section 4 above.

Question 4: Do you agree with our assessment of how Open Communications could enable services that benefit people in vulnerable circumstances? Are there other ways it could benefit people in vulnerable circumstances?

No – Open Communications is not a suitable remedy. Rather than pursuing Open Communications, Ofcom should focus on monitoring the impact of the recent interventions it has already made (as described in section 4 above) and, if required, take more targeted measures to promote consumer engagement and the protection of vulnerable customers.

Question 5: Are there any risks that we have not identified that could reduce the overall benefits of Open Communications? Please provide evidence, where possible.

Yes – as described in section 4 above, Ofcom has posited no evidence that an Open Communications regime would deliver incremental benefits to consumers, and it has failed to take account of recent and upcoming changes in consumer regulation.

Question 6: Do you agree with the core principles that we have identified for the design of Open Communications?

No – for the reasons set out in our response, Sky believes it is premature to consider the core principles for the design of Open Communications, as the case for intervention has not been made.

Question 7: On what kinds of communications providers do you consider that any obligation to provide customer and product data should sit?

For the reasons set out in our response, Sky believes it is premature to consider how obligations to provide customer and product data should be formulated, as the case for intervention has not been made.

Question 8: Do you agree with our initial views on how to approach key issues for the design and operation of Open Communications? Do you have comments to make on other implementation issues?

No – Sky believes it is premature to consider key issues for the design and operation of Open Communications, as the case for intervention has not been made. We note that the costs of implementing an Open Communications regime would be significant, see section 5 above.

Question 9: Do you agree with our view of the data that Open Communications should make available to third parties? Is there data about accessibility needs or vulnerable circumstances that people would benefit from being able to share with third parties?

No – Sky believes it is premature to consider the data that Open Communications may make available to third parties, as the case for intervention has not been made. We also note that sharing of personal data, particularly regarding sensitive personal data relating to a customer's mental or physical health needs, may pose significant GDPR risks.

Question 10: What are your views on the appropriate arrangements for determining liability and redress in disputes between customers, providers and / or third parties?

Sky believes it is premature to consider the appropriate arrangements for determining liability and redress in such disputes, as the case for intervention has not been made.

Question 11: Do you agree that we have identified the main sources of costs for implementing Open Communications for both providers and services that use Open Communications data? Are there any sources of costs that we have missed?

The case for intervention has not been made and Ofcom has failed to carry out an adequate assessment of the costs of an Open Communications regime. For the reasons set out in section 5 of our response, the costs of implementing such a regime would be significant.

Question 12: What factors will drive the overall scale of costs to in-scope communication providers and to third parties? How might this level of cost vary depending on whether providers serve residential and / or business customers?

As noted in section 1 of our response, the case for intervention has not been made.

Open Communications would be the most significant intervention in the communications and TV sectors since Ofcom's creation, costing the industry many millions of pounds; costs that will ultimately be borne by UK consumers.

Question 13: If relevant, please estimate and describe, as far as possible, the costs to your organisation of implementing and running Open Communications.

As noted in section 1 of our response, the case for intervention has not been made.

Open Communications would be the most significant intervention in the communications and TV sectors since Ofcom's creation, costing the industry many millions of pounds; costs that will ultimately be borne by UK consumers.

Question 14: If relevant, would your organisation consider using Open Communications data as a third party to offer new services or enhance existing ones?

The premise of this question is wrong. We note that, as set out in section 3 above, we are already working with price comparison websites to enhance their services and drive innovations to develop a range of well-used services and information tools. The case for intervention has not been made.

