

Open Communications: Enabling people to share data with innovative services

TalkTalk response to Ofcom consultation

13 November 2020

TalkTalk welcomes the opportunity to comment on Ofcom's consultation on Open Communications.

In summary we are concerned about the Open Communications proposals for the following reasons:

- We do not believe that Ofcom has produced sufficient evidence to support the proposition that it would be necessary to introduce Open Communications obligations on broadband providers in the UK.
- We are concerned that Ofcom has not managed to make any further progress on assessing the potential cost of implementing an open communications model.
- Ofcom has not considered the impact on providers to implement the new consumer protection measure set out in the European Electronic Communications Code over the next two years.

We address the above points in more detail in the following sections.

1. Lack of evidence in support of Open Communications proposals

TalkTalk is concerned that Ofcom has not produced sufficient evidence to support the proposition that it would be necessary to introduce Open Communications obligations on broadband providers in the UK. The consultation document makes frequent reference to the fact that Open Communications could fundamentally change the information available to people and businesses. Yet the consultation document does not in our view, set out a coherent set of arguments as to why such regulatory intervention would be necessary or proportionate to the aim of improving consumer transparency and switching.

There is a temptation to make comparisons with the banking sector where a model of open banking has been introduced. We would argue, however, that the comparison with the banking sector is not immediately relevant as the communications sector generally features far more complex product sets and services which are dependent on physical connections into the premise. Switching of communications services is therefore generally more complex than switching bank accounts. More broadly, there is very little evidence of significant consumer benefit arising from Open Banking. For instance, a survey published in October 2020 found that just 23% of UK users would be happy for banks to access their information

and just 25% were aware of this capacity.¹ This is more than two years after launch and high costs for industry in setting up the initiative.

It seems to us that Ofcom has only carried limited consumer research to support its proposals. The survey referenced in the consultation document focused on consumers' perception of current price comparison websites rather than assessing any underlying concerns that consumers may have when it comes to engaging with the broadband market and seeking out the best deal for them.

The presentation of the market research evidence in the consultation document strikes us as being one-sided where only potential shortcomings are highlighted. The consultation document does not explain why a particular % threshold should be considered more relevant than any other and accordingly why a particular finding should be considered more relevant than any other. For instance, it is interesting to note that:

- 78% of respondents were confident or fairly confident that they understood the deals that were available to them;
- 78% of respondents were confident or fairly confident that they had ensured that their current deal was the best one for them or their household;
- 77% of respondents were confident or fairly confident that they were able to compare the costs of services across different providers;
- 77% of respondents were confident or fairly confident that they were able to compare the value for money of services across different providers;
- 76% of respondents were confident or fairly confident to speak their current or other provider about new deals;
- 74% of respondents were confident or fairly confident that they understood the language and terminology used by providers; and
- 72% of respondents were confident or fairly confident that they understood the broadband speed they or their household needs.²

In stark contrast to the way in which Ofcom seeks to present the same research in the consultation document,³ we would argue that the very same research actually shows that a significant majority of consumers are actually very capable of engaging in the broadband market in order to seek out the best deal for them. It also does not suggest that there is significant appetite for an Open Communications function.

Ofcom refers to the fact that 40% of broadband customers were outside their minimum contract period ('out-of-contract') in September 2019, paying on average £13 more per month than new customers.⁴ Ofcom does acknowledge (in a footnote) that the survey was conducted prior to the entry into force on 15 February 2020 of the obligation on broadband

¹ <https://think.ing.com/articles/what-we-say-and-what-we-do-differ-in-a-tech-world>.

² Ofcom, August 2020, [Open Communications Survey](#), B6

³ Ofcom consultation document, paragraph 3.10.

⁴ Ofcom, July 2020, [Helping consumers get better deals: A review of pricing practices in fixed broadband](#), Table 3.

providers to send end-of-contract notifications.⁵ Ofcom does not explain, however, why it considered it appropriate or meaningful to conduct the survey only days before broadband providers started sending out end-of-contract notifications.

Ofcom says that it is *“making targeted interventions across the consumer journey to prompt people to engage at the right time, help them to search the market and to act, including by switching provider [...]”*.⁶ Such an approach makes sense to ensure that regulatory intervention measures are necessary and proportionate to the aim of protecting consumers through better information mechanisms. It makes little sense, however, to seek to make the case for yet another regulatory intervention without first assessing whether measures already imposed would have any effect. Yet this is what Ofcom appears to be doing in this case by commissioning consumer research into a market that was yet to see the impact of a previously imposed measure.

2. Potential cost of implementing an Open Communications model

We are very concerned that Ofcom has not managed to make any further progress on assessing the potential cost of implementing an Open Communications model. The implementation cost is a key consideration in the overall regulatory analysis required to ensure that a regulatory intervention is proportionate. The consultation document makes reference to the fact that Ofcom has engaged with communications providers and price comparison websites but then simply acknowledges that *“[g]iven the early stage of our work, and the extent to which the costs may depend on the design and the volume of datasharing, we have not yet attempted to quantify costs.”*⁷ We would also note in this regard that Ofcom suggests that third party providers may be able to recoup any costs in setting up Open Communications but there is no analysis carried out as to whether providers would be able to do the same or would simply have to swallow the cost.⁸

Ofcom does then actually not say how it intends to arrive at a reasonably robust estimate of implementation costs but only says in this regard that it intends to engage with stakeholders *“[h]ow design can mitigate the costs of implementing Open Communications.”*⁹ We fail to understand how Ofcom considers that it will meet the statutory duty of ensuring that a regulatory intervention of this nature would be proportionate without having a detailed view of likely implementation costs.

We would also note that the research shows that the biggest concern appears to be about speed calculations and terminology. We recognise this is a challenge for consumers but we cannot see how Open Communications would necessarily assist here as the envisaged measures would not help to build understanding amongst consumers who struggle to understand these terms. The Open Communications data would simply give numerical

⁵ Ofcom consultation document, footnote 19.

⁶ Ofcom consultation document, paragraph 2.14.

⁷ Ofcom consultation document, paragraph 8.4.

⁸ Ofcom consultation document, paragraph 8.22.

⁹ Ofcom consultation document, paragraph 9.4.

comparisons but not the information to help customers understand their speed needs. There are separate measures to help the consumer to understand their download speed needs e.g. questions about usage at point of sale which TalkTalk (and we are sure others) have implemented. These issues are also being considered in other regulatory contexts, including discussions around the migration to full-fibre networks. We welcome these discussions but do not see how Open Communications would help to build consumer engagement or knowledge of the issue.

3. Consideration of other consumer protection measures

Ofcom needs to consider the overall impact on communications providers particularly as Ofcom has only last month published its final statement to implement the extensive requirements of the European Electronic Communications Code (EECC). This document will require providers to implement a host of new and significant consumer protection requirements in relation to consumer sales information, new switching platform and process as well as number porting. Ofcom has given a time period of 18-24 months ending in December 2022 for the most complex requirements around consumer switching (which are yet to be consulted on by Ofcom next month). There will therefore be a significant amount of implementation work for providers to consider over the next two years which notably are all designed to increase significantly the level of consumer protection in relation to the sales and switching of communications services.

Furthermore, Ofcom chose to implement EECC requirements around end-of-contract and annual best tariff notifications with effect from February 2020. In fact, providers will have until February 2021 to start sending out the first annual best tariff notifications. Ofcom is only this autumn starting to assess the impact of these consumer protection measures although we would argue that it will take a couple of years before we are able to draw any definitive conclusions around impact on switching. It is therefore premature to consider further consumer protection measures such as Open Communications before we can make any safe conclusions about measures that have only been recently introduced in the communications sector.

Finally, some of the services which third party providers say they will offer (e.g. overview of services, money spent etc), we already offer through existing online dashboards and other MyAccount services. There is a presumption underpinning the consultation document proposals that third party providers would be able to add value to this market but there is very little evidence as to precisely that added value would consist of. We would argue that it would be better to understand first how consumers interact with current tools e.g. price comparison websites, usage guidance, data dashboard etc. before seeking to create new tools by requiring providers to undertake significant development efforts.