

# Zzoomm response to Ofcom consultation on Open Communications



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## Introduction and background

1. Zoomm is pleased to respond to Ofcom's on the potential introduction of Open Communications in the UK electronic communications sector.
2. Zoomm plc ("Zoomm") builds and operates new ducted Full Fibre networks in selected UK market towns. It delivers services to homes, businesses, and enterprises within each service area over a combination of shared XGS-PON and point-to-point fibre infrastructures. It commenced operation in September 2019 in Henley-on-Thames, [X].
3. Zoomm currently operates as a vertically integrated business but is actively pursuing engagement with retail ISPs for them to use the Zoomm fibre network to deliver their services and bundles of services.
4. We believe in consumer choice and in enabling consumers to make informed choices. For example, Ofcom refers in paragraph 3.19 to confusing terminology when selecting broadband services. Operators like Zoomm that invest in full-fibre networks have been facing competition from copper-based broadband providers that untruthfully describe their services as 'fibre' when in fact only part fibre, giving rise to considerable consumer confusion.
5. This confusion is a direct result of deliberate and intentionally misleading advertising campaigns by broadband providers including BT/Openreach and the retail service providers using the Openreach infrastructure. Yet Ofcom has made no efforts to stop this practice. In our view Ofcom, the first step towards open communications should be through reducing confusion by ensuring that this type of behaviour is stopped and that the technology used to deliver specific service is accurately described.

## The scope and benefits of Open Communications

6. Throughout the consultation document, Ofcom quotes its qualitative and quantitative research, demonstrating that customers do not always make informed decisions and find it difficult to find and/or understand their own usage data.
7. We agree that the sector is complex to navigate and do not oppose efforts to assist customers in making informed choices. We are not, however, convinced that Open Communications will achieve this.
8. We believe that Ofcom should identify specific objectives it wishes its proposals to meet. The current consultation document is very wide and non-specific, making it difficult to prove or disprove whether any proposed measures have been successful.
9. As a new market entrant Zoomm is in favour of empowering consumers to make informed choices. We are confident that our network and services are equal to (when Full Fibre) or superior to others available where our networks are present, and we would welcome means of demonstrating that in a clear and transparent manner.
10. Our concerns in relation to Ofcom's Open Communications proposals are that we do not believe Ofcom has clearly identified the problems it seeks to solve and that the solution outlined<sup>1</sup> could lead to unintended consequences as well as imposing a significant cost and administrative burden on service and network providers.

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<sup>1</sup> Which we acknowledge is at an early stage and we look forward to engaging with Ofcom in the development of a more targeted and proportionate remedy.

## Comparison to other sectors

Ofcom refers to other sectors in which similar initiatives have been implemented, in particular to the banking sector. Whilst we agree that it is always useful to seek lessons on how interventions have been done and what impact they have had in other sectors, we are concerned that Ofcom does not seem to actively consider where the banking sector and the electronic communications sector are comparable and where they are not.

In particular, the sharing of customer data in banking is limited to the services taken by the customer, not to the physical presence of the banks, nor the time customers have to queue or wait on the phone to receive service. In electronic communications, however, Ofcom is proposing that commercially sensitive network coverage and performance data should be shared between competitors and/or third parties but does not question the risk of such data being abused.

We urge extreme caution against assumptions that benefits and risks can be read across between sectors and would welcome a consultation from Ofcom on how the Open Communication initiative would be implemented, including a cost/benefit assessment of such proposals.

## The benefits of third-party comparison websites

11. Zzoomm has severe reservations in relation to third-party comparison websites. Whilst, in principle, they should deliver assistance to consumers, they are often sponsored/funded by players in the sector and, as identified by some parties in Ofcom's research, it is not clear that the comparisons are made objectively and that the recommendations made to customers do not favour those sector players that provide financial backing for the comparison website.
12. One could compare reliance on comparison websites to reliance on on-line ratings of products and services for which a significant amount of fraud has been exposed in recent years. Zzoomm therefore urges extreme caution with respect of the assumption that increased reliance on third-party comparison websites will deliver consumer benefits. In particular, we are concerned that Ofcom thinks third-party comparison websites could be specifically helpful to vulnerable customers.
13. We understand that Ofcom is proposing to make accreditation of comparison websites mandatory, but we are not confident that accreditation scheme can effectively prevent bias in the recommendations produced by such sites. This consultation appears to assume that third-party comparison websites will act in an unbiased manner, in the interest of individual consumers. We do not believe this assumption is justified and would like to register our severe concerns that Open Communications could be implemented to the detriment of consumers, rather than to their benefit.
14. For example, not all comparison sites include all service providers, potentially resulting in customers receiving a recommendation based on who the site has included, rather than on which provider would best meet that specific customer's needs. We note that the Competition and Markets Authority (CMA) has recommended that customers use several insurance comparison sites, for example, for that very reason.
15. It is not clear to us that customers will want to go through the authorisation of Open Communications data drops to several comparison sites, that is if they even realise that comparison websites in fact may not compare all relevant service providers. It seems that this situation may not be a significant improvement over status quo.

16. It should be noted that comparison sites need to create revenues and profits. This will typically be through sponsorships, sales commission, and advertising, all of which have the potential to create incentives for bias in the assessments undertaken by the comparison sites.
17. Finally, the use of most favoured nation clauses by a price comparison site<sup>2</sup> was found by the CMA earlier this year to be in breach of competition law, yet another example of the scope for bias in the comparisons and recommendations performed by such sites.

### Ofcom accreditation

18. We acknowledge that Ofcom is offering a (currently) voluntary accreditation scheme for comparison sites. We also understand that Ofcom would intend to make such accreditation compulsory, in order for a site to be accredited to receive Open Communications data.
19. History, however, has shown that it can be very complex to determine whether comparisons are fair and unbiased. Certainly Ofcom accredited comparison sites should increase consumer trust, but we are not confident that this would be a fail-safe guarantee that such sites are not designed to (or evolve over time to become) favour providers with whom a site has financial links.
20. We are not aware of what restrictions Ofcom imposes on sites in order for them to be accredited. For example, what firms of revenue-generating models are allowed.
21. Given the complex analyses required by the CMA to make its determinations relating to comparison sites, Ofcom's accreditation scheme would need to be very sophisticated, and undertake frequent checks on accredited sites, in order that it could be guaranteed that customers interests are genuinely served by such sites.

### Accreditation of electronic communications network and service providers

22. We note that Ofcom proposes that, alongside third-party comparison sites, providers of electronic communications networks and services can also be accredited to access Open Communications. That is, if a customer is considering moving to another provider, that customer can mandate its current provider to release all relevant information to the provider the customer is considering switching to.
23. We have concerns that such data could be abused by providers to make general comparative claims. It is not clear how it can be ensured that a provider in receipt of confidential network coverage or quality data for its key competitor will not abuse such data. Ofcom makes a number of general statements that the customer must feel sure that her or his data is shared in a safe manner, but we see no consideration of the risks of operator-specific data being thus shared.
24. Whilst we have severe concerns in relation to the reliance on third-party comparison sites or concerns in relation to the provision of sensitive network data between network and service providers go even deeper and we urge Ofcom to reconsider this approach.
25. It should also be noted that sensitive network and product data shared with third-party comparison sites may also be at risk of being harvested and shared with competing network or service providers.

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<sup>2</sup> Comparethemarket - <https://www.gov.uk/government/news/comparethemarket-home-insurance-deals-could-deny-people-better-prices>.

## Proportionality

26. Ofcom acknowledges that standardisation of data for Open Communications can be complex and costly<sup>3</sup>, but this is almost a comment made in passing. It appears that whilst, rightly, Ofcom focuses significantly on potential benefits to consumers, the consultation does not focus appropriately on the potential consequences of Open Communications for network and service providers in the sector.
27. Zzoomm supports consumer protection measures that can be demonstrated to lead to clear benefits or demonstrably prevent consumer harm. Information on products, coverage and quality are data that could be secured without the need for open Communications, including through Ofcom's existing data collection activities. Data published regularly by Ofcom can be accessed by comparison websites.
28. Ofcom also references a number of other initiatives it has taken in recent years to improve access to information for consumer and to remove barriers to switching. It is not clear to us that there is yet sufficient evidence to assess whether those initiatives have improved conditions for consumers, and we believe that enough time should be allowed for that assessment to take place.
29. Additionally, to comply with the European Electronic Communications Code (EECC), a new gaining provider led switching platform is due to be implemented over the coming 18 months or so. It is not clear how this will interact with any Open Communications initiative.
30. Considerable investment is required by operators in the UK in coming years to comply with consumer protection measures in the (EECC), including the forthcoming gaining provider led switching platform. This is happening at a time where capital investment in new infrastructure is at an all-time-high in the UK and we urge Ofcom to consider the impact of the ability of (in particular) smaller network providers to comply with what looks likely to become highly complex Open Communications requirements as well.
31. It should be noted that, if Open Communications is introduced, then it would become critical for all providers (including small network operators) to participate, as, otherwise, customers would be receiving recommendation that that exclude services offered by those small network operators.

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<sup>3</sup> Paragraph 7.19.