Ofcom Net Neutrality Review – DCF Response

January 2023

About the Digital Connectivity Forum

The Digital Connectivity Forum (DCF) is the UK Government's primary advisory group on the provision of seamless digital connectivity.

Our goal is seamless digital connectivity, empowering positive societal change and economic growth across the UK.

We are an expert advisory forum for the entire digital connectivity sector. Through collaboration, evidence-building and research, we make recommendations to Government, regulators and industry.

The DCF was first established in 2001 as the Broadband Stakeholder Group (BSG). Today, our diverse network includes telecoms operators, equipment manufacturers, ISPs, mobile network operators, content producers, broadcasters, business groupings, central and local government, the devolved administrations, Ofcom and others.

Introduction

For more than a decade, the Digital Connectivity Forum - under its previous guise of Broadband Stakeholder Group (BSG) - has played a central role in the creation and maintenance of an open internet in the UK:

- In 2011, the BSG brokered the UK's first Traffic Management Transparency Code, an agreement between Internet Service Providers (ISPs) and Mobile Network Operators (MNOs) committing signatories to ensuring that traffic management policies were transparent and comparable. Between them, the signatory organisations accounted for some 90% of all fixed and mobile connections;
- In 2012, the BSG published the Open Internet Code of Practice, committing signatories to not using traffic management practices to degrade the services of a competitor and ;
- In 2016, following the adoption of the EU Connected Continent Regulation, the BSG facilitated the creation of the UK's pioneering Open Internet and Traffic Management Transparency Codes of Practice, merging it with the earlier code. The Code of Practice was agreed with BSG members across the value chain – including ISPs, MNOs and content providers. This led Ofcom to describe industry's commitment to the Code as an "effective self-regulatory model", which fulfilled a "key part of Government policy on Net Neutrality".

The DCF welcomes Ofcom's consultation on its net neutrality review proposals. We believe the proposals come at an appropriate time given the significant changes that the market has seen in recent years, such as the substantial growth of internet traffic volumes and emergence and evolution of new technologies that use the internet. Similarly, as Ofcom has itself highlighted, developments at an international level mean that this review and the subsequent proposals are timely.

The DCF supports the overarching aims of the Ofcom review to ensure that the regulatory approach to net neutrality continues to support innovation, investment and growth by encouraging efficient and well-run networks. The DCF also believes that Ofcom's proposals are consistent with our long-held support for an Open Internet that meets the following criteria:

- Users can access all lawful content
- Content providers are not discriminated against on the basis of commercial rivalry; and
- Traffic management policies are clear and transparent.

The DCF also recognises that Ofcom is compelled to take a relatively narrow approach during this review due to the constraints of the wider net neutrality framework. We therefore look forward to working with government as it considers the wider policy questions.

Zero Rating
Question 1: Do you agree with our assessment of zero-rating offers and our proposed approach?

The DCF welcomes the increased clarity that these proposals provide on Ofcom's approach to zero-rating. We support the clarification of the rules to allow zero-rating for certain circumstances whilst maintaining a system of 'effects-based' case-by-case assessment for other zero rating offers.

It is welcome that Ofcom has provided clarity that they are 'unlikely to have concerns' if ISPs provide:
  i)   'Zero rated access to information and services from public sector organisations… that provide a public benefit and are not in competition with other suppliers' and
  ii)   Zero rating offers that are 'genuinely open for all CAPs of a certain category, or class of applications… to join'.

This proposed approach builds on the pragmatic one taken by Ofcom during the Covid-19 pandemic, when it forebeared on enforcement action against ISPs who zero-rated certain website and services which provide wider benefits to consumers and citizens, such as websites supporting the victims of crime and some educational services.

Question 2: Do you agree with the criteria we use to define Type One, Type Two and Type Three zero-rating offers and our proposed approach to such offers?

Type One
As outlined in response to question 1, the DCF welcomes Ofcom's clarification that it is 'unlikely to have concerns' if ISPs zero rate content and websites which provide a public benefit.

The DCF also believes that the proposed criteria which must be met for a zero-rating offer to be classified as Type One are appropriate and provide helpful clarity.

Type Two
The DCF welcomes the proposed Type Two criteria set out by Ofcom. Ofcom's approach of considering the practical effects of zero rating according to these criteria, rather than a strict 'letter of the law' interpretation of the net neutrality rules, is welcome. We do however encourage Ofcom to engage in transparent and open dialogue when establishing classes for Type Two offers. Ofcom may wish to consider publishing technical guidance on how classes are assessed to assist CAPs and ISPs as they adapt to the new rules.

Type Three
The DCF supports Ofcom's outline of how Type Three zero-rating offers will be assessed. Again, Ofcom's intention to consider the actual effects of these types of offers, rather than the

question of whether they adhere to inflexible principles, is a pragmatic approach. However, we would also welcome complete transparency in the assessment process due to the fact that subjective judgements will be being made.

Question 3: Do you agree with the approach in our guidance in Annex 5 in relation to zero-rating?

The members of the DCF welcome the guidance in relation to zero-rating and believe that this will enable the required dialogue between ISPs, CAPs and the regulator. We also support Ofcom's proposal to expand its annual net neutrality reporting to include information related to the monitoring of zero-relating offers.

Question 4: What are your views on whether zero-rated content should be able to be accessed once a customer's data allowance has been used up?

Ofcom's outlined approach to zero-rating when the general data allowance has expired provides some helpful clarification. The clarification that Ofcom is unlikely to consider enforcement a priority when the accessible content is limited to: ISPs' own websites; content under a Type One offer; and access to the emergency services, provides operators with useful additional flexibility and will benefit consumers.

Question 5: Do you agree with our assessment of retail offers with different quality levels and our proposed approach?

Some members of the DCF welcome the flexibility that has been provided by Ofcom regarding premium retail offers alongside increased clarity on rules related to specialised services. Those who support Ofcom's approach towards retail offers believe they could enable innovation in specialised services and ultimately greater choice for consumers from more tailored packages which will better suit their needs and budget. However, it should be acknowledged that other members believe there is a lack of certainty over how retail offers with different quality levels would work in practice, and that there is a risk that consumers who lack technical understanding could purchase packages that are unsuitable for their needs, or that customers on lower incomes could be priced out of the benefits of internet innovation, and that this approach could risk creating fast and slow lanes for customers based on different retail offers.

Question 6: Do you agree with the approach in our guidance in Annex 5 in relation to differentiated retail offers, including transparency requirements, improved regulatory monitoring and reporting of retail offers with different quality levels as well as the general quality of the internet access services?

A proportionate approach towards reporting requirements should be taken by Ofcom. Overly onerous reporting requirements could result in an unnecessary high administrative burden for providers and Ofcom. The DCF does fully recognise the need for consumers to have adequate information to take well-informed purchasing decisions and supports guidance which clarifies what information should be provided to them.

Question 7: What are your views on a more permissive approach towards retail offers where different quality levels are content and service specific?

DCF is aware that some parts of industry support a more permissive approach towards retail offers where different quality levels are content and service specific. We understand that a more permissive approach could result in a wider variety of tariffs and propositions which could be better suited to consumers' needs and result in their experience being enriched. However,

we are aware that this is not a universally held position across the entire DCF membership. Certain members would highlight that retail offers where different quality levels are content and service specific could create fast and slow lanes for different types of traffic, undermining net neutrality principles.

Question 8: Do you agree with our assessment of how traffic management can be used to address congestion and our proposed approach?

The members of the DCF are aware and recognise that traffic management is an important part of network management and that the existing net neutrality rules have provision for some traffic management if required. This is an important tool for ensuring that the overall consumer experience is protected and that network usage that threatens this can be subject to intervention.

Indeed, this is particularly important for mobile networks which are more susceptible to localised experience being degraded due to heavy usage. This was recognised by the then BSG in its refresh of the Open Internet Code in 2016 which agreed that reasonable traffic management measures were necessary under certain conditions, including the implementation of excessive or heavy usage policies.

We would welcome further engagement with Ofcom to think further on what more can be done to encourage efficient use of networks.

The DCF also supports Ofcom's decision not to include specialised services under these rules, especially as the acceleration of 5G deployment across the UK has resulted in increased interest in using such services.

Question 9: Do you agree with the approach in our guidance in Annex 5 in relation to the use of traffic management to address congestion, including transparency requirements, improved regulatory monitoring and reporting of general network performance metrics, the use of traffic management and the impact on service quality?

As outlined earlier, the DCF strongly believes that traffic management policies must be clear and transparent. The DCF is also aware of the nature of the challenges posed by so-called 'super peaks' and that these consumer-driven surges in demand are expected to deepen over the next decade. It is therefore important that network operators are able to manage their networks appropriately to cope with this expected peak demand.

The DCF believes that the greater clarity provided on the circumstances under which such exceptional traffic management measures are allowed is welcome, while noting the significant steps that CAPs already proactively take to manage traffic peaks.

The DCF welcomes the new guidance and believes that it forms a starting point for more effective, but proportionate traffic management.

Question 11: Do you agree with our assessment of specialised services and our proposed approach?

The DCF welcomes the increase clarity and flexibility that has been provided by Ofcom on specialised services through their guidance.

Question 12: Do you agree with the approach in our guidance in Annex 5 in relation to specialised services, including transparency requirements, improved regulatory monitoring

and reporting of the need for optimisation of a service, the general performance of internet access services and the impact of specialised services on the quality internet access?

The clarity that Specialised Services must be predicated on a 'reasonable expectation of the need for optimisation' is welcome. However, it is important that a proportionate approach towards reporting requirements is taken by Ofcom. Overly onerous reporting requirements could result in an unnecessary high administrative burden for providers and Ofcom.

We welcome Ofcom's attempt to provide clarity on when a specialised service would be considered detrimental to the general quality of internet access. However, we believe that there is scope to provide additional clarity in this regard, and would welcome the opportunity to work with Ofcom to refine its guidance.

Question 14: Question 14: Do you agree with our assessment of internet access services provided on aeroplanes, trains, buses and coaches and our proposed approach?

We welcome Ofcom's proposal that the application of the rules in relation to the management of traffic on connectivity services provided on trains, buses and coaches is unlikely to be an enforcement priority. This is a pragmatic step; it reflects the practical challenges inherent in such services and will be beneficial to consumers.

Question 15: Do you agree with our proposed approach to emergency 999 communications services and that we should consider amending the GCs to achieve this?

The DCF welcomes Ofcom's decision to review the regulations related to emergency 999 communications services and the clarification that they are unlikely to take enforcement action on zero-rating of these services.

Question 16: Do you agree that ISPs should be allowed to block scams and fraudulent content and provide in-network parental controls and content filters?

We welcome Ofcom's proposal that ISPs should be allowed to block scams and fraudulent content and provide in-network parental controls and content filters. Again, this is a pragmatic step and will be beneficial to consumers.