

## **Net neutrality review - consultation - ITV plc response**

### ITV is broadly supportive of Ofcom's conclusions

ITV welcomes this opportunity to respond to Ofcom's consultation on the future of the Net Neutrality rules in the UK.

The rules have played a critical role in ensuring that the UK has a thriving broadband market alongside world class creative and internet economies. Decisions about their future are therefore of critical importance.

### Arguments in favour of reform are unclear, unevidenced and ever-changing

We have been struck throughout the debate - both in response to Ofcom's process but also more broadly, in the UK and abroad - about the lack of a clear and compelling case for reform. Proponents of the reform or removal of the net neutrality rules seem unable to articulate why such reforms are necessary, what they would do with such freedoms, the consumer benefits that would arise, and how the protections offered by the current rules could be otherwise delivered.

Some argue that this is about ensuring investment in fixed broadband infrastructure, suggesting that telcos are struggling to invest and to raise capital. But in the UK, Ofcom and government data shows that networks are being rolled out at speed, both by incumbents and new entrants. If this argument is about delivering universal broadband via the rollout to the small percentage of non-commercial properties, then we observe that the government is already investing at scale to support this.

The network is also highly resilient - we are living through a worked case study of this as covid resulted in a huge and sudden uplift and shift in demand due to mass remote working and increased use of online entertainment to no apparent ill effect.

More recently, and notably in Europe, the arguments supporting net neutrality reform have shifted to suggest that this is instead about 'fairness' in some way. The suggestion seems to be that it is unfair that online service providers have created significant businesses without paying telcos for the network. But the network is already paid for by end-users and by governments. It's not obvious why it is 'fair' for a handful of online firms to pay some form of tax, nor what the tax is intended to be used for. Cheaper broadband for consumers? Infrastructure investment? Shareholder returns?

Even more recently, the debate has shifted to suggestions that some form of charging of content providers is necessary to encourage efficiency in the network. But as Ofcom and BEREC have found and set out so clearly, there is no evidence to support this position. Indeed, it is surely the decision of the Internet Service Providers (ISPs) and Mobile Network Operators (MNOs) to offer cheap, unlimited data tariffs - both fixed and mobile - that is the biggest driver of consumer demand. For a consumer there is rarely an additional cost to streaming a video, to deciding to stream that video in the highest resolution, to do so in peak.

Some have suggested that it would be too complicated to explain differentiated products to consumers that place some restrictions on data usage to deal with any perceived excess demand. That seems to take a rather dim view of people's capacity to understand what they are being offered - and perhaps speaks more to a failure on the part of the ISPs and MNOs. It seems possible to us for people to understand the difference between a 'Gamer's package' ("Our fastest broadband, no data limits, no lag even in peak!"), a 'Generalist package' ("Perfect for everyday browsing, email and TV, reasonable use limits, might be slower at peak times") and a 'Basics package' ("Perfect if you just want to check email, might be much slower in peak").

As we set out in our response to Ofcom's initial call for evidence, overall the broadband market is in rude health and enabling a thriving market for online content and services. The net neutrality rules do not appear to have acted as any form of constraint to investment. Limited and tightly controlled exemptions within the rules, such as those for traffic management, ensure the rules do not compromise the user experience or network operators' ability to invest in and deliver a robust service.

#### The protections offered by the net neutrality rules have never been more important

At the same time, the policy rationale for net neutrality rules is stronger than ever. Although the online market has clearly changed significantly since the rules were introduced, the rationale for the rules - to protect citizens and consumers from ISPs preferencing or throttling some content versus others is as important today, if not more so, given people's ever-greater reliance on online services.

Indeed, what is striking in the UK over the past 5 years is the incredible blossoming of choice, variety, and innovation in the UK online economy which has made a major contribution to the life and prosperity of the UK. At the same time, we also enjoy a competitive broadband market with, as we set out in more detail below, a clear plan to drive fibre roll out which has been welcomed widely. Nothing here obviously suggests significant issues or problems to be solved.

As such, we agree with Ofcom's overarching conclusion that:

*"...net neutrality has worked well and supported consumer choice as well as enabling content providers to deliver their content and services to consumers."*

Those in favour of removing the rules suggest that the intent is not to degrade the open best-efforts internet - but to facilitate the offer of 'fast lanes' or other differentiated paid-for services. But it is not enough to promise not to degrade the best-efforts internet. If such a promise had been made during the days of dial-up then the best-efforts internet today would be barely credible. Instead it is about ensuring that the current incentives which have delivered rapid growth in the speed, capacity and choice in internet offers continues.

We welcome Ofcom's conclusion that the case for charging of CAPs is not made but are concerned by the somewhat one-sided framing of the policy debate

We welcome Ofcom's conclusion that the case has not been made for the introduction of charging of content providers by ISPs.

But we caution that should the potential for such charging to be allowed be considered in future, it needs to be viewed not just from the perspective of whether that might lead to more efficient use of networks, but also factor in the significant negative impact it would have on the UK's world-leading creative industries.

The net neutrality rules are important not just because they allow content providers like ITV to deliver their content to consumers, but also because it helps ensure that the terms of that delivery are such that we can continue to invest at scale in the brilliant British content that UK audiences love.

Given the importance of the net neutrality rules to content providers, Ofcom's duty to ensure people have access to a wide range of high-quality television and radio programmes are provided by a range of different organisations, appealing to a range of tastes and interests should therefore be as relevant to its work here as its telecoms duties. As Ofcom notes, *"ISPs have gatekeeper positions and have the potential to exploit market power over CAPs."*

Ofcom notes that charging of content and application providers (CAPs) by ISPs might result in such costs being passed onto consumers via higher CAP subscription fees. This is almost certainly true but, as Ofcom then notes, is not relevant to the significant number of CAPs who do not operate subscription models - or where that is only a small overall part of their consumer offer. For ITV, our primary online offer *ITVX* is a primarily advertising-led service. As such, ITV is unable to pass on ISP fees via higher subscriptions. Instead ITV would either need to reduce its investment in UK content, with implications for consumers and for the wider creative industries. Or it would need to charge advertisers higher fees, impacting swathes of the UK economy.

ISPs also benefit from the demand created by CAPs as a result of the open internet

It is not just CAPs that benefit from an open internet underpinned by net neutrality rules. ISPs also benefit because the thriving content market that the open internet enables drives consumer demand for the faster, better but also more expensive products offered by ISPs. Without compelling content offers, consumers would have no reason to purchase often-expensive broadband propositions from ISPs.

Indeed, you might easily argue that ISPs are driving up costs for CAPs, because ubiquitous access to streaming-capable connectivity, at home and on the move, is leading to rising consumer expectations that content should be available anywhere, at any time, no longer limited to traditional means of distribution. CAPs are therefore facing significant additional costs from investing in their online propositions because ISPs are driving consumer expectations.

And yet despite the fact that ISPs profit from the significant investment by CAPs in content and online services, they make no contribution to this significant investment by content providers.

#### Ofcom needs to consider the interaction between the net neutrality rules and PSB framework

Ofcom also needs to consider the interaction between PSB obligations - particularly any 'must offer' style provisions that apply to online delivery - and any changes to the net neutrality rules around charging. PSBs could be significantly disadvantaged by a regulatory approach that mandated provision but allowed the ISPs to determine the terms.

A related issue is the extent to which Ofcom's acceptance that ISPs may offer lower-quality internet services for a lower price might result in poorer and/or more vulnerable people having degraded access to public services such as PSB or online health care via video. Whilst it might be that some consumers would legitimately choose a lower quality service, for millions more the choice may not really exist given broader economic challenges. The net neutrality rules should not result in a two-tier PSB system.

#### Net Neutrality rules are good for the UK economy as a whole

Of course, the net neutrality rules are not just about the relationship between ISPs and CAPs. They enable smaller players to compete effectively with larger players right across the economy, and therefore stimulate investment and innovation. This is true not just for the creative industries but the economy more broadly. This is a critical element of the internet ecosystem that needs to be safeguarded - forcing online businesses to pay ISPs for carriage would not be consistent with that.