

Net neutrality review Consultation

KCOM response – 13 January 2023

1. KCOM Group Ltd (“KCOM”) welcomes the opportunity to respond to Ofcom’s consultation on its net neutrality review¹.
2. As Ofcom is aware, KCOM is a provider of fixed wholesale and retail electronic communication networks and services in and around the Hull Area. In view of its position in the market, KCOM is subject to various Significant Market Power and Universal Service regulatory obligations in the Hull Area.
3. KCOM is a member of UKCTA and fully supports UKCTA’s response to this consultation.
4. We would like to emphasise, in particular, UKCTA’s comments in relation to Ofcom’s proposal to expanding their approach to monitoring and reporting on network performance, traffic management and any impact on service quality. This is set out in paragraphs 6.103 – 6.105 of the consultation and the draft Guidance on Ofcom’s approach to assessing compliance with the net neutrality rules, in Annex 5 to the consultation.
5. Ofcom is proposing to require ISPs to “routinely collect and store information to provide to Ofcom for each instance where they have applied traffic management to demonstrate that the traffic management approach taken was compliant with the Regulation”. However, Ofcom appear to have made no attempt at all to assess the cost of this proposal.
6. Ofcom have a statutory duty to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and to any other principles appearing to OFCOM to represent the best regulatory practice². In KCOM’s view, the effect of this duty is to require Ofcom to consider the impact of its regulatory proposals, including in relation to the likely compliance costs.
7. Indeed, Ofcom’s own guidance on policy making³ starts with the following acknowledgement:

“The decisions which Ofcom makes can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of

¹ Net neutrality review Consultation, 21 October 2022. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0028/245926/net-neutrality-review.pdf

² Section 3(3) of the Communications Act 2003

³ Better Policy Making. Ofcom’s approach to Impact Assessment. 21 July 2005. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0026/57194/better_policy_making.pdf

regulation. 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.”

8. KCOM concurs with this approach.
9. Our initial assessment of Ofcom’s proposal to expanding their approach to monitoring and reporting on network performance, traffic management and any impact on service quality, is that it may impose non-trivial compliance costs. Further, we consider it likely that other ISPs would face similar additional costs. We should be happy to discuss the matter with Ofcom. In the circumstances, we do not see how Ofcom can satisfy themselves that they have complied with their statutory duties without a proper examination of the cost and benefits of this proposal.
10. Separately, KCOM appreciates that the scope of this review is limited in that it is intended to inform Ofcom’s work in monitoring and ensuring compliance with the net neutrality rules and the operation of current guidance on complying with the existing rules.
11. However, as Ofcom notes, the internet value chain is complex and has changed significantly since the net neutrality rules were introduced. It is not simply ISPs that have the ability to control the content accessible to consumers. There has also been significant growth in capacity demand to ensure consumers are able to access the content they want to access.
12. Further, the UK has now left the EU. These Regulations were formulated in Brussels.
13. Given market developments, the impact of net neutrality rules on ISPs, and the fact that the UK has “taken back control”, KCOM believes that a wider review should be undertaken to understand whether the current Regulations remain fit for purpose. We would urge Ofcom to engage with Government to inform and move the wider policy debate forward.