

Response to Ofcom's Net Neutrality consultation

Utility Warehouse welcomes the opportunity to respond to Ofcom's Consultation on Net Neutrality. Utility Warehouse is a multi-service provider, selling energy, fixed and mobile telecommunications services and financial services to consumers and small business customers. We are a reseller of fixed and mobile telecoms services and have wholesale agreements in place with telecommunications providers whose networks we use to offer fixed and mobile telecoms services to our customers. We rely on these parties to manage the network in a way that provides our customers with a good quality of service whilst meeting all relevant regulations.

As per our response to the Call for Evidence ('CfE'), our response to this consultation focuses on those aspects of Ofcom's proposals with the most relevance to us. These are related to the interplay between the net neutrality terminal equipment rules, Fair Usage Policies and mobile unlimited plans.

Mobile unlimited offers, terminal equipment rules and Fair Usage Policies

In our response to the CFI we set out the details of Utility Warehouse's mobile Unlimited plan and its Fair Usage Policy ('FUP') which includes a set of light restrictions, aimed, on the one hand, at protecting other users (for instance from spam, fraud, illegal content) and, on the other hand, ensuring other customers experience a good quality of service. Our FUP specifies among other things that using fixed routers in combination with our mobile service or using our mobile service as a replacement for a fixed broadband service is not allowed. Using the service in such a way is likely to result in very high mobile data usage, which could lead to congestion in the mobile network and negatively impact on the quality of service of other users. [✂]

The consultation

In our response to the CfE we set out that we considered reasonable and light terminal equipment restrictions, such as the ones included in our FUP should be allowed. We note that in addition to Utility Warehouse, a number of mobile providers proposed in their response to the CfE that reasonable device restrictions should be allowed. A number of benefits were identified:

- It would protect users against congestion caused by a small number of customers with extremely high data usage;

- It would allow providers to optimise propositions for certain devices and use cases, including QoS parameters;
- It would reduce any cross-subsidies from low data users to high data users; and
- It would ultimately result in more innovative propositions and better tariffs for consumers.

However, In the consultation Ofcom considers terminal equipment rules have generally delivered good outcomes and that the impact of the terminal equipment rules on service innovation and efficient network management is likely to be small. It set out that ISPs have significant flexibility without device restrictions and that other parameters (price, bandwidth, data allowance, quality and fair usage policies) can be used to customise services and make them attractive for use with particular types of devices, to suit the technical characteristics of devices and to prevent or discourage unintended and unreasonable usage.

The consultation notes the popularity of mobile Unlimited plans. We also witnessed a strong take-up of our Unlimited plan since its launch late 2020. In order to be competitive in the mobile market as a reseller, we feel we need to have a simple, compelling mobile unlimited offer. It seems unfair to our current and potential customers to limit our Unlimited plan and make it less attractive because of a very small group of customers generating extremely high volumes of data. In addition, if we want to continue offering a compelling offer, we have limited flexibility in terms of the parameters set out by Ofcom, and could in practice only use the FUP::

- Price - If we want to remain competitive, there is limited room to increase the price of our Unlimited plan.
- Bandwidth - We could introduce tiered speeds for our Unlimited plan, but this would make the proposition more complex and potentially less attractive to some customers. Deprioritising traffic in busy times is another possibility, but as a reseller, we would depend on our wholesale party to monitor this and implement it for us.
- Data allowance - If we want to continue offering an Unlimited plan, it will not be possible to limit the allowance.
- Quality - As a reseller, it is difficult to implement different QoS for different types of plans. In addition, it would make the proposition more complex and a proposition with inferior QoS parameters is likely to be less attractive to customers.

- Fair Usage Policies - This mainly leaves FUPs to set out what usage is considered to be fair and unfair.

In the consultation Ofcom set out that 'ISPs could, for example, set data allowances and/or fair usage policies consistent with typical mobile usage to deter the use of mobile packages with device(s) that would generate much higher traffic volumes such as fixed devices or large numbers of tethered devices. This is an important point to us. [8]. We have seen different providers managing this issue through their FUPs in different ways. Based on Ofcom's comment regarding FUPs, it is not clear to us what is allowed and what is not. Ofcom appear to suggest that a FUP could be used to deter the use of fixed routers or to limit the number of tethered devices. We ask Ofcom to provide clarity in relation to FUPs to ensure that all providers are aware of Ofcom's expectations, to create a level playing field and to make sure customers can expect a similar treatment irrespective of their provider.

Embedded SIMs

In our response to the CfE we noted that certain devices have SIMs embedded in them and that some of these devices are able to access the internet (e.g. in-car solutions). On the face of it, embedded SIMs, when used to access the internet, go against the choice of device rule. It would be helpful if Ofcom could clarify in what circumstances or use cases embedded SIMs are allowed.

Conclusion

The UK fixed and mobile markets are highly competitive, with different types of players offering a wide range of different plans. We consider providers should be allowed to have terms and conditions and/or a FUP which include reasonable restrictions and differentiate between using SIMs in a mobile capacity or at a fixed location in their product offering and pricing. These restrictions should be clearly set out before a customer takes out a contract.

Different providers have put in place different FUPs and Terms and Conditions for their unlimited offers. It would be helpful if Ofcom assess these and set out its expectations on what constitutes a reasonable FUP or terms and conditions in relation to Unlimited mobile offerings and net neutrality.