Virgin Media O2 response to Ofcom consultation: “Improving broadband information for customers”

Non-Confidential

May 2023

Executive Summary

Virgin Media O2 welcomes the opportunity to respond to Ofcom's consultation on improving broadband information for customers (henceforth "the Consultation").

Our response comprises five sections, which set out our beliefs that:

1. Consumers are largely agnostic about network technology information.
2. The nominal 'harms' Ofcom outlines lack sufficient evidence as to be credible.
3. The policy is a poorly disguised effort to promote fibre technology without due consideration for the competitive distortions such intervention could create.
4. There is a high likelihood, given all that Ofcom fails to consider, that these proposals could exacerbate the customer confusion about which it is so concerned.
5. The expectations for implementation are simply not feasible and demonstrate Ofcom has forged ahead with these proposal with little regard for practicality.

It is important that consumers have access to appropriate information to enable them to make informed purchasing decisions. An understanding of the product or service parameters about which consumers care is a key tenet of a well-functioning market in which consumers' purchases align with their needs and preferences.

In certain circumstances, regulatory intervention is necessary to achieve that end; in others, the contestability of the market and other market factors facilitate and incentivise providers to compete on their respective merits, including the provision of relevant purchasing information. We are strongly of the view that the UK falls into the latter category.

The retail broadband market is competitive. It follows that the threshold for any regulatory intervention in that market is set very high, given the consequences for consumers and market participants. In particular, there must be a clear, demonstrable case of consumer harm. Moreover, the effects of the proposed intervention on providers in the market must be assessed fully, with proof provided of benefits clearly outweighing any negative effects.

In our view, the Consultation satisfies neither of these requirements. Specifically, we refute Ofcom's position that the Consultation document functions as an Impact Assessment. It is woefully lacking in sufficient detail and fails to take into account the wide-ranging effects of the proposals to the extent that we do not believe that it has sufficiently satisfied its requirement under the Communications Act to undertake an impact assessment.[1] This is of particular concern, given that Ofcom's proposals afford one type of technology a competitive advantage over others through a regulatory intervention. Ofcom has also failed to provide sufficient evidence of consumer harm to justify its proposals.

Competition in the retail market takes place on a number of competitive vectors, underlying network technology may be one of them. By overly focussing information requirements on just this competitive vector, rather than improving outcomes for consumers, the proposals will, in our view, increase consumer confusion and distort the competitive dynamic of the market.

Moreover, Ofcom's departure from technology neutrality is inconsistent with both its own regulatory principles and, critically, Government policy. Again, such a divergence necessitates a full and separate impact assessment to ensure it is warranted.

[1] Communications Act 2003, Section 7

The UK retail broadband market is one of the most competitive in the world and has consistently delivered incremental value to consumers year-on-year for at least the past five years, if not more. Ofcom itself has played a key role in facilitating this market dynamic. The proposals stand to undermine these achievements.

Providers are competing vigorously on the relative merits of the services that they offer, including providing information to consumers about the different types of broadband technology that they use to deliver those services; it is in their interests to do so. Rather than intervene – unjustifiably – in a competitive market, we believe that Ofcom should permit the competitive dynamics of the market to prevail and allow providers to continue to compete on the merits of their products, services and technologies. Ofcom should maintain a monitoring role, intervening only if there is clear evidence of harm, for example consumers being explicitly misled about the products that they are purchasing.

Part 1: Consumers are agnostic about the technology used to deliver their services

Network technology is not priority information for consumers

At the heart of Ofcom's policy objective is the desire to dispel customer confusion and engender an environment where customers are well-informed about the nuances of different products, which ultimately culminates in better purchasing choices and translates into consumers having fixed broadband products that meet their needs. This is a laudable objective, and we support its principle. However, we do not believe the proposal to provide information about underlying network technology will achieve that.

For the majority of customers, the underlying technology of their broadband product is not a priority for them. According to research carried out by Virgin Media in 2022, the three most important factors were price, download speed, and the reliability of the service[2]. Indeed, Ofcom's own research recognises that that these three factors were ranked as most important by participants.[3] Likewise, the Advertising Standards Authority's ("ASA") 2017 research concurs that consumer priorities when purchasing a broadband product are speed, cost/value for money, reliability and data allowances.[4] Further to this, the ASA's report goes on to state that "delivery mechanism […] was generally not spontaneously articulated as a priority when purchasing broadband" and that this was "partly because it is a layer of detail (and complexity) that the majority did not want to consider if it was not necessary: they were able to, **and preferred to**, reach a conclusion about the relevance of an offer based on other information given".

Across the three different pieces of research, network technology did not rank as being information consumers independently sought. Whilst the ASA's research was conducted in 2017, we do not believe there has been such a material shift in consumers' attitudes in the broadband market that would see this changed. Indeed, if there had been and customers were independently articulating or searching

[2] Please refer to Appendix 1.
[3] Ofcom, 'Broadband terminology research' (March 2023), pg.21. <https://www.ofcom.org.uk/__data/assets/pdf_file/0028/254980/broadband-info-terminology-report.pdf>
[4] ASA, 'Broadband Fibre Qualitative Research: Final Report' (2017), pg.4. <https://www.asa.org.uk/static/uploaded/d791272c-805a-495d-8e25650af1740ab7.pdf>

for particular delivery mechanisms, that surely would have surfaced in Ofcom's own research on the topic.

This research shows that competition is mostly influenced by other competitive vectors and by raising the profile of another vector through intervention Ofcom would be, by definition, altering the basis for competition in this market, contrary to its general duties.

Moreover, very few customers have a developed understanding of broadband network technologies, which calls in to question how effective this information would be in supporting them to make informed choices. Virgin Media O2's research demonstrates that customer understanding of network technology is often superficial; there is recognition of certain words and associative qualities (such as fibre conferring characteristics such as speed and quality onto products), but no developed understanding of what a given technology is and how it works. This can also be seen with the term 'cable', where 71% of respondents recognised the word, but only 46% felt confident that they understood it. Ofcom's research shows that whilst consumers were most likely to claim to understand 'cable' (with 88% of respondents demonstrating some level of understanding), there were a "significantly lower proportion [who] found the description of cable broadband matched their understanding".[5] This gap between word-recognition and developed understanding of the technology adds credence to the conclusions the ASA reach, which is that consumers do not want to spend their time considering network technology and are happy to make decisions without this information.

Potential for information overload

Ofcom's proposal does anticipate that consumer understanding of network technology is limited, and thus has included the requirement to create a short and simple explanation that can be accessed digitally or is included in the terms and conditions. We have a number of concerns regarding these explanations, which we expand upon later in our response, but at this juncture we would highlight that there is an increasing amount of information given to customers at the point of sale and following their purchase. At present, providers are required to show customers a significant amount of information during their sales journey. Following this, customers are then provided with their Contract Information / Contract Summary. Based on available data we have for various online documents (including T&Cs), we can see there is a low dwell time and that customers are not allocating significant time to these documents.

This behaviour can perhaps be elucidated by the comments made in a focus group carried out as part of Virgin Media's research. Despite the proliferation of information being presented to broadband customers, the participants did not report feeling overwhelmed by the level of existing information. Rather, they spoke about simply ignoring or filtering out information that they deemed superfluous. Again, the priority information that participants cited were cost, speed, and what the broadband connection could be used for or number of devices it could support.

This was supplemented by the quantitative research, which demonstrated that the majority of respondents (59%) felt like there is just the right amount of information presented to them in a broadband purchase journey. Only 17% felt like there was not enough information available, and 13% stated that there was too much information.

Although consumers seem to feel the balance is right for now, it is evident that some level of 'sifting' is already occurring, and the requirement on consumers to do this only increases as more and more

[5] Ofcom, 'Broadband terminology research', pg.13-15.

information is added into the purchase journey. As the Competition and Markets Authority ("CMA") recognises in its work on online choice architecture, most consumers "have limited capacity to process all available information" and are "likely to consider only a few aspects in their decision making". It goes on to cite further research that found "information improves decision making up to a certain point, beyond which decision making becomes poorer, and the motivation or ability to decide declines".[6]

Whilst the focus of the CMA's work is not directly related to online purchase journeys for broadband, we believe that its findings are nonetheless relevant and Ofcom should more closely consider the level of information it expects broadband consumers to digest and understand, and whether that is realistic. We do not believe Ofcom has sufficiently substantiated its declaration that the "proposals balance the risk of information overload with the advantage of better customer information" (3.50), nor do we think the risk of increasing customer confusion is "plausibly low" because of the existing use of fibre in marketing materials. In fact, we believe the proposals have the potential to exacerbate customer confusion, which we come on to later in our response. Ofcom goes on to write that the policy does not "introduce new terms", but rather it clarifies existing terms. As we will come on to, the proposals *will* be introducing new terms to customers (both cable and copper are not used in customer-facing material) and there is significant scope for consumer confusion about these terms.

Additionally, the CMA's evidence review explores literature on potential remedies, which include "prioritising decision-relevant information to help consumers allocate their attention more efficiently". Speed is, as substantiated by research, decision-relevant information and this information is displayed prominently. Yet, the naming convention for speed tiers is largely outdated and a potential area of confusion. Indeed, we wonder if Ofcom's resource would be better spent considering means of encouraging more consistency in speed naming.

Part 2: Ofcom's theories of harm lack sufficient evidence

No evidence that customers are being misled

The intervention proposed by this Consultation is a labelling scheme, to ensure that consumers have information about the extent of the use of fibre in the product they are purchasing. Yet, Ofcom states explicitly that it simply has not done the required assessment to determine whether there is actually a problem to solve here.

> *"…For the avoidance of doubt, we have not included or undertaken any assessment of whether use of the word 'fibre' is misleading in either our research or the policy development of our proposals."* (2.18)

In order to intervene in a well-functioning competitive market, Ofcom must demonstrate that a harm is being caused to consumers. In this case, the posited problem is misleading product labelling. If Ofcom has not *"undertaken any assessment as to whether the use of the word 'fibre' is misleading*", then its proposed intervention shouldn't even be put out for consultation – the evidence to

[6] CMA, 'Evidence review of Online Choice Architecture and consumer and competition harm' (2022) <https://www.gov.uk/government/publications/online-choice-architecture-how-digital-design-can-harm-competition-and-consumers/evidence-review-of-online-choice-architecture-and-consumer-and-competition-harm#information-overload>

substantiate a proposal is not there, Ofcom hasn't even looked for it or factored it into the unqualified speculation that forms the rest of its Consultation.

Three hypothetical theories of harm are posited, but not supported by evidence

Notwithstanding the absence of evidence or analysis as to the actual impact on consumers, the Consultation goes on to speculate about a number of theories of harm:

- Customers may be unable to find the right product for their needs;
- Customers may have to spend unnecessary effort; and
- Some customers may disengage from the broadband market.

It is *presently* the case that information about underlying technology is not being provided directly during the purchase journey, and thus the conditions that give rise to Ofcom's potential outcomes are currently in place. Therefore, Ofcom should be able to easily evidence from current customer behaviour the extent to which negative outcomes are transpiring. Notwithstanding these favourable research conditions, Ofcom presents no corroborating evidence to support its assertions.

For two of these outcomes ("customers may be unable to find the right product for their needs" and "customers may have to spend unnecessary effort"), Ofcom makes no attempt to substantiate this with its research. If anything, the evidence in the Consultation points towards the opposite conclusion to that hypothesised. Indeed, Ofcom's own 2022 Switching Tracker suggests 60% of those responsible for their household's fixed broadband are confident about the difference between full fibre and part fibre.[7]

For the third outcome ("some customers may disengage from the broadband market"), Ofcom does point to research demonstrating customers find the broadband market complex and that there can be barriers to engagement, but it does not seek to evidence whether that is specifically attributed to a lack of information about network technology.

In summary, no theory of harm is clearly substantiated by evidence. No evidence has been presented that warrants a consultation on this topic, let alone proposed interventions in a competitive market. In our view, Ofcom has failed to pass the legal hurdle for intervention.

The available evidence does not support Ofcom's hypotheses in any event

Returning to the substantive points of the potential outcomes, Ofcom articulates the first potential harm as being "customers may be unable to find the right product for their needs". Ofcom expands on this by suggesting that those who want an FTTP product may end up accidentally purchasing an FTTC product due to misunderstanding the difference between 'full fibre' and 'fibre', or that customers may choose a higher speed FTTP product to ensure they are getting FTTP when a lower-speed and cheaper option would have sufficed. This outcome is predicated on the notion that broadband consumers are actively seeking products based on the network technology. If we are to revisit the research referenced above, this is simply not happening. For example, during the qualitative focus group portion of Virgin Media's research, when participants spoke about what made them want to review their broadband supplier, it was often related to price. If the price was fair, and the broadband worked reliably and consistently, then participants said they had little desire to move

[7] Ofcom, 'Core Switching Tracker Study' (July-August 2022). Table 263. <https://www.ofcom.org.uk/__data/assets/pdf_file/0022/246307/switching-tracker-2022-data-tables.pdf>

services. There was no mention of seeking out better or different technology when considering changing provider.

However, if we are to momentarily ignore that reality, the nominal outcome also fails to take into account that Communication Providers who have FTTC and FTTP products will have their own motivations to encourage customers take up the latter. In contrast to footnote 36, we view that a cursory glance at some of the major Communication Providers websites will show Ofcom that providers are differentiating their own broadband products, and prominently providing explanations of what FTTP or full fibre means.

For example, on TalkTalk's website the provider offers a drop-down menu which contains the two options of "Full Fibre" and "Fibre Broadband". If one clicks on to the "Full Fibre" page, it is clearly explained that full fibre is a new offering and that it is different from previous fibre broadband tariffs ("You might be thinking, "*wait, haven't I already got fibre*?". Well, most broadband services are only part-fibre with the rest powered by copper cables. Whereas Full Fibre delivers a 100% full fibre connection straight to your home").[8] Likewise, BT also prominently promotes its FTTP services and offers an explanation of what FTTP is, as well as what that will mean for customers in real terms ("super reliable video calls"; "Full fibre can handle working from home, and then some. Even if the kids are online too"; "Full Fibre is gaming without the slow-downs").[9] Additionally, Sky has a page dedicated to explaining what full fibre is and includes a section on the difference between full fibre and fibre[10]. Vodafone too has a clearly demarcated page for full fibre, including pictorial explanation of the difference between FTTP and FTTC.[11] It is in these providers own interests to educate their customers on the difference and explain that in a way that means something tangible to people who do not care about the technology.

This type of behaviour by Communication Providers reflects the views of the participants in the ASA research. The use of fibre for FTTC products was acceptable to them because "it implied 'some fibre in the connection', which was true", but that ultimately the "the onus was on full-fibre providers to better differentiate themselves and educate consumers about the benefits of their service".[12] This is precisely what is happening.

Moreover, Ofcom's research found that participants found this type of information most useful on provider's websites. Over half said that simple terms and a detailed description of the services characteristics would be most useful on the website, whereas two fifths thought it would be most useful at the point of purchases (A3.15). Information on network technology is out there for consumers who want it, and it is in the place where Ofcom's research participants thought it would be most useful. Given this, we do not believe that Ofcom's concern that consumers seeking an FTTP product will not be able to find one will materialise.

The second potential outcome is that customers who do not have access to information on underlying technology then may have to spend "unnecessary effort finding out about the characteristics of the products available to them". Again, this presupposes a customer base that is actively searching for broadband products based on the underlying technology, which is not borne out by research. It also ignores the fact we have expanded on above, which is that Communication Providers are already

[8] https://new.talktalk.co.uk/broadband/fttp [Accessed April 2023]
[9] https://www.bt.com/broadband/full-fibre-learn [Accessed April 2023]
[10] https://www.sky.com/help/articles/what-is-full-fibre-broadband [Accessed April 2023]
[11] https://www.vodafone.co.uk/broadband/full-fibre [Accessed April 2023]
[12] ASA, 'Broadband Fibre Qualitative Research', pg.34.

actively providing information to attract customers who do care about network technology. Those customers will reward the providers who proactively offer this information by purchasing broadband services from them. This is how a competitive market works. Ofcom should encourage that instead of intervening.

Thirdly, Ofcom theorises that some customers may disengage from the broadband market because they perceive it to be complex and difficult to understand. As above, there is no evidence that customers feel this way specifically because of a lack of information on network technology. Conversely, we would venture that for those who do experience the market in this way, it is unlikely that information about underlying network technology – which in itself is often seen as being complex and difficult to understand – will change that.

Moreover, within the Consultation, Ofcom includes reference to a question within its 2022 Switch Tracker: "In terms of communication services such as mobile, landline, broadband and TV…How confident are you about understanding the language and terminology used by providers?" (footnote 4, 2.6). For fixed broadband customers, it notes 27% were not confident (20% reporting as 'not very confident' and 7% selecting 'not at all confident'). This compared with 42% who stated they were 'fairly confident' and (based on the source material) 26% who were 'very confident'; meaning that 68% reported confidence in language and terminology.[13]

At most, Ofcom can say that there are "potential harm[s]" arising for "some categories of customers" (3.22). We do not consider that this a legitimate basis on which to make a significant intervention that will have wide-ranging impacts for Communication Providers and no guarantee of refining customer understanding. We also take this opportunity to remind Ofcom that the current dynamics within the broadband market have seen it becomes more competitive, which has meant consumers are getting better value for money. Ofcom itself states "retail competition in broadband is delivering good value for most customers, with people getting more for their money every year".[14] A report form Assembly Research, commissioned by Virgin Media O2, similarly demonstrates that consumers are paying less for more of their telecoms services. Connectivity usage has increased, yet the average monthly household spend on telecoms services has fallen by nearly a fifth (more than £18 per month) since 2017.[15] At the same time, broadband services have seen huge improvements in quality while prices have fallen. The average fixed broadband download speed increased 72% over the last five years, while prices of fixed broadband per Mbps have fallen 39% over the same period.

Part 3: Ofcom should not pick a technology winner

The policy promotes fibre over other gigabit-capable technology

Virgin Media O2 believes that the anticipated intervention in a competitive market is unwarranted and will cause competitive distortions. Ofcom's proposals clearly favour FTTP technology to the detriment of other technologies – and particularly gigabit-capable broadband technology. However,

[13] Ofcom, 'Switching Tracker', Table 261.
[14] Ofcom, 'Helping consumers get better deals: Review of pricing practices in fixed broadband' (2020) < https://www.ofcom.org.uk/__data/assets/pdf_file/0031/199075/bb-pricing-update-july-20.pdf>
[15] Assembly Research, 'A report for Virgin Media O2: The value of telecoms services in the UK', (December 2022), pg.9. <https://news.virginmediao2.co.uk/wp-content/uploads/2022/12/The-value-of-telecoms-services-in-the-UK.pdf>

Ofcom has undertaken no assessment on the impact of this preferential treatment on non-FTTP providers or the broader competitive landscape.

Ofcom writes that its policy objectives underpinning these proposals is wanting to ensure customers "can better understand the characteristics of fixed broadband products" and support them in migrating "from older to newer technologies, including from copper-based to full-fibre based broadband" (3.7). It goes on to write that providing network technology information is particularly important at this juncture due to the "continued deployment of FTTP networks" and the fact customers "have a choice of FTTP service in parallel with services delivered over ADSL, FTTC and cable technologies" (3.8). While Ofcom has decided not to proceed with a tiering system, the practical effect of Ofcom's proposals will be the same. It is clear in Ofcom's language and how it articulates the objectives that it seeks to structure the fixed broadband market into 'full fibre' and 'not full fibre,' with the former clearly at the top of the hierarchy.

We accept that products which operate over a full fibre network have improved performance attributes and deliver better outcomes than products that run on a purely twisted copper pair network or where the 'last mile' is a twisted copper pair (for example, ADSL and FTTC). Over these technologies the quality of connection deteriorates depending on distance from the cabinet equipment, and deliver maximum download speeds of 80Mbps (or 300Mbps where G.fast technology is used).

However, we do not accept Ofcom's hierarchical taxonomy of fixed broadband placing FTTP products above those delivered by HFC networks using DOCSIS technology. This network combines optical fibre and coaxial cable; the core network and a large part of the access network is fibre optic, which connects to the street cabinet, and then coaxial cable extends to the premises. This technology does not experience speed degradation with distance from the cabinet, as the coaxial cable is heavily insulated against interference and additionally amplifiers are in place to boost the signal.

HFC makes up the majority of Virgin Media O2's fixed network, which in total reaches 15.5m homes across the UK and represents the only network competitor of scale to the market incumbent. It is precisely this technology that delivered 1.1Gbps speeds to customers years ahead of the other major Communication Providers that have full fibre offerings (who, even today, are not offering their customers Gigabit speeds). Moreover, as a result of their technology choices, the majority of these full fibre providers do not even deliver Gigabit services to residential consumers, with their products instead offering a maximum speed of approximately 900-950Mbps.

The policy does not address the different types of full fibre

In this regard, Ofcom has not considered the different types of 'full fibre' network and accordingly has not recognised the fact that the performances attributes of these different incarnations differ. A number of providers who are offering 'full fibre' and FTTP services are doing so via GPON technology, which can deliver a maximum speed tier of approximately 1.25Gbps downstream (within the ASA framework)[16] and is not symmetrical.

Whereas other providers who are building FTTP networks are using XGS-PON technology; this is capable of delivering a speed tier of 5Gbps (and possibly more) and offering symmetrical speeds.

[16] This figure is extrapolated from how we would likely dimension based on GPON technology's raw bandwidth of 2.5Gbps.

Indeed, as the network technology evolves, there will be wider availability of 25G-PON and 50G-PON, which will come with faster speeds and greater capacity that can be enabled as demand dictates.

Moreover, 'full fibre' is used generically throughout the Consultation and includes, we assume, installation in which fibre is, for example, delivered to the basement of a multi-dwelling until or to a distribution point at the curtilage of a building – with other technologies used to complete the final section of the network (which could extend to tens of metres). Indeed, in many of these multi-dwelling unit installations, the final section of a supposed 'full fibre' network actually comprises a twisted-pair copper Ethernet cable. If Ofcom chooses to allow this to be called full fibre, we look forward to hearing its explanation on the conceptual difference between this determination and the suggestion that HFC be called 'cable'.

DOCSIS technology has delivered and will continue delivering great outcomes for UK connectivity

Virgin Media O2 commenced its upgrade to DOCSIS 3.1 technology in September 2019, and as we rolled this out across the network our maximum 1.1Gbps speed was made available to customers as soon as the technology was deployed in a given area. The upgrade was completed in December 2021; it enabled the Government to deliver two-third of its broadband target four years ahead of schedule. Government remains committed to this 'gigabit-capable' target, which, crucially, is technology agnostic.

Yet, in spite of this and notwithstanding the fact that the Consultation is derived from Government's ***Gigabit*** *Advisory Take Up Group*, Ofcom policy is clearly designed to encourage consumers to take up FTTP products, at the expense of other, comparable technologies. Despite the fact that many of the current 'full fibre' installations deliver performance that is, at best, no better than VMO2's HFC network, and that our HFC technology delivers maximum speeds more than 15% higher than the majority of full fibre offerings, Ofcom's proposals relegate HFC to a de facto 'second tier' service. In our view, with these proposals, Ofcom has eschewed the technology neutral approach that it adopts in many other areas of its work in order to intervene in the market on behalf of FTTP providers.

Ofcom goes on to justify favouring FTTP in this way by stating "copper-based services will gradually be retired over the next decade and therefore FTTP is the future-proof technology that means customers will not necessarily need to upgrade their connection again" (3.12). As we have pointed out above, at present many of the full fibre providers are constrained by their technology choices to speeds below 1Gbps – in order to surpass that they will be required to carry out some form of upgrade. This, surely, is not 'future-proof'.

Additionally, we also must make clear that Virgin Media O2 plans to continue the use of its HFC network for some years to come. We would not have invested significant resource and investment in upgrading to the DOCSIS 3.1 standard if its retirement were imminent. This networks already delivers the fastest widely available speeds in the market and is technically capable of supporting multiple Gbps.[17] Far from being at the limit of its capability or its useful life, the network has an upgrade path that will allow it to maintain parity with later versions of full fibre networks for the foreseeable future. The CEO of Liberty Global stated in a 2021 investor call that the huge increases in speed in the UK broadband market was "attributable to cable and DOCSIS, which will be part of our network solution in the UK for a long time to come" and reaffirms that these technologies "continue to play a big role".[18]

[17] https://news.virginmediao2.co.uk/virgin-media-o2-trials-2-2gbps-broadband-speeds-across-existing-network/

[18] Q2 2021, https://www.libertyglobal.com/investors/investor-news/year/all/brand/presentations-events/

These statements were made alongside discussion of Virgin Media O2 rolling out a full fibre network alongside our HFC network. This will use XGS-PON technology and be delivered via the existing ducts. These two networks will be maintained and used in parallel over the coming years.

The decision to lay an FTTP network alongside our HFC network was made due to a number of factors, but largely because of the particularities of the UK market and the economic case for doing so. The decision was not predicated on a belief that HFC and DOCSIS technology would not be viable for the future. Put simply, this was an economically motivated decision, not a decision motivated by technological capability. In this same investor call, the CEO goes on to discuss DOCSIS 4.0 (which will be "a transformational technology development when it arrives") and its suitability for network evolution in other countries within the Liberty Global footprint, in which it is a key part of the network evolution roadmap.

Part 4: Potential to exacerbate customer confusion

Virgin Media O2's approach

Earlier in our response, we questioned whether information on network technology would truly address what Ofcom perceives to be an issue of consumer confusion in the broadband market. However, not only do we consider that the policy will fail to achieve that objective, but we also believe it may exacerbate it and give rise to unintended consequences. This is due in particular to Ofcom having not given adequate consideration to how the policy deals with multiple technologies within a single network, what approach Virgin Media O2 – the second largest network operator in the country – would need to take, and how the different technologies are to be described.

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The three technologies across Virgin Media O2's fixed network all contain fibre; the latter two are full fibre, and the core network and majority of the access network are fibre in the HFC network. Despite this, Ofcom seems to suggest that we would label HFC as 'cable' instead of 'part fibre'. Given that our HFC network is technically capable of delivering much faster and more reliable broadband connectivity than the FTTC networks, Ofcom is correct in thinking we would want a term that differentiates our products. We do not believe that creating such an equivalence in terminology would be an accurate representation of the products to customers, especially when FTTC products deliver substantially lower speeds than HFC and have significantly inferior performance attributes.

However, we have concerns with the proposal that Virgin Media O2 uses 'cable' to describe the products on our HFC network. Firstly, we do not generally describe our fixed broadband products and services as 'cable' in consumer-facing material and have not done so for many years. Customers are not familiar with this terminology coming from Virgin Media O2 or in association with our products. Secondly, Ofcom well knows that the term fibre has better connotations in the UK broadband market than cable does. As the ASA's research notes, fibre is understood "generically as shorthand for, or synonymous with 'modern, high-quality broadband'"[19] by consumers.

Whilst we believe the intention of this policy is specifically about driving take up of FTTP products, Ofcom may argue that the intention is more generic than that. The regulator may say that it simply wants to ensure consumer purchasing decisions are informed by the presence of terms stating the

[19] ASA, pg.7.

network technology and corresponding explanations. However, Ofcom must understand that many consumers will not read the descriptions. This is a simple reality of consumer behaviour, and thus it is likely that the simple terms stating the network technology will be all that many consumers see on this matter.

Based on the combination of this likely behaviour and the association between 'fibre' and quality, we do not consider it beyond the realms of possibility that consumers will be actively discouraged from buying a broadband product from Virgin Media O2 because it has been labelled as cable. It may also have the paradoxical effect of driving consumers towards FTTC products, which will be labelled as 'part-fibre' and thus may seem preferable to a product that seemingly contains no fibre.

A proliferation of different descriptions could create confusion

A further concern we have is the potential confusion that could be created by having to use different terms due to the presence of different technologies. As we have listed, Virgin Media O2's fixed network comprises three different technologies, all of which can feasibly deliver the same tariff/service tiers to a customer – a position that has not previously been challenged or prohibited by the regulator. However, under Ofcom's new proposals, this same theoretical tariff/service tier would need to be presented to customers in different ways. There would need to be different terms attached to it throughout the purchase journey, as well as differing explanations. We strongly anticipate that this will lead to confusion for some customers. If this did occur, we would like to understand what Ofcom's approach would be to resolving this type of unintended consequences from its own proposal.

Furthermore, in addition to being forced to confront information on network technology that consumers have no strong desire to see, they will also likely be presented with varying descriptions of such technology, which may have the adverse effect of creating more confusion. Whilst Ofcom seems to suggest there will be four terms available to providers ('copper', 'part fibre', 'full fibre', and 'cable'), it is not clear how or if Ofcom intends to govern the explanations of those terms. If Virgin Media were to adopt 'part-fibre' for the HFC elements of our network, given that this is an accurate description and there would be no reasonable grounds for Ofcom to prohibit us from doing this, we would likely explain that in significantly different way than providers of FTTC products.

Additionally, as we have previously expanded upon, there are different iterations of fibre. It would not be inaccurate if a provider using XGS-PON for its full fibre network wanted to distinguish it from other types of full fibre network by specifying that fact and setting out what it means practically for customers in its explanation. However, products on a full fibre network using GPON technology should, strictly speaking, require a different explanation. Likewise, 'fibre to the building' networks, in which the last section of the access network is not fibre, would require a further explanation still.

In fact, the reasoning in the Consultation suggests Ofcom should actively encourage Communication Providers to label or explain this difference. The Consultation makes a point that information on underlying network technology is particularly necessary at this juncture because of the availability of FTTP in parallel with other technologies (3.8). However, as above, it is also the case that customers are increasingly presented with different versions of full fibre, with different performance attributes. This information, according to Ofcom's logic, is useful for customers who are informed about different characteristics of technologies (3.18), and there would be justification in providing it because the differences in the technologies may matter to customers when they are seeking the right service for them (3.25). We therefore question whether Ofcom will require providers to state what type of full

fibre is being used, either in the descriptions or through an evolution of the simple terms, in order to recognise that different types of full fibre will give different results.

If Ofcom does not explicitly call for such differentiation, then we would like to understand their response if providers choose to expand upon these details in their descriptions. This is a competitive market, and providers are incentivised to differentiate their products in a way that is most appealing to customers. We believe that it is likely that customers will have to grapple with a proliferation of different explanations for the same four terms. Even where two providers are using similar technologies, the explanations are still being written by two separate companies who will naturally use differing language.

One way to manage this issue would be for Ofcom to involve itself in the descriptions used by every single provider on all of the tariffs they offer. However, we question whether Ofcom would want that level of involvement and whether it would represent the best use of the regulator's resource. Similarly, we are concerned that Ofcom stipulating the wording of explanations would be an overly prescriptive approach that lacks sufficient agility to respond to changes in the market and consumer feedback.

Part 5: Unrealistic expectations

Notwithstanding the fact that we disagree fundamentally with Ofcom's proposals, the decision to not undertake a separate and thorough Impact Assessment has led to deeply unrealistic expectations from Ofcom on the scale of work these changes would cause. The 12-week implementation period that Ofcom has suggested in the Consultation is simply not feasible; the proposals encompass all broadband products that providers make available to customers, and there would be a ripple effect of changes triggered by the proposals. This presents a significant amount of work to be carried out by providers.

These proposals require providers to insert a term describing the technology at the point of sale on their websites and throughout the online purchase journey, into the Contract Summaries, and into the Contract Information that is included within the terms and conditions. They also require providers to include a detailed explanation of these terms, which either needs to be included in the online purchase journey or accessible via the digital form of a Contract Summary and Terms and Conditions. For Virgin Media O2, with three separate technologies in our network, this work would be triplicated.

To reiterate, the above must be done for every single tariff we make available. It would require changes to the digital sales journeys and underlying digital architecture for every single tariff, it requires updating the Contract Summaries and Terms and Conditions for every single tariff, and it requires building new webpages to host the explanation needed for every single tariff. It would also likely require the removal of 'fibre' from the names of tariffs, which would then need to be reflected in a myriad of various systems, such as the billing engine. Many of these systems are managed by third parties, and this work is not planned for in any of our existing roadmaps.

Some of these system-based changes would also likely lead to existing customers seeing a change, for example on their bills. Thus, whilst the proposals do not explicitly require updates to FAQs and agent training, we anticipate that this activity will also be necessary to do, as the changes undoubtedly will not be understood by all customers.

Furthermore, these proposals will likely require updating the physical collateral in our storefronts, interfaces with price comparison websites, and information provided to indirect sales channels.

Our initial estimation is that these changes could take 9-12 months to complete, and that would come at significant cost that could reach into the millions. We will need to undertake a full impact assessment of our own, but at present we believe Ofcom has massively underestimated the scale of this work.

Ultimately, we do not believe the Impact Assessment is fit for purpose as, alongside the failure to consider fully the impact on competition and the impact on consumers, Ofcom has not given any detailed consideration to the practical difficulties of implementing this policy. Ofcom believes "there should be minimal cost to industry in implementing a change to the information provided to customers", justifying this by stating providers already give information on their websites and in contract information and that these are regularly changed (3.51). Ofcom is correct that we provide information on our website and in contract information. This does not mean the changes they are proposing are easy to implement or come with minimal cost.

Conclusions

Virgin Media O2 does not believe the Consultation can or does evidence unequivocal consumer harm that justifies an intervention that has the potential to impact the competitive dynamics of the market. Ofcom's research shows that "three in four agree they are confident comparing the costs of the broadband deals available and understand the different options for broadband services in the market" (footnote 33; 3.13). Within the Consultation, Ofcom reminds us that in performing its duties under section 3(1) of the Communications Act 2003, it is required "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, as well as any other principles appearing to us to represent best regulatory practice". The proposals, in our view, fail to take regard to these principles – particularly in creating regulation that is proportionate and targeted only where action is necessary.

Ofcom's own research shows that, "underlying technology […] was considered one of the least useful pieces of information" (3.16). We can therefore not understand why Ofcom is wasting its valuable time and effort on consulting on proposals, based on a misappreciation that "least useful" somehow equates to "misinformed". Consumers are not calling for more technical specificity and information. To the extent that consumers do wish to have information, Communication Provides are already meeting it through provision of information on their websites – exactly where consumers in Ofcom's research thought it would be most useful.

Finally, Ofcom highlights within the Consultation that section 4(6) of the Communications Act requires the regulator to "carry out its functions in manner which, so far as practicable, does not favour—a) one form of electronic communications network, electronic communications service or associated facility; or b) one means of providing or making available such a network, service or facility, over another" (2.26). These proposals unmistakeably seek to favour full fibre products, and consequently providers who offer those products and providers pursuing a strategy of consumer migration from FTTC to FTTP. Virgin Media O2 is the only network provider of scale to utilise a different technology, and this technology can deliver outcomes that evenly match that of the full fibre offerings on the market today, as well as having an upgrading path that would keep it competitive. This policy is poised to cause unique detriment to Virgin Media O2, which is the largest infrastructure competitor to the market incumbent. Ofcom should therefore expect Virgin Media O2 to vigorously defend its position accordingly.

Appendix 1: Virgin Media O2's 2022 Research

In 2022, Virgin Media O2 commissioned research on broadband labelling. This research included:

- Qualitative Focus Groups, comprising 10 broadband customers with a good mix of gender, life stage and region. There were two sessions of 90 minutes, which took place on 9th February 2022.
- Quantitative Omnibus Survey, across 2000 nationally representative respondents in the UK. This took place between 9-11th February.

This research was not conducted with the intention of publication or to create an external report. However, we are happy to share the raw data with Ofcom upon its request.