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Consultation:

Helping consumers get better deals - consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband

Response:

Overview

Evolving Networks is a small, niche technology company; operating as an ISP and Software Provider, focused entirely on the business market.

We have, in the past, made representations on the definition of consumer and small business used by Ofcom, and make those representations again now, as well as other observations and comments on this proposed regulatory addition.

Business definitions

A limited company or other official entity recognised at companies house is a very easy assessment. Determining the “size” of the business customer by the number of workers (not even employees), and setting an arbitrary threshold of 10, makes the smaller end of the business market difficult to operate.

Having tested this in court, there is confusion and a lack of clarity over whether the amount of workers changing over time has any impact or not. If the customer entity changes after contract sign up and becomes a large business, or vice versa, where do the regulations stand? At the moment of dispute? On contract sign up? On contract end?

Our recommendation has always been very clear, and incredibly easy to police. Registered companies should be only ever classed as businesses (as they are in law and in every other walk of life), regardless of the number of workers, the turnover, the spend, the complexity of the product they buy.

Or, products themselves should be determined as either being business or consumer products. If a consumer chooses to purchase a business product, then they should be liable for that choice and all it entails, along with the benefits such a product gives, but not the consumer protections afforded to an individual.

Likewise, if a business (of any size) wishes to have consumer level protections, they can choose to purchase consumer products, receive those benefits, along with a consumer level of service, support and the associated product capability.

At present under the Ofcom GC and guidance issued, if a residential consumer purchases an enterprise grade leased line from a business ISP, then that ISP has to operate differently, even though an expensive, complex and often bespoke product has been purchased and designed for a different market.

On one hand we welcome the move in this consultation to treat all businesses as one group, thereby avoiding the need to try and determine (mostly unsuccessfully) the number of workers an organisation has.

But on the other hand, rather than using that definition to exclude those areas that are not applicable to businesses, the broadening of the definition has essentially dumbed down the old classification of businesses over 10 workers to that of a residential consumer.

The only exclusions surrounding businesses in this consultation are on some of the pieces of information needed to be presented to the customer. Businesses are still obliged by this draft condition, if it were to come into force, to contact each customer, even if the provider has no “tariff” to speak of, or if the contracts entered into do not “roll over” in the ways envisaged by Ofcom.

How we engage with customers and provider connectivity

Evolving Networks creates bespoke connections for businesses, based on need and location. Each contract is unique and negotiated between the participants based on those factors. We have no tariffs, and our customers expect our connections to continue indefinitely unless a termination for convenience is agreed.

We enter into discussions based on business risk, uptime and bandwidth. The onus is on the customer to articulate their requirements, so a suitable solution is delivered.

Definition of “best”

This consultation falls into the trap of defining what is “best” as what is cheapest. The term “best tariff”, which is used a total of 335 times in the consultation document, is not clearly defined anywhere. The only expressions in this document on suitability for the customer are based on ensuring the lowest cost.

I want to directly challenge that best means cheapest. The term “best”, in the context of connectivity, is at best entirely subjective on the end user. In a world where connectivity is increasingly important and relied upon, is uptime, or resilience, or any other measure of quality not a factor in what’s considered “best” for the customer?

What is “best” for one customer will be entirely different to what is “best” for another. One will consider it a minimum level of service to have no single points of failure, increasing the cost substantially. Another will consider hardware failure a risk worth pursuing, but will spend extra money on over-engineering on bandwidth, so that if circuits fail, their business can still operate on a reduced service.

None of these has a “best” alternative. Likewise, if a customer has purchased a service to ensure their VoIP service works seamlessly or wants to prioritise their cloud backup service over the users use of social media or video streaming.

Offering an alternative connection to a customer purely on lowering the cost would go against every principle we have, even though we are in fact trying to deliver the “best” connection for them with those principles.

We agree with comments made by Virgin Media in 4.16. The needs of businesses are vastly different to consumers, and those that seek out a complex and expensive product such as ours are seeking something that is deliberately more advanced than consumer offerings. I would argue these businesses are seeking something “better”, not cheaper.

Cheapness is not “best”

A more resilient connection is more expensive. I would argue a more resilient connection is best. Likewise, the same can be applied to bandwidth, or other network connection characteristics like latency and loss.

Cheapness in the business connectivity market is rarely best. In fact when thinking on more broad terms, there aren't really any products and services that get better the cheaper they are. The highest quality products and services (i.e. the best ones) are the most expensive, or at least are at the opposite end of the scale.

Power taken from the consumer

By including all businesses in this regulation, and perpetuating an assumption that cheap is best, you damage what are long fought campaigns to try and improve the image and trustworthiness of the ISP industry through focusing on quality and service.

In fact, what this regulation does is codify that the provider knows what is best for the consumer, and not the other way around. As given in the examples above, with our customers it is they who choose what they want and what they consider to be more or less important.

By stipulating that that judgement be made by the provider in giving them a “best tariff”, you remove power from the consumer. The provider knows “best”.

It is likely that those most vulnerable consumers identified by Ofcom, those that they wish to protect the most, would in fact be those most likely to be entirely led by the choices of their current provider, in choosing what is “best” for them.

Threats to competition and increasing barriers to entry

Ofcom also profess to want to encourage competition in the market.

Regulations such as these increase the barriers to entry for new providers wishing to enter the market, when monopolistic concerns exist.

New regulations such as those proposed in this consultation encourage consolidation in the market in order to deliver the scale needed to make adherence easier.

Large companies can much more easily implement these new regulations, squeezing smaller providers out, or preventing new ones from entry.

This stifles innovation in what should be a market competing on technological advancement and ever-increasing quality. Instead of developing exciting new features or investing in the network, money is spent on compliance teams to ensure regulation is met, more customer service staff to implement them, and IT systems and system integration to manage the data.

Also, taking practices that already exist in the market and making them mandatory in order to level the playing field removes competition.

Whereas before providers could compete on that aspect of their contract, now they can't. Each time the playing field is levelled, competition is removed and therefore competition in the market is reduced.

This leads inexorably to a situation where price is the only competitive factor, because every other characteristic is regulated.

Summary

It is our view that regulations such as these will

- a) Incur cost that will naturally be passed to the consumer
- b) Reduce competition, not increase it
- c) Discourage new entrants to the market
- d) Favour larger providers who have the scale and resource to implement these changes, encouraging consolidation in the market, not diversification
- e) Reduce innovation and network investment

It is also noted that by definition, the “best tariff” notification is a marketing email that end users may have opted out of with the GDPR. The prospect of having to send an email entitled Best Tariff, which does not include a best tariff seems clumsy at best, yet this is the guidance Ofcom are giving. When laws and regulations are fundamentally incompatible, they should probably be revisited.

It is our view that the entire set of communications is unnecessary, and that these kinds of initiatives, in the name of protecting consumers, end up infantilising them. The accumulated harm from this removal of choice and competition far outweighs the predicted benefits.