Net Neutrality: Ofcom Call for Evidence
ITV plc response

ITV welcomes this opportunity to respond to Ofcom's Call for Evidence 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 a world class creative and internet economy. Decisions about their future are therefore of critical importance.

Audience behaviours are changing rapidly and ITV is adapting at speed. ITV is the UK's biggest commercial broadcaster and producer. Whilst our family of linear broadcast channels will remain at the heart of national life for many years to come, we recognize that viewers and particularly younger audiences are increasingly choosing to view content in different ways, and will expect our content to also be available on-demand where and when they want it. That is why we are the provider of two of the largest and most recognized VoD services in the UK, ITV Hub and (with the BBC and Channel 4) Britbox. A fit-for-purpose IP network is therefore of central importance to ITV's future.

The broadband market is working well. The broadband market in the UK is in rude health and enabling a thriving market for online content and services. The network is also highly resilient. Indeed, we have just lived 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.

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.

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.

We are not aware of a stakeholder clamour for reform - nor of any compelling arguments in favour of the removal of the rules. Indeed, the only firm we are aware is actively pushing for the removal of the rules is BT. BT seems to be suggesting that the growth in online services and content and a lack of coordination between content providers over when content is released means that a) their costs are increasing and b) that the network is actually unable to cope with consumer demand. Their CEO has also suggested that the "...*only contribution being made [to meet such costs] is by consumers through what they pay or by us, the networks"* and asked *"Is that fair?"* These issues, it argues, necessitate the removal of the net neutrality rule to enable the charging of a subset of online content providers which BT argue offer the most bandwidth-intensive services. We do not believe either of these positions holds merit.

The argument on cost seems to ignore the substantial body of work that Ofcom concluded on exactly this issue earlier this year. Ofcom concluded that the current regulatory regime allows the underlying network providers (including BT Openreach, Virgin Media and Altnets) to invest in the network at scale. When Ofcom announced its decision on how it will regulate the wholesale telecoms markets, Dame Melanie Dawes stated that:

> "*Over the past year, being connected has never mattered more. But millions of homes are still using the copper lines that were first laid over 100 years ago. Now it's time to ramp up the rollout of better broadband across the UK. We're playing our part – setting the right conditions for companies to step up and invest in the country's full-fibre future. This is a once-in-a-century chance to help make the UK a world-leading digital economy.*[1]"

This view was shared by BT and Openreach. In response to Ofcom's announcement in March, Philip Jansen, CEO of BT Group said:

> "*This is good news for all fibre providers in the UK. For us, it is the greenlight we've been waiting for to get on and build like fury. Full fibre broadband will be the foundation of a strong BT for decades to come and a shot in the arm for the UK as we build back better from this pandemic. Connecting the country has never been more vital*[2]".

Similarly, Clive Selley, CEO of Openreach said:

> "*We've now passed almost 4.5 million premises and are building faster, at lower cost and higher quality than anyone else in the UK. Today's regulation will allow us to ramp up to 3 million premises per year providing vital next generation connectivity for homes and business right across the UK*[3]".

It is unclear why the position just six months on would be so radically different as to justify changes to the net neutrality rules. Indeed, since then, BT has actually decided to cut its wholesale prices. Far from using the flexibility offered by Ofcom in its statement to introduce a more sustainable pricing structure to underpin the investment that BT argues is necessary, BT has actually decided to cut its wholesale prices via its "Equinox" offer, apparently in a bid to defend market share[4].

Their argument ignores the fact that content providers are already investing substantially to lessen the burden on networks and improve the consumer experience. For instance, by partnering with Akamai, ITV is helping to reduce the volume of content that is traversing ISP/carrier networks and backbone – and thus reducing costs for those network infrastructure players. Akamai serves ITV''s content from the edge of the Internet (95% of the time the Akamai server is in the same network as an end-user, or one hop away), meaning the content does not have to traverse across ISP/carrier networks from

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[1] https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/rollout-full-fibre-broadband
[2] https://newsroom.bt.com/bt-confirms-fttp-build-plan-to-20-million-premises/
[3] https://newsroom.bt.com/bt-confirms-fttp-build-plan-to-20-million-premises/
[4] https://www.ispreview.co.uk/index.php/2021/08/openreach-rivals-warn-ofcom-not-to-allow-big-fibre-price-cut.html

the ITV origin. Alongside this, our own ongoing research and experimentation into more efficient video encoding enables us to deliver improved picture quality while maintaining or reducing the network bandwidth used.

Whilst voicing concern about the increasing demands on its network, BT is simultaneously seeking public policy changes that would further increase capacity demands on its network. In its submission to Ofcom's Small Screen: Big Debate consultation[5], BT actually argued for DTT to be switched off, which would inevitably further increase the demands on networks as all TV consumption would move online. This position does not seem aligned with the idea that BT is struggling with the costs or capacity of its network. If BT's network cannot cope - or it cannot bear the cost of increased demand - then it should not be advocating for an unnecessarily aggressive switch to all-IP TV delivery.

Even were costs to increase, it is unclear why the correct regulatory response would be to allow the discriminatory charging of a subset of content providers (and their customers, who would ultimately bear the cost). Openreach (and others building out their own networks) should surely pass the true costs to all ISPs, who in turn should price their products to reflect the true underlying cost of the network. As costs change, ISPs may need to reconsider their approach to pricing or data caps - similar to the structure we see without controversy for mobile - and network providers will need to ensure that the relevant network costs are passed to ISPs.

For instance, if increased demand is as a result of the changing behaviours of all users, then the cost of a sustainable network should in turn be borne by all users of that network (with suitable social tariffs in place to protect vulnerable consumers) rather than a handful of firms accessed by a subset of consumers on that network. Alternatively, if the uplift is instead driven only by a subset of consumers - by only the heaviest internet users - then it may well be that the ISPs' historic decision to offer widespread 'unlimited data' tariffs to everyone as standard is no longer sustainable. ISPs already offer consumers some choice - via the range of speeds on offer at various price points - allowing them to make a choice about the capacity of the product they wish to purchase to suit their needs. There is no reason such an approach could not be amended to account for the underlying costs of the network.

Punishing that subset of content providers whose services are most likely to present a compelling reason for consumers to purchase fibre in the first place seems perverse, akin to gas companies seeking to charge hob manufacturers for the increased demand for gas that they create. Indeed, we might observe that absent compelling online content from the likes of ITV or Netflix there would be no demand for the very fibre from which BT profits. But the only contribution being made to meet the cost of producing that content is by consumers through what they pay or by us, the content creators. Is that fair?

We are therefore sceptical of claims either that BT (and others) will be unable to invest sufficiently in the network as it grows or that regulation (including the net neutrality rules) is the cause. At the same time, the net neutrality rules offer vital protections to content providers and so should be retained.

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[5] https://www.ofcom.org.uk/__data/assets/pdf_file/0021/218109/bt.pdf