

Utility Warehouse response to Ofcom's Call for Inputs on Net Neutrality

Introduction

Utility Warehouse welcomes the opportunity to respond to Ofcom's Call for Inputs 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 for offering 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. In our response we focus on those net neutrality aspects that have an impact on us and where we believe the rules and or Ofcom's guidance and enforcement approach should be updated. These are related to the interplay between the net neutrality rules, Fair Usage Policies and mobile unlimited plans. We also discuss our position as a reseller in relation to net neutrality and briefly address the interplay between net neutrality and innovation and investment.

Mobile unlimited offers, net neutrality rules and Fair Usage Policies

Over the past two years an increasing number of mobile telecoms providers have started to offer plans with very high and unlimited data allowances to cater for their customers' increasing data usage. We launched our Unlimited Mobile plan in September 2020 and we have seen a strong uptake. We launched our plan with a transparent Fair Usage Policy ('FUP'). FUPs are a common way for providers to explain the requirements a user should meet when using their service. The Advertising Standards Agency ('ASA') acknowledges this and has published guidance regarding the use of 'unlimited' in claims. The guidance sets out that any limitations the provider imposes on the speed or use of the service should not stop legitimate users from doing normal online activities like streaming content. It states that unlimited claims are likely to be acceptable provided that:

- The legitimate user incurs no additional charge or suspension of service as a consequence of exceeding any usage threshold associated with an fair use policy (FUP), traffic management policy or the like; and
- Provider-imposed limitations that affect the speed or usage of the service are moderate only and are clearly explained in the marketing communication.

Our FUP includes a number of restrictions to the way our service can be used which are targeted at illegitimate users. The restrictions are light, and aim on the one hand to protect other users (for instance from spam, fraud, illegal content) and on the other hand to ensure other customers experience a good quality of service. Our FUP specifies 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. In addition, we offer fixed broadband services as well, which use the network in a more efficient way, minimising congestion and the impact on other mobile network users. Where customers are in an area where fibre is available, we prefer to offer them one of our fixed broadband plans. ☞

Our position as a reseller

As set out above, we do not own a network and have agreements in place with third party network providers. Our mobile services are fully managed by BT/EE. ☞

In a previous exchange of views with Ofcom on the subject we argued that Recital 7 of the Open Internet Regulation should be applied more broadly to commercial practices. Recital 7 sets out the following (emphasis added):

‘In order to exercise their rights to access and distribute information and content and to use and provide applications and services of their choice, end-users should be free to agree with providers of internet access services on tariffs for specific data volumes and speeds of the internet access service. Such agreements, as well as any commercial practices of providers of internet access services, should not limit the exercise of those rights and thus circumvent provisions of this Regulation safeguarding open internet access. **National regulatory and**

other competent authorities should be empowered to intervene against agreements or commercial practices which, by reason of their scale, lead to situations where end-users' choice is materially reduced in practice. To this end, the assessment of agreements and commercial practices should, inter alia, take into account the respective market positions of those providers of internet access services, and of the providers of content, applications and services, that are involved. National regulatory and other competent authorities should be required, as part of their monitoring and enforcement function, to intervene when agreements or commercial practices would result in the undermining of the essence of the end-users' rights.'



We consider that the current review is an opportunity to assess if scale and market positions of providers of Internet Access Services should be taken into account more widely when assessing any commercial practices. We are concerned about the position of smaller resellers and MVNOs in relation to unlimited offers.



Net neutrality, innovation and investment

The interplay between net neutrality and innovation and investment should also be considered, and any unintended consequences carefully assessed. We have seen the launch of innovative products such as a fixed broadband connection backed up by a mobile connection if the fixed broadband goes down. This service uses a mobile SIM in the router, and it will automatically revert to the mobile network when the fixed broadband connection is down. The mobile service is not subject to any volume or speed restrictions and the mobile SIM is typically embedded in the router, and cannot be removed and inserted in other devices. Other examples are in-car services, where an embedded SIM can be used for calls, but also for in-car entertainment (such as streaming music and films). These are innovative services where the customer will not have the choice of equipment. Considering the type of proposition, these restrictions are reasonable and do not restrict choice. A narrow interpretation of the net neutrality rules could find this type of innovative services in breach

of the rules, because a customer does not have the choice of equipment. This could stop providers from launching such services, which ultimately is not in the customer interest.

Both the UK Government and providers are investing heavily in gigabit capable networks and 5G. We fully agree with the vision of affordable high speed internet for everyone but it is important to have the right investment incentives in place to realise this objective. With the introduction of 5G, more customers may start using this as an alternative for their fixed broadband service, especially since it is quicker to provide than fixed full fibre connections. Because of the higher speeds, 5G data customer usage will be a multiple of current 4G data usage, which will result in a strong increase in overall data usage, in particular where 5G is used as a substitute for a fixed broadband service. Ultimately, using 5G as a replacement for a fixed broadband service could undermine investment in full fibre. For consumers in 5G enabled areas, it may be cheaper and quicker to get a 5G Unlimited SIM, use it in a 5G router, and get a very fast broadband connection, reducing the need for full fibre. This could result in a reduction of demand for full fibre which could be detrimental for consumers not in 5G enabled areas in terms of competition, price and availability ultimately affecting the vision and delivery of affordable high speed internet for everyone.

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. This would ensure all customers have a decent quality of service, whilst respecting the principles of an open internet. 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.