

## **Who We Are**

Evolving Networks is a technology company offering fully managed connectivity solutions using software enhancements to UK business.

Our entire focus is on quality, sophistication and uptime, and not a race to the bottom on price. In fact, the two things consumers always rate highest when choosing an ISP (cost and speed) are the two factors which we give least focus.

We build products based on consistency and reliability that are more expensive. We believe speed (bandwidth) is not the most important measure, and have built our network to be able to aggregate circuits, protect business critical applications with per packet prioritisation to, compress live data and instantly failover. Metrics such as latency, jitter and loss all factor higher than bandwidth in our products.

We pride ourselves on a high standard of personalised customer service.

## **Ofcom definition of Small Business**

We struggle with those companies that fall into the Ofcom definition of small (10 or fewer workers).

While being impossible to measure accurately, we find that there is a propensity for a higher proportion of these customers to lie about how many workers they have, and for threatening behaviour (invoking ADR) in order to achieve an exit to a contract or a payment of some kind for perceived wrong doing.

Without exception, every organisation that has threatened to take us to ADR has been doing so to either waste time, run up a big bill (of at least time and energy), or induce a payout.

This may indicate a lack of professionalism in this size of organisation, but I believe this to be an unfair assessment of the business community. It is our view that the presence of the regulation that lumps businesses with less than 11 workers in with residential consumers gives those more unscrupulous directors the opportunity to exploit their supplier.

Being clear, we provide business internet connections, yet we have to structure our contracts and processes in such a way as to have to deal with both consumers and businesses even though we don't contract with residential users. This is neither easy nor practical, and combined with the inability to reliably determine the "size" of the business, we end up in an impossible position where we are held to ransom by customers with an axe to grind.

Let me be clear that we have dealt with a large majority of businesses who are courteous, professional and fair regardless of their size. The ADR qualification of small businesses is about giving those more unscrupulous characters unnecessary bargaining power. Our experience is that the others just don't need it because they recognise what both being a company and buying a business product entail.

## **Consistency of Definition**

We ask for consistency in how regulation is applied. Either by product/service (stating clearly this is a business service or residential service) or by purchaser.

At present a fully registered limited company turning over millions of pounds a year but having under 11 workers can purchase a business product but be treated as a consumer. Likewise, a business with more than 10 workers can purchase a residential service and be treated as a consumer. We consider this to be unfair and inconsistent.

The current Ofcom consultation on Automatic Compensation talks in detail about how a potential new regulation will apply to the product or service and not the purchaser. See paragraph 11.57 of the consultation document which says “We also note that for the third of SMEs that purchase residential services, they will benefit from our automatic compensation proposals for residential consumers.”

This is a position we support, in that the product determines the types of regulation applied.

Our suggestion would be to have a requirement for transparency of which market any advertised product/service is intended (residential/consumer or business) and then whatever entity purchases the residential product is handled by residential regulation and whatever entity purchases the business product is handled by business regulation.

Otherwise we are left in the current position where we can contract with any registered company regardless of size, and have the regulations differ even though contract law does not.

### **How to determine company size**

We have no problem with consumers getting protection but feel that the criteria for determining a business with less than 11 workers is nigh on impossible, and that those companies tend to want to be seen as having a higher number of workers, until it suits them from a regulatory perspective. The guidance on how to determine the size of an organisation (even if it has 10 workers and turns over billions of pounds) is very vague and impractical to prove in court as we have found with practical experience.

In a recent court case that hinged on the regulations and how they were applied, the customer in question had no problem portraying their company as having a great many more workers than 10, and in fact being a group organisation buying and selling other companies. Yet when it came to their relationship to us, their CP, they wanted to be treated as a consumer.

### **CPs are exempt**

We agree that CPs should continue to be exempt from ADR in all circumstances. The supply chain of communications services must be protected and dealt with in a professional and business like way involving contractual agreements.

However, more guidance on what a CP is should be given. For example a limited company with only 7 workers buying an internet connection and then supplying that to 3 subsidiaries in our eyes is classed as a CP.

Likewise a limited company with 2 workers that provides WiFi for residents in a University halls of residence, or to businesses renting desks with internet access.

We would welcome greater clarity on the definition of CP.

### **Transparency**

Much clearer guidance is needed on what is or isn't a suitable ADR dispute. In particular on what is considered vexatious or malicious.

The reasons for all rulings should be clear, consistent and unambiguous. We have read many reports that this isn't the case.

If a dispute is found in favour of the CP, no costs in any way should be awarded to the consumer, and the CP should have a right to seek recovery of costs from the consumer even if its just the ADR case fee.

### **No right of appeal**

Having no right of appeal goes against the strong legal tradition we have in the UK. The way ADR is currently structured gives too much unchecked power to two organisations. It is vital that transparency is used in order to maintain quality and consistency and to make sure that the ADR companies actually do what they are supposed to do.

How can justice in secret be justice at all? Who watches the watchers?

### **Summary**

We are essentially a business ISP. The only disputes we have are with companies that want to be treated like consumers in order to somehow get a free ride. Currently we have business customers who buy business products, that somehow have residential protections, such as ADR, which they can use as a bargaining chip because it always costs the CP money.

We believe this to be unfair and inconsistent.

It is our view that the protections afforded to the group of businesses classed as small by Ofcom should be removed in favour of a clear distinction between either residential and business products, or by residential and business customers (a business being a business whether it has 1 employee or a million).

ADR for business ISPs (because we don't supply consumers at all) is a one sided, provider always pays, threatening mechanism for a small but vocal group of small businesses (as defined by Ofcom).

Any attempts to improve this situation while naturally continuing to protect consumers would be greatly welcomed.