

Consultation response form

Please complete this form in full and return to netneutrality2021@ofcom.org.uk.

Consultation title	Net neutrality review
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Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how Ofcom handles your personal information and your corresponding rights, see [Ofcom's General Privacy Statement](#).

Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential? Delete as appropriate.	Nothing
Your response: Please indicate how much of your response you want to keep confidential. Delete as appropriate.	None
For confidential responses, can Ofcom publish a reference to the contents of your response?	NA

Your response

Zero-rating

Question	Your response
Question 1: Do you agree with our assessment of zero-rating offers and our proposed approach?	Confidential? –N We agree with Ofcom's commitment to revise its policy stance toward zero-rating offers and adopt a more flexible and open approach.

	<p>While zero-rating is essentially a mobile-only issue with most common fixed packages being unlimited, the COVID-19 pandemic has shown that there are good reasons to enable preferential access to certain platforms. At the onset of the pandemic, mobile operators were forced to break with the regulatory principles of net neutrality through their decision to act responsibly and zero-rate crucial network connectivity to ensure access to some essential online services and websites.</p> <p>At the same time, a more flexible approach to zero-rating, or indeed to the concept of net neutrality in general, can boost competition in the connectivity market, thus helping to address a range of issues that fall into Ofcom's broader area of responsibility, including switching.</p>
<p>Question 2: Do you agree with the criteria we use to define Type One, Type Two and Type Three zero-rating offers and our proposed approach to such offers?</p>	<p>ISPA welcomes the further clarity provided, including that the decisions to zero rate in Type Three will not be based on a single factor and takes into account market considerations across the connectivity and CAP markets.</p> <p>Overall, we believe the current approach is a good starting point but urge Ofcom to keep this matter under review and consider introducing further flexibility if CAP and connectivity market developments support this.</p>
<p>Question 3: Do you agree with the approach in our guidance in Annex 5 in relation to zero-rating?</p>	<p>/</p>
<p>Question 4: What are your views on whether zero-rated content should be able to be accessed once a customer's data allowance has been used up?</p>	<p>ISPA believes that zero-rating some content after a data allowance has been used up can be particularly beneficial as it may assist some low-income consumers, who are more likely to rely on mobile data for internet access. We would urge that the measure is kept under review to potentially offer more flexibility in the future.</p>
<p>Please provide any further evidence you have to support your responses.</p>	
<p>While not specifically related to the issue of zero-rating, we have concerns about the continued quasi-reliance on BEREC guidance in the Draft Guidance in Annex 5. While we understand that Ofcom may want to consider the actions, guidance and decisions from non-UK regulators, we believe that it should clearly set out within its own framework which rules, guidance and advice</p>	

actually apply in the UK. Suggestions that some Ofcom “may have regard to them [BEREC guidelines]] where we consider it appropriate” provides uncertainty to our members if these decisions are not clearly outlined through Ofcom’s own communication.

Traffic management

Question	Your response
<p>Question 5: Do you agree with our assessment of retail offers with different quality levels and our proposed approach?</p>	<p>Confidential? –N</p> <p>ISPA is encouraged by Ofcom’s tone and assessment of differentiated retail offers. Concerns around harm resulting from more flexibility in this area are essentially hypothetical and based on isolated examples that occurred in an entirely different market environment. Ofcom is correct in identifying that confusion stemming from the current rules has resulted in less choice for UK consumers, and thus a potentially lower level of competition and innovation in the UK connectivity market.</p>
<p>Question 6: Do you agree with the approach in our guidance in Annex 5 in relation to differentiated retail offers, including transparency requirements, improved regulatory monitoring and reporting of retail offers with different quality levels as well as the general quality of the internet access services?</p>	<p>We broadly support Ofcom’s approach but would urge that the regulator keep the data collection requirement to an absolute minimum. We would also welcome further clarity in relation to how ISPs should consider encrypted traffic as part of their considerations in this area, especially in the context of developments such as DNS-over-HTTPS, encrypted client hello, Private Relay and the greater use of consumer VPNs which increasingly reduce visibility of basic network data.</p>
<p>Question 7: What are your views on a more permissive approach towards retail offers where different quality levels are content and service specific?</p>	<p>We believe that Ofcom should support the provision of greater flexibility in this area. The level of investment into broadband infrastructure from a range of operators supports a more permissive regime. This has resulted in money reaching under-invested parts of the country, levelling up the infrastructure for generations to come.</p> <p>We would caution that the business case to maintain this level of investment in broadband infrastructure under the current regime is likely to become more challenging as the market continues to mature. Maintaining capacity, reliability, and latency also necessitates further</p>

	<p>large investments in the wider network interconnections between ISPs across the UK.</p> <p>A more permissive regime would also accommodate the fact that there are now a greater number of players, including operating system providers, content providers, streaming services, app stores or even individual apps, that can have a meaningful impact on traffic routing, traffic management and the end user experience.</p>
<p>Question 8: Do you agree with our assessment of how traffic management can be used to address congestion and our proposed approach?</p>	<p>ISPA supports the assessment by Ofcom of how traffic management can be used to address congestion. Growth in the use of the internet delivers substantial benefits, but also requires new approaches to traffic management in order to rise to the challenges of how best to meet demand and focus network investment.</p> <p>Under the existing rules, there is limited capacity for flexibility, cooperation, and management of traffic in response to events. Our members have also reported to us that other players (including those from cloud providers to video on demand, gaming, and various operating systems) do not always work closely together with our members to manage and anticipate congestion, and that such collaboration is often focused on a subset of ISPs. Accordingly, we would argue that this is much more of a present problem, rather than a potential future issue (as suggested in paragraph 6.75 of the consultation).</p> <p>Overall, we believe that more needs to be done to foster cooperation, including by developing a code of practice setting out some requirements and responsibilities for those issuing large software downloads, for example. Alongside this, a coordination forum between key parties would be helpful.</p> <p>.</p>
<p>Question 9: Do you agree with the approach in our guidance in Annex 5 in relation to the use of traffic management to address congestion, including transparency requirements, improved regulatory monitoring and reporting</p>	<p>We broadly support Ofcom's approach but would urge that the regulator keep the data collection requirement to an absolute minimum</p>

of general network performance metrics, the use of traffic management and the impact on service quality?

Question 10: What are your views on a more focused approach to traffic management to address congestion?

ISPA welcomes the provision of clearer guidance on the scope of traffic management measures, and how they can be focused to address congestion in support of an open internet.

Please provide any further evidence you have to support your responses.

ISPA believes that the core principles of the UK's Net Neutrality framework have worked well, delivered good outcomes, and safeguarded an open internet. No significant or sustained concerns from either Ofcom or other parties have materialised around the management of network traffic by fixed internet access providers in the UK which would warrant a more restrictive interpretation of net neutrality rules.

For many fixed networks, traffic management policies are rarely if ever invoked, although content providers do publish what they would do if networks are congested to ensure adequate performance for time critical applications. However, the ability to use traffic management measures is a necessary aspect of ISPs' network management practices, allowing our members to better control the flow of traffic across a network and benefiting consumers by improving the performance of their broadband connections at peak times.

Capacity

Ofcom has previously noted that the amount of internet data being delivered to consumers by major video content providers continues to increase, and that the use of content delivery networks also continues to grow (Connected Nations report, 2016), with internet content increasingly being served from caching servers embedded in the ISPs' access networks and provided by the content providers. Improvements in terms of access to 5G and full fibre networks are largely driven by crucial investment from ISPs.

Since the current net neutrality rules were introduced, there have been significant developments in the wider internet ecosystem which we believe should be considered in the future development of the UK's net neutrality regime. These include the emergence of new online business models, some of which consume very high levels of data and bandwidth, the emergence of a number of players with highly concentrated power (often in multiple markets or parts of the value chain) and the emergence of new standards such as DNS-over-HTTPS.

As a result, access providers no longer fulfil the same 'gatekeeper' role that they did when the current net neutrality rules were devised and introduced. There is not only a greater level of competition between access (infrastructure) providers (offering consumers greater choice than in other parts of the value chain), but there is also a greater number of players (operating system providers, content providers, streaming services, app stores or even individual apps) that can have a meaningful impact on traffic routing, traffic management and the end user experience.

It is also worth noting that network traffic continues to grow at pace in the UK, with average monthly data use now estimated at 482 GB per connection. To meet this demand, ISPs have invested heavily to strengthen capacity across networks, with the UK now recognised as a global leader in network deployment. Our members' continued investments have resulted in high performance and cost-effective networks for customers.

We would encourage Ofcom to create a neutral, cross-sector forum with ISPs in which informal dialogue could be used to gauge risks with different companies, providing more detailed examples of good practice and guidance that can be developed.

Expanding net neutrality beyond a pure ISP focus

While the UK's net neutrality regime continues to fulfil its original purpose of ensuring that no discrimination takes place at the access layer, we would also urge Ofcom to consider broadening

the scope of the net neutrality regime in the context of the overall internet value chain. It is important to remember that the internet is significantly more than ISPs and CAPs, to which the current regime only applies.

Remaining solely focused on this access layer gives an incomplete picture of how the internet has changed since its inception, and the challenges to maintain the core principles of an open internet as we regulate it for the future. If this changing value chain cannot be captured within the net neutrality rules themselves, then we would welcome further clarity from Ofcom, or other forums such as the The Digital Regulation Cooperation Forum, on how such cross-value chain issues can be addressed, and ensure that a regulation which potentially impacts only one part of the value chain unfairly can be avoided.

Specialised services

Question	Your response
Question 11: Do you agree with our assessment of specialised services and our proposed approach?	<p>Confidential? – N</p> <p>We generally welcome the greater clarity of specialised services provided in the draft guidance, believing that, in theory, this gives more support to diversifying ISPs who are leading innovation in the market.</p> <p>As we move to a full-fibre and 5G environment, a clearer definition of how specialised services can be offered becomes ever more important. This would include a clearer definition of “objectively necessary”, and a recognition that network capacity is always shared, with a more common-sense approach to balancing special services and general internet access to further enable innovation by network providers. Fixed and mobile networks have invested significant sums in infrastructure that is central to the UK’s economic growth and development, it is important that any review of the rules in this area enables innovation and further investment.</p> <p>Both the BSG’s Open Internet Code of Practice and Ofcom’s Approach to Net Neutrality from 2011 had an explicit focus on consumer services, and we believe that such a consumer-focused approach to net neutrality offers the right way forward with flexibility. Business contracts tend to be highly tailored and designed to support innovation, and our members have voiced concerns that the current interpretation of specialised services has been insufficiently flexible for the current, yet alone the future business market (e.g. Software Defined Networks (SDN)/Network Functions Virtualisation (NFV), 5G, hybrid networks and IoT).</p> <p>Businesses not only have bi-laterally negotiated tailor made contracts that are different from consumer contracts, but they also require and demand different services than those used by consumers. Large businesses in particular require highly tailored services which meet their specific needs, as opposed to "mass market" style consumer offerings. Regardless of whether</p>

	<p>increased meaningful transparency or other rules and possible minimum QoS levels are appropriate in the consumer protection context, we believe Ofcom should not automatically apply the same provisions to large business users. We would recommend that, if a wholesale carve-out is not possible, Ofcom should at least consider clarifying the application of specialised services in relation to enterprise grade connectivity.</p>
<p>Question 12: Do you agree with the approach in our guidance in Annex 5 in relation to specialised services, including transparency requirements, improved regulatory monitoring and reporting of the need for optimisation of a service, the general performance of internet access services and the impact of specialised services on the quality internet access?</p>	<p>ISPA generally supports the approach set out in relation to specialised services in the draft guidance.</p>
<p>Please provide any further evidence you have to support your responses.</p>	
<p></p>	

Scope of the net neutrality rules, terminal equipment and public interest exceptions

Question	Your response
<p>Question 13: Do you agree with our assessment of the terminal equipment rules and our proposed approach?</p>	<p>Confidential? –N /</p>
<p>Question 14: Do you agree with our assessment of internet access services provided on aeroplanes, trains, buses and coaches and our proposed approach?</p>	<p>/</p>
<p>Question 15: Do you agree with our proposed approach to emergency 999 communications services and that we should consider amending the GCs to achieve this?</p>	<p>/</p>
<p>Question 16: Do you agree that ISPs should be allowed to block scams and fraudulent content</p>	<p>Yes</p>

and provide in-network parental controls and content filters?

Please provide any further evidence you have to support your responses.

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