

## **ISPA submission to CMA Loyalty Penalty super-complaint investigation**

The Internet Services' Providers Association (ISPA) welcomes the opportunity to submit evidence to the Competition and Markets Authority (CMA) investigation of the Citizens' Advice Super Complaint regarding loyalty penalties. We particularly note that the broadband sector is included in the super complaint as a market where this is extremely prevalent.

ISPA is the trade association for internet services providers in the UK, with over 200 members, 90% of which are SMEs. Our members cover the whole spectrum of access provision in the UK using FTTP, FTTC, wireless and satellite connections at a wholesale and retail level. They also play a critical role in delivering broadband and internet services across the UK to consumers and businesses.

### **Introduction**

ISPA fully supports efforts to encourage customers to engage with the market, and there is, naturally, a clear need to engage with vulnerable customers to provide support and help with switching.

ISPA would like to note a number of issues, however, surrounding the concept of a "loyalty penalty" and its application to the broadband market. It is particularly important that the CMA consider ongoing work on issues in this area by Ofcom and Government, and allow these existing processes to run their course before any other interventions are considered. Moreover, any policy recommendations should be proportionate and targeted to those in need of help. ISPA is therefore supportive of the indication from Citizens' Advice that vulnerable customers should be the focus specifically of the CMA investigation. Finally, ISPA would like to ensure the narrative of a "loyalty penalty" is not used to conflate loyal and ill-informed customers, and therefore justify action by regulators.

### **Existing policy landscape**

Throughout this investigation it is necessary for the CMA to fully consider the impact of any policy interventions on the market as a whole. Importantly, this should take account of the existing work being done by regulators, and Government.

One such example of this is the recent Ofcom consultation on end-of-contract and out-of-contract notifications, to which ISPA submitted a response. This consultation proposed measures aimed at increasing awareness for consumers about their contracts to allow them to make informed decisions about their provider to avoid inertia. Whilst there are some concerns around the applicability to small businesses, ISPA is broadly supportive of this step in the residential market. This consultation does however highlight the need for the CMA to respect ongoing work in this area by regulators and industry.

Government published their Consumer Green Paper earlier this year, which ISPA fed into, and similarly covered a number of consumer issues, including the idea of a loyalty penalty, in the Broadband and other markets. There is clear appetite from Government and regulators to investigate this area

### **Importance of targeted intervention**

We urge the CMA to ensure that prior to recommending new or amending existing consumer protection regulation, that they clearly identify the harm consumers are facing, and ensure that any potential intervention positively benefits consumer interests. This should include an assessment of the specific types of consumers in need of protection, as stated by Citizens' advice to likely be vulnerable customers. Blanket regulation across the diverse range of providers and customers is

rarely appropriate, risks undermining flexibility, choice and competition that have become a defining factor of the UK broadband market and might create unnecessary barriers for large corporate business customers.

### **Problematic application of loyalty penalties in the broadband market**

One of the main concerns of the broadband industry in relation to “loyalty penalties” is the tendency to conflate customer loyalty with ill-informed or unengaged customers. Loyalty to a provider does not necessarily mean that a customer is not content with their service, especially as in the broadband sector there are a range of non-price issues that the customer may value, including performance, service quality, and reliability. Further, this conflation is often used by regulators to justify interventions which overestimate the number of customers experiencing harm.

It should be remembered that there is a great deal of competition at the retail level of the market giving consumers a wide choice of products. Whilst not all consumers chose to engage with the many discounts and options open to them, it is a mark of this competitive market that these are available. Furthermore, the choice available to consumers in the retail broadband market is wide and the introductory offers made available by many providers are a function of a competitive market and help to keep prices low overall.