

ISPA Response to the Consumer Green Paper

About ISPA

ISPA welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy Green Paper on Modernising Consumer Markets. ISPA is the trade association for providers of internet services in the UK, we have 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. Our members play a critical role in delivering broadband and internet services across the UK to consumers and businesses.

Introduction

The markets discussed in the Green Paper represent a broad spectrum of market structures and any attempt to strengthen consumer rights in these areas should be done in a targeted manner, taking full account of existing regulatory and voluntary measures to ensure that these interventions effectively improve consumer rights. ISPA would like to highlight the following key issues in this response:

- The unique characteristics of the telecoms sector, and the need to target interventions so as to mitigate against negative consequences for consumers;
- The importance of balancing measures to simplify market interaction with the positive effects that competition and choice can bring to consumers;
- The existing regulatory and voluntary environment, recent changes and ongoing efforts to improve consumer experience within the sector;
- The danger of duplication and introduction of overly burdensome requirements when refining existing measures would be more effective for both consumers and industry; and,
- The need to review the current ADR arrangements, in line with Ofcom's upcoming review.

Differentiation of the broadband market

Whilst broadband has become a ubiquitous service, it must be considered differently to a classic utility network. The broadband industry has different market and competition dynamics and a different nature to the service that is provided. For example, the telecoms infrastructure is still being built, with next-generation networks being rolled out by our members across the country. Government support is necessary to ensure the best market conditions to attract the investment required for the UK's ambitious upgrade plans. Furthermore, the broadband market operates with both infrastructure and service competition, using a variety of

technologies. This not only differentiates the sector considerably, but also delivers a greater degree of product and service variation for consumers, and allows for differentiation of services on other characteristics beyond price.

As such, the telecoms industry, requires a proportionate and specific approach to consumer policy, with a recognition of the existing voluntary and mandatory interventions that already apply. These include the ASA's advertising rule changes implemented in May 2018, along with the updated voluntary Speeds Code of Practice from Ofcom. Industry has worked closely with both the ASA and Ofcom on these issues to help inform customers and maintain transparency, and these recent measures need time to bed in before further interventions in the market are considered. ISPA is also updating its own Code of Practice for members and will publish a range of Best Common Practice documents later this year which will address issues such as speeds and cyber security.

We urge Government and relevant regulators to ensure that prior to introducing 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, often most likely to be residential and small business 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.

Education of consumers

The range of factors affecting consumer experience are wide and often outside of the providers' direct control. These include issues inside the home such as wiring and the devices used. There is more to be done to ensure that the range of factors affecting consumer experiences of broadband are understood and acted upon appropriately by consumers themselves, and are appropriately supported by industry and consumer groups to get the most out of the services they pay for.

In conjunction with this need for education, ISPA welcomes the engagement from consumer groups around these issues. There is, however, a need to balance competing demands. This can include the contradictory calls for greater competition and concerns regarding overwhelming choice and complexity in the consumer market. This is one area in which it is clear that policy interventions must be approached with caution and are driven with robust evidence to ensure they continue to benefit rather than unintentionally harm consumers.

Loyalty Penalties, bundled services and switching

The Green Paper, along with recent research from Ofcom¹, has suggested that consumers are losing out by remaining with one supplier, when they could get a better deal if they switch providers. Whilst ISPA fully supports encouraging customers to engage with the market there is a potential difficulty within this narrative of conflating loyalty with ill-informed or unengaged customers. For example, 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 (e.g. performance, service quality, reliability, billing, technical support, customer support, additional features).

There is, naturally, a clear need to engage with vulnerable customers to provide support and help them switch and ISPA members are working hard to ensure that appropriate help is offered to those in need of it.

There is a further need to recognise the positive aspects of switching, including the importance of competition in the market and the use of introductory offers to facilitate this. Limiting or scrapping introductory offers, on the basis they disadvantage customers that remain with a provider beyond the introductory period, would undermine this and could lead to increased costs to consumers.

In addition, the presence of bundles in the telecoms sector should be appreciated as a differentiator, and perceived as a positive way of offering consumers more choice, rather than causing too much confusion. For example, bundled services are often introductory offers which can simplify the switching process by combining multiple services into one contract, and synchronising contract lengths for renewal. If these offers become more difficult to offer it could see a reduction in introductory bundled services offered which will require the consumer to make comparatively more complex switching choices and may unintentionally increase inertia.

We recognise that the significant price and product competition in the broadband market requires more engagement from consumers, but believe that this is ultimately a better outcome for consumers than a more heavily regulated and simple market that offers consumer fewer choices and less competitive products. We do, however, believe that the different services and technologies offered across the industry should be bound by the same switching procedures so that customers can easily switch between providers of different infrastructures to promote further competition.

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0030/113898/pricing-report-2018.pdf

Ranking and performance data

There is no doubt a need for regulators to collect data from those within their respective sectors, and to provide consumers with greater information and insight as a result. This is already operating to an extensive degree in the telecoms sector with a large amount of information collected regularly by Ofcom and published in easily understandable formats for consumers. This represents a much higher requirement than in many other sectors in the UK, and telecoms sectors abroad. Whilst ISPA members comply with Ofcom data requests, there is a need to appreciate the cost and administrative burden this already brings, along with the danger of duplicating existing information. This may not only unduly burden businesses, diverting resources away from factors directly improving customer experience, such as infrastructure build and improvement, but may also bring more confusion than clarity for customers.

Telecoms Consumer Advocate

Similarly, the role Ofcom already performs in the telecoms market must be appreciated fully when considering the need for a consumer advocate in the sector. Ofcom already has a statutory duty to further the interests of citizens and consumers. This has been seen in the 2017 update to the General Conditions which come into force in October 2018. These introduce new requirements in respect of vulnerable customers, and bring in changes to the rules governing complaint handling outlined below. In addition to these regulatory changes, Ofcom's has recently started to adopt a more consumer-friendly approach to communication. This has been evident in the increasingly accessible reports on the telecoms industry, which have also been published more frequently, as seen with the most recent interim Connected Nations Report. The increase in data output from Ofcom has been a useful step to educate customers, whilst the administrative burden placed on providers to compile and submit this data, as discussed above, should be considered.

In addition to this overarching customer focus within Ofcom, the role of a consumer advocate is already largely fulfilled through the Communications Consumer Panel. This panel currently advises Ofcom on consumer issues which informs their subsequent policymaking in the area. ISPA feels that Government and Ofcom should look to utilise this existing tool and ensure the panel is working to its full potential rather than shift the function to a different or new body where there would be a greater chance of duplication and confusion.

ADR

Customer service is a priority for our members and ISPA has been actively seeking to improve the existing Alternative Dispute Resolution system which is mandated in the telecoms sector.

ISPA called for a review of the existing system in its response to Ofcom's annual plan consultation for 2018-19, which Ofcom has now stated will take place.

The periodic review undertaken by Ofcom last year of the ADR system recommended to largely maintain the existing arrangements, but highlighted one area where further review is required regarding the readiness of ADR providers to accept out of scope cases, which has been raised by a number of our members. As such, there is clearly a need to look at the existing ADR system in the telecoms sector to ensure it is working most effectively for consumers and industry alike.

The current arrangement, by which there are two approved providers of ADR for telecoms works well. ISPA feels, as in other fields, competition between ADR providers leads to better outcomes for both industry and consumers. The Green Paper makes reference to possible confusion of multiple providers, however, with ADR a statutory obligation for telecoms where ISPs pick one of the two providers this is easily avoided.

Further to this, there has been a lot of concern from consumer advocacy groups that there is not enough awareness amongst customers of ADR, despite it being a statutory requirement for telecoms. As of 1st October 2018, Ofcom's reviewed General Conditions will come into effect. This will include a new obligation for providers to notify customers of their right to ADR on all bills, rather than just paper bills. Providers will also be required to proactively issue a deadlock letter if a resolution cannot be found, and will have to provide more information on the timelines within which consumers need to respond. All of these changes to the existing regime will help to boost awareness about ADR and the process, and is another indication of the strong consumer protection role Ofcom is already playing within the market.

Finally, ISPA itself aims to facilitate greater communication between providers and their customers by providing a platform to register complaints against members on our website. These complaints are then escalated directly to a nominated point of contact within the member company to aid quick resolution.

Conclusion

In conclusion, ISPA members are committed to ensuring consumers have a positive experience of their broadband provider and believe that the characteristics of the telecoms sector necessitate a targeted approach to policymaking in this area in comparison to utilities also covered in the Green Paper. ISPA would like to highlight the existing efforts to provide greater clarity for consumers recently applied to the broadband market, and the role of Ofcom and the Communications Consumer Panel in working to protect the interests of customers. There

is a concern that universally applied initiatives across sectors to increase reporting requirements of regulators for example, may duplicate existing arrangements, or fail to recognise the importance of infrastructure competition in the broadband market. There is real potential for misjudged interventions to inadvertently lead to negative outcomes for customers, and this should be avoided through appropriately targeted and proportionate reforms, which fully take account of the existing landscape especially given recent and ongoing policy implementation in the telecoms sector.