ISPA response to Ofcom Consultation on Open Communications

ISPA is the trade association for providers of internet services in the UK. ISPA has approximately 150 members, 90% of which are SMEs as well as large multinational companies. We are proud to be an organisation which covers the whole Internet value chain, including companies that provide access, hosting and other online services. We represent the full ecosystem including communications providers that serve consumers and businesses, those that build their own networks and those that resell services via the fixed and wireless networks.

Introduction

ISPA welcomes the opportunity to respond to this consultation and engage in the wider discussions around smart data and its applicability to the communications sector. Whilst understandably looking to the nearest example of such a policy seen in Open Banking, the Open Communications initiative must be considered in the specific context of the Communications Market. This is both in in terms of the overall objectives that we seek to achieve as well as the specific steps that we take to unlock the potential for innovation. Simply transferring existing models, risks putting an unnecessary burden on the sector without achieving any of the expected benefits.

More specifically any open communications intervention should:

- Be based on an evidence-based cost-benefit analysis.
- Be tailored to the broadband and wider communications market, including the interaction between different parts of the market, pricing models, consumer behaviour.
- Take account of current and expected initiatives/interventions around consumer protection and engagement, specifically the implementation of gaining provider led switching and end of contract notifications.
- Come with clear safeguards to protect competition within the market.
- Come with clear measures of success and deliver actual and meaningful benefits to a significant segment of consumers.
- Apportion cost fairly, including to organisations that seek to make use of Open Communications data.
- Ensure that the high regulatory standards that are applied to Communications Providers are mirrored across the Open Communications value chain.

Below, we provide specific replies to a selection of the consultation questions.

Question 1: Do you agree with our assessment of the challenges that people and SMEs face when engaging with the market, which Open Communications might help to address? Please explain and provide evidence.

The challenges outlined in the consultation paper are largely in line with Ofcom's established position in this area. However we challenge Ofcom's approach to generalise findings and assessments across different types of customers and urge Ofcom to:

a) adopt a more granular approach to segmenting customers and their engagement with the market; and

b) clearly determine how an intervention in the market would actually benefit the various types of consumers.

For example, an open communications approach might not provide much benefit to customers who currently don't understand their needs, especially in the broadband sector where products tend to

be differentiated by speed rather than volume. Equally those customers who are currently unengaged, might be the same customers who are sceptical about engaging with a new Open Communications-based information service.

Question 3: Do you agree with our view of the benefits for people and businesses that Open Communications could generate?

In order to provide real benefits, Open Communications would likely need to capture the entirety of communications providers' services and contributors to a customer's purchasing decisions. Collecting and supplying this data is likely to come at significant costs to the telecoms sector which suggests that clear cost and benefit analysis is necessary. This consultation also makes little acknowledgement of the wider trade-offs that implementing Open Communications may cause, particularly on Ofcom's other policy objectives such as investing in gigabit networks.

Naturally, the outline of potential benefits in the consultation paper is somewhat vague, and more work would need to be done to determine:
1. the actual benefits
2. the costs to CPs and, in turn, users (where costs are sufficiently high to have an impact on pricing); and
3. whether there are alternative approaches that would achieve similar outcomes.

We would be happy to support Ofcom in undertaking a more detailed assessment. However, simply using a select number of use cases provided in the consultation suggests this detailed cost-benefit analysis is clearly necessary.

Example 1: Price Comparison Services
The consultation states that "[o]ur market research also suggests that improved product comparison appeals to many people and businesses. If these websites and apps can offer a more compelling service to users, we could see even more people and businesses taking advantage of them." However, elsewhere the consultation suggests that "around three in ten (28%) UK adults said they had used a price comparison website in the past year for communications services", i.e. even a significant increase in usage of price comparison websites would not necessarily deliver a significant change across the market.

Moreover, the consultation acknowledges that a lot of data is already available in the market, e.g. via mystery shopping, third parties or direct agreements with providers. In this sense, price comparison services could already offer a more comprehensive service, including one that is less focused on price. This in turn begs the question, whether Open Communications data would lead to a significant change in this area and what level of data would need to be included in Open Communications to allow for a meaningful change.

Example 2: Account Aggregation
Particularly in the broadband market, where services tend be uncapped, there is a question to what degree Open Communications-based account aggregation would meaningfully improve consumer outcomes. The consultation acknowledges that Open Banking has already allowed third party services to aggregate spending data on utilities and communications services to provide spending dashboards and make switching recommendations. Open Communications would need to deliver significant additional benefits to what can already be provided with Open Banking data to justify the additional costs of collecting and supplying the relevant data.

Example 3: Account Management

The consultation suggests that "[a]n account management service could also complement and reinforce the impact of end of-contract and annual best tariff notifications", but the added benefits would again need to be significant to justify the added costs of delivering Open Communications. There is clear need to assess the impact of these recently made notification requirements before complementing them with additional layers of interventions.

Example 4: Third-party switching

The consultation acknowledges that "Open Communications in itself would not enable third parties to facilitate agreements to switch services" but it fails to clearly identify the barriers that currently prevent third-party switching, making this at most a tentative potential benefit.

Question 4: Do you agree with our assessment of how Open Communications could enable services that benefit people in vulnerable circumstances? Are there other ways it could benefit people in vulnerable circumstances?

The protection of vulnerable customers is a live policy area. There might be benefits in being able to share vulnerability data when customers make a decision to switch, but it is again questionable whether the benefits that are outlined in the consultation document could already be achieved by other means or whether the absence of Open Communications is a real barrier. For example, spending data is already available via Open Banking solutions and a debt advice service should be sufficiently capable to assess contract information that a vulnerable consumer can provide to them.

Furthermore, it is necessary to consider whether vulnerable customers are best placed to utilise a service enabled by Open Communications. Ofcom's own assessments have seen that these consumers often struggle to engage with the market currently, and the assumption that sharing their data to a third party is something that would be something they found easier and were comfortable with should be based in evidence.

This is clearly a complex issue, where considerable work is already ongoing, both from Ofcom and in collaboration with industry initiatives which are looking to provide help for these customers in a more targeted manner.

Question 5: Are there any risks that we have not identified that could reduce the overall benefits of Open Communications? Please provide evidence, where possible.

We strongly believe that more work needs to be done to fully understand the complexity and costs of collecting and providing the data that would allow Open Communications to make a meaningful difference. This has not taken place so far and the most tangible benefits outlined in the consultation paper are likely to be achievable by other means. This poses the risk of imposing too high a cost on the communications sector and its customers.

There is also a clear need to work towards a system that actually, rather than hypothetically, improves consumer interaction with the market. For example, will those 16% that "do not currently feel confident" that they have the best deal for their household change their opinion because they can provide Open Communications data (which they might find hard to understand) to a third party (which they might not trust)? Equally, will those 78% that feel either "fairly confident" or "very confident", get a better deal as a result of Open Communications?

We strongly believe that the consultation paper underestimates the risk to competition. For example, Open Communications could provide competitors with near-permanent access to not just basic customer data but also information about network performance and quality of service.

Furthermore, Open Communications could become a barrier to new entrants and smaller existing providers which we outline in more detail below.

The consultation also does not take account of the significant changes to the market being undertaken through the EECC currently. Given the scale of these changes, Ofcom should support providers implementing recent interventions and the EECC, ensuring that they wait to assess the impact of those measures on consumers before considering mandating further structural changes to the sector such as Open Communications. The risk of duplication or overlapping policy interventions where they have had little to no time to bed in is considerable.

Finally, there is a risk that Open Communications undermines efforts to switch residential consumers to gigabit capable products and SMEs to tailored business services. If switching recommendations provided by Open Communications services are based on current consumer behaviour, as suggested in the consultation, then they are unlikely to recommend a switch to a faster product in the case of consumers. They may also fail to encourage business customer to go for a customised package that meets their business needs.

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We would like to suggest an eighth principle: Open Communications should meaningfully and directly improve consumer interaction with the communications market.

Question 7: On what kinds of communications providers do you consider that any obligation to provide customer and product data should sit?

As indicated previously there is real and clear risk of negatively impacting competition in the market, either because

a) smaller providers or new entrants are overburdened by the cost and administrative obligations (if Open Communications applies across the sector); or

b) they are not included in Open Communications Services (if Open Communications is only applied to a select group of providers).

Crucially, a failure to cover the entire market (either because of cost or regulator barriers) would undermine the expected consumer benefits of Open Communications as consumers would not actually have guaranteed access to the best available service that meets their needs. This is particularly relevant in the business market where, as Ofcom recognises, there is a greater degree of local variation in supply and a greater diversity of products and services.

Question 8: Do you agree with our initial views on how to approach key issues for the design and operation of Open Communications? Do you have comments to make on other implementation issues?

It is too early to provide a detailed response to this question but there is a clear need for Ofcom to consider the different needs of the different types of customers, rather than treating customers as having uniform needs regarding market engagement.

Question 9: Do you agree with our view of the data that Open Communications should make available to third parties? Is there data about accessibility needs or vulnerable circumstances that people would benefit from being able to share with third parties?

The impact on competition would need to be clearly considered when determining who should receive access to certain types of Open Communications Data. Clear rules would need to be put in place to ensure that those parties who have access respect privacy and do not misuse data or cause other harm. There might be benefit in sharing vulnerability data, but this could be delivered independently of an Open Communications approach.

Question 10: What are your views on the appropriate arrangements for determining liability and redress in disputes between customers, providers and / or third parties?

It is too early to provide a detailed response, but CPs are heavily regulated and any use of data that they provide or party that gets access to that data should comply with similarly stringent regulations as CPs.

Question 11: Do you agree that we have identified the main sources of costs for implementing Open Communications for both providers and services that use Open Communications data? Are there any sources of costs that we have missed?

We leave it to our members to provide a more detailed response, but the consultation paper seems to overemphasise the possibility that the data that would be subject to Open Communications is already being held in an (API-) accessible format by CPs. Moreover, there is a need to consider legal and ongoing compliance cost to CPs. Additionally, there is a question around how Ofcom's cost for governing and monitoring Open Communications as well as any potential costs related to enforcement action would be apportioned. These costs should fall on services making use of Open Communications data.

Question 12: What factors will drive the overall scale of costs to in-scope communication providers and to third parties? How might this level of cost vary depending on whether providers serve residential and / or business customers?

We leave it to our members to provide a more detailed response, but at a high level, the cost of providing data about business services is highly likely to be more significant as business products can be more complex, personalised and can be bundled with a range of other business services or equipment.

Question 13: If relevant, please estimate and describe, as far as possible, the costs to your organisation of implementing and running Open Communications.

n/a

Question 14: If relevant, would your organisation consider using Open Communications data as a third party to offer new services or enhance existing ones?

n/a