

OPEN COMMUNICATIONS CONSULTATION RESPONSE

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Key Documents	<ul style="list-style-type: none"> → Consultation Doc → Impact Assessment → 2021 Ofcom Statement on Open Comms → Previous Smart Data / Open Communications Impact Assessment from the DPDI Bill
ISPA Contact	→ Till Sommer

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Introduction / Summary

Smart Data has the potential to unlock innovation and improve outcomes for consumers, but we are strongly concerned that Open Communications will not achieve the expected innovation and do not meaningfully improve consumer outcomes, while imposing significant costs on a highly dynamic sector that is facing economic headwinds and significant regulatory uncertainty.

We strongly believe that the real benefits of smart data can only be unlocked via cross sector smart data schemes, yet Open Communications adopts an extremely narrow view and purely focuses on a limited set of telecommunications data that is already easily accessible to consumers, instead of considering a potentially much larger pool of data, such as banking, or mobile application and operating systems to truly enable consumer engagement and service innovation.

We further believe that the key problems that DSIT has identified in the consultation are already being addressed by existing interventions, including End of Contract Notifications, Best Annual Tariff Information and Contract Summaries. These have already led to a significant decline in customers that are out of contract and One Touch Switch will be implemented soon and will further address key areas of concerns for DSIT.

DSIT's analysis of the market environment further fails to recognise that the market is in a high degree of flux, and will change fundamentally in the coming years. Not only will we see a wholesale change of technology with most consumers moving to full fibre networks, we will also see a significant change in the number of providers being present in the market due to significant expected consolidation.

Given that it will take a significant level of development and run in time to set up Open Communications, it will likely be out of sync with the actual market environment and consumer expectations when it goes live, yet will have an immediate impact in terms of leveraging costs on a large number of providers, thereby diverting investment away from rollout and further adding to regulatory uncertainty and complexity, making telecoms a less attractive market for investment.

We set out these points in more detail below and several of our members will provide more detailed evidence, but overall, we strongly urge DSIT to do the following before pressing ahead with Open Communications:

1. allow existing consumer interventions such as One Touch Switch to fully bed in before intervening further in the market;
2. allow the market to mature, consolidate and stabilise while ensuring maximum investment in fibre rollout; and
3. allow sufficient time for broader cross-government and cross-sector smart data governance to develop and consider evidence and input from the smart data challenge prize and similar future interventions.

In the meantime, we believe that a stronger focus should be placed on convening a telecoms sector and government forum, to consider the challenges set out in the consultation and identify more immediate measures to support customer engagement. This can, but should not be limited to, identify alternative ways of providing information to customers.

Benefits, unintended consequences and market implications

Question 1: What are your views regarding the potential impact – positive or negative – on consumers of establishing an Open Communications scheme in the UK telecoms market? Please provide evidence or data where possible to support your answer.

Question 2: If you highlighted any negative impacts to consumers, do you have any views about how these potential negative impacts may be prevented or mitigated?

We believe that cross-sector smart data schemes offer significant potential to improve consumer outcomes and unlock innovation. The Open Communications proposal, however, adopts a more narrow approach with the main stated benefits being improved market engagement, improved switching rates and take up of new services. Open Communications should thus be primarily evaluated against these more narrow criteria. The more innovative potential of smart data schemes would only be unlocked if DSIT embraced a cross-sector smart data approach, but we still touch on innovation in the points below.

Switching & Market Engagement

Open Communications largely covers data points that are already included in Contract Summaries, End of Contract Notifications (ECNs), Annual Best Tariff Notifications (ABTNs) and consumer portals of many providers. Ofcom research suggests that ECNs have led to positive consumer outcomes and, given it is still a fairly new intervention, ECNs will likely lead to further improvement with the introduction of One Touch Switch (OTS) leading to significant further change. Neither the ongoing implementation of ECNs and ABTNs nor the forthcoming implementation of OTS are recognised in the Impact Assessment and the estimated costs from overpayment and out of contract customers would thus need to be reduced accordingly.

This is further compounded by the fact that the Impact Assessment does not make a convincing argument that Open Communications would achieve a significant delta in switching rates and consumer engagement above and beyond the mentioned consumer measures:

- ECNs should put most of the Open Communications data front and centre of consumers' minds when they have the most need for it – at the time when they should make a decision about their next contract - and data-driven consumer can get further data points from contract summaries as well as provider portals and applications running on their devices.¹
- Consumers that currently do not engage with ECNs, contract summaries or other information, either because of a lack of interest, skills, understanding or vulnerability, are unlikely to make use of Open Communications.²

Accordingly, Open Communication is most likely to benefit customers that are already engaged while leading to higher costs across all types of consumers, assuming that the increased compliance costs will ultimately be reflected in consumer pricing.

Take-up

The Open Communications proposals adopt a reductive take on broadband consumption, and risk locking consumers into current usage patterns, potentially disincentivising take-up of new services. Open Communications primarily seeks to highlight data on a customers' current buying and consumption behaviours. Current consumption behaviours are, however, naturally constrained by the products and services to which the customer is currently subscribed.

¹ [Research by Ofcom](#) clearly indicates that ECNs had positive impacts on the number of out of contract customers, engagement (including amongst vulnerable customers) and price differential between and in and out of contract customers.

² [Research commissioned by Ofcom on Open Communications indicates:](#) The use of price comparison services is low (20% of broadband customers), the services are used significantly less by those who are disabled, out of work, in the DE socio-economic group, or over 55 and the most significant reason that was provided for not using a price comparison service was the lack of need. The research further found a lack of understanding and knowledge of broadband speeds, and the language used by providers.

Take-up was the key consideration for Gigatag, which addressed this issue in its final report, highlighting lack of awareness, little perceived benefit and practical issues as key barriers to the take-up of new connections.³ However, Open Communications purely focuses on addressing the perceived practical barriers and even then only seeks to address the potential hassle of switching rather than the wider practical barriers identified by Gigatag.

Gigatag demonstrated the need to raise awareness, create a pull effect and highlight the way in which different types of connections and speeds enable different consumer behaviours. However, without contextualising new broadband services, ingesting data from related sectors (e.g. other subscription services), providing clarity around terminology and outlining use cases, Open Communications will simply encourage consumers to stay at their current service instead of encouraging them to opt for a higher tier FTTP product that might be better suited for their needs, especially if that comes with a potentially higher price.

Innovation

The counter argument to the above is that we do not yet know whether new services would emerge that help increase the number of customers that use data to engage in the market. It is impossible to give a definitive answer to this question, but we believe that it is important to look at whether current comparison services are data constrained or, as suggested in the consultation, rely on consumer input – leading to consumers taking out packages above their need. With this in mind, it is important to note that none of the mainstream price comparison services require any user data input beyond a customer's address, which is then used to outline the services and prices that are available at that specific address. Crucially, these same services currently require heavy data input for comparing other products such as insurance or mortgages, suggesting that it is a deliberate choice for these services not to use or require extra data for broadband. Moreover, despite already having access to all the relevant information, mainstream price comparison services currently do not contextualise the information that they provide, i.e. they do not offer recommendations based on what consumers would like to do with their connection, and it is thus questionable whether they would do so under Open Communications.

In short, there is currently no reliable evidence that the data that has been suggested in the consultation would lead to a significant change in how price comparison services or other services would provide broadband information, given that they already do not use all the information that could be available to them.

³ [Gigatag \(2021\): Final Report](#)

Question 3: What are your views regarding the potential impact - positive or negative - on telecom providers of establishing an Open Communications scheme in the UK telecoms market? Please provide evidence or data to support where possible to support your answer.

Question 4: If you highlighted any negative impacts to telecom providers, do you have any views about how these potential negative impacts may be prevented or mitigated?

The proposed Open Communications scheme is unlikely to create significant positive impacts for telecommunications providers. The data included is geared towards enabling price/service comparison and switching, but is unlikely to unlock significant service innovation by providers. On the contrary, there is a significant risk that the proposals lead to **competitive distortion** due to:

- **Uneven Cost Distribution:** Implementation costs do not scale with business size or type and will fall unevenly on market participants.
- **Pay to play problem:** Price comparisons services do not currently provide a full picture of the market and rely on commercial relationships with providers.

Uneven Cost Distribution

We strongly question the impact assessment approach in the consultation to calculate compliance costs, and struggle to understand how DSIT arrived at the differentiation between high and low exposure businesses. In reality, cost will be highly dependent on individual circumstances, including:

- Whether the data in question is already being collected – not all providers collect all the data that has been proposed in the consultation.
- Whether the data can be easily processed – both large and small providers can have legacy IT infrastructure in place and some still rely on manual data processing for some of the data included in the proposal.
- Whether a business has gone through a process of consolidation – it can often take years to fully integrate IT systems.

This is further compounded by the fact that data-related compliance costs are largely independent of customer numbers. Given the significant differences in customer numbers between “mainstream players” and challenger brands, this is likely to have a significantly disproportionate impact on newer entrants in the market.

In short, Open Communications is likely to disadvantage smaller players compared to larger players, and it will definitely disadvantage providers with more complex business structures or data systems and companies going through a consolidation process.

Pay to play problem

Open Communications is likely to suffer from a pay to play problem, and exacerbate an issue that is already present in the market. Price comparison services are the most likely beneficiary of Open Communications data and the most obvious way for consumers to interact with the data.

However, price comparison services currently do not provide a full picture of the market. Inclusion on service websites and apps can require the agreement of commercial deals, and many of our members have raised this as a competitive issue. If the selective featuring of telecommunications providers on price comparison services continues under an Open Communications scheme, excluded providers would likely be even further disadvantaged as consumers would only be introduced to an artificial subset of the market – thus undermining the stated objective of the consultation.

Question 5: What are your views regarding the potential impact – positive or negative – on the telecoms market as a whole, in establishing an Open Communications scheme? Please provide evidence or data to support where possible to support your answer.

The proposed Open Communications scheme is unlikely to create significant positive impacts for telecommunications providers. The data included is geared towards enabling price/service comparison and switching, but is unlikely to unlock significant service innovation within the market. On the contrary, there is a significant risk that the proposals lead to competitive distortion (see answer to question 3), divert investment away from rollout and further add to regulatory uncertainty and complexity, making telecoms a less attractive market for investment.

Given that the Open Communications proposals have a large degree of overlap with existing consumer interventions (One Touch Switch, Contract Summaries, End of Contract Notifications), any further intervention should wait until the market is more mature and the investment has bedded in.

Consolidation

The UK communications market is entering a crucial phase. Overall, investment in new fibre networks continues to be high, and the sector is well on track to meet Government rollout

targets. However, the sector is facing macroeconomic headwinds with supply chain pressures and, at an individual level, we have seen investors starting to reserve new investment. The long-expected consolidation of the market – including amongst providers reselling services, network builders and vertically integrated companies – has also started, and will continue to accelerate over the coming years.⁴

In short, the market is in a high degree of flux, and will change fundamentally in the coming years. This should put a strong premium on regulatory interventions that require significant IT change management, due to the significant extra costs that these will cause when integrating the different parts of a consolidated business.

Regulatory overload

The market already has to deal with significant regulatory change management requirements, particularly from One Touch Switch and the Telecoms Security Act, with significant associated costs and management complexities. Moreover, many members are also still in the process of optimising the implementation of previous consumer interventions such as Contract Summaries, with some providers still relying on a manual data collection process. In the context of the Government's ongoing work on smart regulation, caution should be applied before introducing further regulation into a market that is still maturing.

Question 6: If you highlighted any negative impacts to the telecoms market as a whole, do you have any views about how these potential negative impacts may be prevented or mitigated?

The pay to play problem could be addressed by requiring price comparison services that seek to use Open Communications data to present the whole market, without reliance on any commercial relationships with providers.

Question 7: Are you able to provide any examples of the potential new services or apps which may be developed by an Authorised Third Party to use the data unlocked by any Open Communications scheme?

Despite being under active consideration for many years, no serious proposals for using Open Communications data have been put forward and the recently announced smart data challenge prize does also not call for suggestions that cover telecommunications. Ofcom's consultation from 2020, suggested a number of potential use cases and we address two of these below.⁵

⁴ [ISPA \(2022\): What lies ahead: ISPA Altnet Gigabit Broadband Investor Report](#)

⁵ [Ofcom \(2020\) Open Communications: Enabling people to share data with innovative services](#)

- Price comparison: As mentioned previously, most Open Communications data is already available in the market and the innovation potential for the services is currently non data constrained.
- Account aggregation: Particularly in the broadband market, where services tend to be uncapped, there is a question to what degree Open Communications-based account aggregation would meaningfully improve consumer outcomes. The Ofcom consultation document acknowledged 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.

Home Broadband

Question 8: Do you have any views regarding the potential benefits, challenges, or unintended consequences of requiring providers of home broadband services to participate in any Open Communication scheme? Where possible, please provide evidence or data to support your answer.

Question 9: Do you have any views regarding our assessment that any such scheme should require all providers of home broadband services – regardless of size – to participate?

Question 10: Do you have any views or data regarding the potential impact on small, medium or large providers of requiring their participation in any such scheme?

As indicated in more detail in our answer to Question 4, the impact of Open Communications is highly dependent on the individual circumstance of a provider (IT setup, data availability, organisational complexity) but business size nevertheless plays an important role. Compliance costs are largely independent of customers and assuming similar individual circumstances, a small provider will face higher relative compliance costs.

Accordingly, there is a strong justification to only mandate Open Communications for a subset of the market. However, a fundamental problem with partial coverage of Open Communications would be that consumers would not be able to access information about

the full market, thereby reducing the potential positive outcomes of Open Communications. On balance, we still believe that voluntary participation is the correct way forward given the potentially significant cost implications for players in the market.

Question 11: Do you have any views about ways to design any Open Communications scheme which will allow smaller providers (and their customers) to participate, without placing a potential excessive burden on those providers?

There are a number of ways in which an Open Communications scheme could facilitate participation of smaller providers, e.g. providing them with more time to become compliant, only requiring them to provide a subset of the data or making participation entirely voluntary. In each of these cases, it would be important to ensure equality of input and output, i.e. providers should only be able to consume data points that they themselves provide.

Business Broadband

Question 15: Do you have any views, evidence or data regarding the unique challenges facing businesses navigating the business broadband and mobile markets?

Question 16: If you have highlighted challenges in Question 15, do you have any evidence of any negative impacts or consequences of these challenges on businesses ability to operate efficiently or successfully?

Question 17: Do you have any views, evidence or data relating to unique challenges associated with successfully navigating the business broadband market?

Question 19: Do you have any views on the data points which any Open Communications scheme should require providers of business broadband and mobile services to make available to consumers to assist them navigate the market?

We do not believe that business broadband should be included in an Open Communications Scheme. Businesses have very specific needs with tailored Service Level Agreements and

bespoke services that would be difficult to capture in a smart data scheme. As part of the normal business accounting process, they are also more likely to actively review their spending across the board including on broadband which further reduces the potential expected benefits from Open Communications compared to the consumer market. The need to include business broadband further decreases when taking into account that many of the smallest businesses can run their business on a consumer-grade connection, particularly once that is upgraded to fibre. As a result, we would not expect that businesses would make significant use of Open Communications data and that the cost-benefit analysis would be even less favourable for the business than the consumer market.

Data coverage

Question 20: Do you have any views about the data points we have highlighted above, and do you believe that – should they be included within the scope of any Open Communications scheme – they would support consumers in the market?

Delta compared to current data provision is low

The data points included in the consultation are geared towards service comparison, particularly with a view towards switching. They overlap with information that providers already provide to customers via Contract Summaries and End of Contract Notifications. Particularly for fixed broadband, which generally comes with unlimited usage allowances, the data points are also largely fixed and do not change over time, e.g. network type, price or contract length. While these data points are useful, it is highly questionable whether live access to these data points via an API would make a meaningful difference compared to the current provision of that data in contracts, Contract Summaries and End of Contract Notifications; and more research and evidence from DSIT will be required to justify the extra costs associated with Open Communications.

Reliability at line level should not be included

Not all providers currently collect data on reliability at consumer-line level, and requiring this would come with significant cost implications. More importantly, line-level reliability is a largely mute data point in a switching scenario, as it cannot be provided for the line that a consumer would switch to. Accordingly, we strongly recommend excluding consumer-line reliability data from the scope.

Bundles

Even considering the narrow switching focus of the proposals, the consultation adopts a narrow and outdated view of bundling and consumer behaviour. By using the broadband

connection as the anchor point for bundles, Open Communications would only surface more traditional bundled products offered by a telecommunications company and would thus provide an insufficient view of the market significantly undermining the purpose of Open Communications. With that in mind, DSIT should either consider significantly reducing the bundle coverage of Open Communications and explore other ways of combining the relevant data, e.g. via Open Banking. Alternatively, DSIT could extend Open Communications beyond the telecommunications sector and include a range of other services, including video on demand, Voice over IP and gaming subscriptions, thereby allowing proper switching and comparison across formal and informal bundles would require Open Communications. Both options would require a broader lens than Open Communications and there is also significant overlap with the Digital Market, Competition and Consumer Bill, highlighting that intervention at this point in time seems premature.

Question 21: Do you have any views about any other data points which might be made available by any such scheme? If you have added any other data points, please explain why these additional data points will support consumers navigate the market?

The true value of Smart Data schemes will only be unlocked by establishing cross-sector data schemes. A lot of work is currently going across Government, and we strongly urge DSIT to consider Open Communications as part of a broader smart data setup. In isolation, the Open Communications data will not meaningfully improve consumer outcomes while increasing costs for the sector with a potential knock-on impact on consumer pricing.

Question 22: Do you foresee or anticipate any negative impacts of releasing any of the sets of data outlined in this section? Please provide evidence or data to support your response.

As proposed, Open Communications risks locking consumers into their current usage patterns rather than exploring alternative whole system approaches of thinking about household connectivity, connected devices and subscriptions services.

Data sharing

Question 23: Do you have any views on how information might be shared between providers participating in any Open Communications scheme and consumers?

Question 24: Do you have any views on the potential merits, challenges, or unintended consequences of requiring providers participating in any Open Communications scheme to make data available via an API?

All the options suggested by the consultation come with significant cost implications. The API option would come with significant added complexities that a central hub would need to be created to limit the number of integrations that individual companies would need to achieve.

Question 25: Do you have any data or evidence which may assist us in assessing the potential financial and resource costs of pursuing an Open Communications scheme which requires the creation and maintenance of an API?

Members have told us that it is very hard to assess costs given the lack of detail provided in the consultation or impact assessment.