Communications Consumer Panel and ACOD's response to the Ofcom 2021 review of the Net Neutrality Framework

Background

The Communications Consumer Panel, established by the Communications Act 2003, is a group of independent experts with direct sectoral experience. We ensure the citizen and consumer voice is represented in communications policy development.

The Panel's job is to ensure that the sector works for consumers, citizens and micro businesses - and in particular people who may be in a more vulnerable position in society. We carry out research, provide advice and encourage Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD (the Advisory Committee for Older and Disabled people) with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Response

We welcome the opportunity to respond publicly to Ofcom's review, having recently discussed the Framework with Ofcom.

For a growing number of consumers, the internet is becoming an 'always on' essential service. Consumers are relying on digital connectivity for their everyday lives, work, studying, entertainment and keeping in touch – the Covid pandemic has demonstrated the usefulness of video calling services and video streaming. This can result in contention on networks, slow speeds and a frustrating experience for consumers and businesses.

Network providers have various tools to tackle this issue, including data caps to manage the amount of data used by an individual consumer and introducing traffic management policies in which they may prioritise traffic by type, charge either the consumer or the content provider or both for guaranteed bandwidth, or block or degrade the quality of certain content.

While traffic management potentially offers some benefits to consumers there are also

concerns that consumers do not understand these practices and so are unable to exert proper consumer choice, and that prioritising some services or types of traffic over others could reduce long-term consumer choice and have a detrimental impact on those services that cannot afford to pay for prioritisation, including possibly some public services.

We also have concerns that the technology used for traffic management could have implications for privacy and freedom of speech, as it involves analysis of internet traffic in order to decide how to manage that traffic.

This review provides a chance for Ofcom to promote and protect competition and fairness for consumers across the market, which we strongly support. It is vital that consumers understand what they are paying for and what they are entitled to, so that they can make informed choices. Only then can they benefit from competition, understand when they are being treated less than fairly and speak up to challenge unfair treatment.

Freedom of speech

We believe that consumers should be able to choose what they want to view and providers should not be able to constrain consumers' access, knowledge or actions for their own gain, or to the detriment of their competitors.

Ofcom should take a pragmatic and informed view on enabling freedom of speech, to ensure fairness and to lay a foundation for active consumer engagement in the market.

We would highlight the work of Timothy Garton Ash, '*Free Speech: Ten Principles for a Connected World*' (full project details here: https://freespeechdebate.com/the-project/) The research project includes insights into Net Neutrality and the use of algorithms, which may be insightful to those conducting Ofcom's review.

"The public interest in privacy and free speech could get squeezed between a government's interest in being seen to do everything to protect its citizens' security and the companies' interest in maximising profit". Timothy Garton Ash

'Zero-rating' of websites

We previously raised with Ofcom the subject of 'zero-rating' websites (enabling consumers to have free use of a particular website or content, without being charged by their provider for the data consumed while using the site). We note that this practice is contrary to the net neutrality rules.

During lockdown, we heard from stakeholders participating in our National Hubs that the zero-rating of certain educational websites had enabled some parents to keep their children's home-learning in line with classmates whose parents who could more easily afford the increase in data used by their household. Being able to access this content when their family's data allowance had run out helped keep some children connected. However, the practice of zero-rating educational websites was not consistent across the UK, which created inequality of access to education across the UK Nations.

We believe that providers should thus be able to zero-rate data and content to enable consumers in vulnerable circumstances, but that this should be done transparently, consistently and fairly, in a way that doesn't impact competition.

In considering how best to present information to consumers Ofcom should bear in mind that consumers may find it useful to have positive commitments about the content and services they will definitely be able to access and when, rather than information about services they may or may not be able to use.

Another insight from our Hubs came from charities representing D/deaf consumers, who may require higher bandwidth services in order to access services such as Video Relay and may use video calling software with a real-time sign language interpreter. We have previously advised Ofcom to ensure that its compliance with communications sector rules and regulations does not encroach on consumers and citizens' equality and human rights. Ofcom's General Conditions set out a requirement that providers protect consumers who may be more vulnerable in the market and we continue to encourage providers to ensure they understand their customers' needs so that they can provide for them and not develop policies and practices that will discriminate against them.

Exemption of services that are relied upon by consumers for their safety

An area of great concern to the Panel – as Ofcom is aware – is the handling of the upcoming, industry-wide migration to digital telephony, via all-Internet Protocol networks.

This change will mean that some services that do not currently run over the internet will do so, which will have an impact on the amount of data a household will use. We are concerned that if a vulnerable consumer's household runs out of data, they may lose access to vital services. We have therefore raised concerns with Ofcom that the net neutrality framework could impact consumers' and citizens' access to telephony after migration to all-IP networks. Our recent consumer research on this topic showed that consumers would expect their provider to lead them through this process and to protect them from technical difficulties after the switchover.

We understand that 'a specialised service' (such as the ability to contact emergency services) could be exempt from Net Neutrality rules under the current Framework. However, other services that consumers rely on – and may rely on in an emergency, such as video relay and telecare alarms, are not exempt. We hope that the current migration trials in Salisbury and Mildenhall will help to inform this review and Ofcom will consult further if there is a likely threat to consumers' safety or health.

Summary

  ➢ The internet must, we believe, be fair for all to access – and a space for free speech;
  ➢ Rules governing the internet must be clear and easy for consumers to understand, so that they know what they are paying for and are able to afford what they need;

- Ofcom must ensure that providers do not simply rely on the transparency of their policies, but instead get to know their customers' needs so that they can provide services that work for – and are affordable by – everyone;
- Ofcom must work with providers and consumer groups to understand the full range of consumers' and micro businesses' usage needs and requirements, for example d/Deaf consumers' use of video services and ensure that these needs and requirements are taken into account when developing policies;
- We were pleased to see Ofcom and industry working together to support home schooling, via 'zero rating' websites – we encourage flexibility, but would urge collaboration and transparency across the whole of the UK;
- We urge Ofcom to take note of any impacts of migration to all-IP networks on consumers using telecare alarms, video relay services and any other services that may lead a consumer to breach a data cap due to their telephone service being run over the internet since migration and act to protect consumers, without them incurring additional charges.