



Ofcom
Riverside House
2 Southwark Bridge Road
London
SE1 9HA

Which? response to Ofcom's Consultation on Open Communications – Enabling people to share data with innovative services.

Summary

1. Which? believes that the introduction of Open Communications could help to overcome some of the barriers to engagement in this sector and deliver new services for consumers. We believe that data portability could be an effective solution to address some of the barriers to engagement in this market, such as the lack of confidence in engaging in the telecommunications market and the unjustified fear of higher costs for switching. However, we also believe that there is not a silver bullet to solve all consumers' issues.
2. Which? believes that consumers should always be in control of their data and be aware of how their data is used. Consumers should have the right to opt out from Open Communications services, especially in relation to health and financial data. This measure will be particularly important when it comes to assisting vulnerable consumers, who are among the most concerned when it comes to sharing personal information.
3. We believe that Open Communications has the potential to facilitate switching between providers, allowing consumers to save time in comparing offers and gathering information on their contracts. However, we also believe that it should be supported by the introduction of other complementary regulatory interventions aimed at facilitating consumer engagement.
4. Which? believes that any accreditation system should be compulsory for providers and third party providers alike. Moreover, while we support the idea of the UK having a clear and coordinated approach to the regulation and oversight of Smart Data initiatives, it is important that the specific issues of each sector are taken into account and that they are not sacrificed over cross-platform solutions.

Introduction

5. Which? welcomes the opportunity to respond to Ofcom's Consultation on Open Communications. We are pleased to see Ofcom taking further steps to make it easier for consumers to engage across the communications sector.

6. We previously commented on the idea of Open Communications in the Government's 2019 Smart Data Consultation¹. We believe that it can play an important role in improving consumers' experience of the communications market. The introduction of Open Communications could help to overcome some of the barriers to engagement in this sector and deliver new services for consumers.
7. Nonetheless, we believe that it is not a silver bullet to address the range of barriers consumers face in relation to engaging with the telecoms market. As a result we believe that should be part of a range of interventions aimed at addressing these barriers.
8. Which? also believes that it is important that the UK has a clear and coordinated approach to the regulation and oversight of Smart Data initiatives that are now being introduced across a wide variety of sectors. We recognise the importance and the potential benefits of using consumer data across different sectors. Although we understand the benefits of using a cross-sectoral platform, we believe that any initiatives should take into consideration the key challenges for each sector. In this case Open Communications should focus on accountability and contribute to build consumer trust in the market.

Data Portability and Consumer Uptake

9. Which? believes that Open Communications can encourage innovation and competition, while also improving the overall consumer experience. The introduction of Open Communications could help to overcome some of the barriers to engagement in this sector and deliver new services for consumers.
10. In 2019 Which? worked with BritainThinks to conduct qualitative research looking at the barriers to engagement in the broadband market²; this included exploring the idea of data portability with participants. Our research found that data portability could be effective in addressing some barriers to engagement in this market.
11. In particular, it can help address some evident capability issues, particularly where consumers may lack the confidence and ability to assess their own needs and are unable to identify a package to meet them. In addition, it may help overcome the belief that changing broadband packages could result in higher costs than anticipated or where a consumer is reluctant to engage in the market through fear they may make a wrong decision when selecting a new package. We found evidence that some consumers can struggle to know what their needs are, or to navigate what's

¹ Which? "Consultation response to 'Smart Data: Putting consumers in control of their data and enabling innovation'" 2019c. Available at: https://about-which.s3.amazonaws.com/policy/media/documents/5d517ecade106-Smart%20Data%20Putting%20consumers%20in%20control%20of%20their%20data%20and%20enabling%20innovation%20-%20Which_%20response%20FINAL.pd

² Which? "Consumer Engagement with Broadband", 2019
<https://www.which.co.uk/policy/utilities/4986/broadband-engagement>



available, and as a consequence decide to remain with their current package; data portability could be effective in overcoming this.

12. Although, we consider that unless the design of data portability also considers consumers' needs and preferences, rather than current usage, it may only be beneficial to those who want a similar package to their current one.
13. However, we would strongly caution against data portability being regarded as a 'silver bullet' to overcome inertia and disengagement in this sector. We believe that Open Communications should be just one of a range of interventions aimed at addressing the barriers to consumer engagement in the telecoms sector.

Consumer data- Opting Out

14. Which? believes that data collection should be justified and specific. We agree that for the service to be effective consumers will have to provide the necessary amount of data on their connectivity needs. However, we are aware that there may be situations where consumers may not feel comfortable in sharing their data to third party providers.
15. One of the reasons behind this lack of engagement in the market is the fact that consumers perceived broadband as being more "complicated" and less trustworthy compared to other utilities. Our research has shown that here are relatively low levels of trust in telecoms: broadband trust 39%/don't trust 20%, mobile phone services trust 38%/don't trust 19% (February 2020). This is lower than day-to-day banking (48% trust), but just below gas and electricity (40% trust)³.
16. Which? believes that consumers should always be in control of their data and aware of how those data are used. We believe that consumers should have the right to opt out from Open Communications services and to not provide sensitive data, such as in relation to the finances or healthcare. We also believe that measures should be taken to avoid any form of price discrimination in the market for consumers who are not engaging with data-sharing initiatives.
17. In the context of Open Communications, it will be important to make sure that consumers are aware of the benefits to enable them to build confidence in the services and be more willing to take part. If consumers are uncertain of the benefits of engaging with new products and services related to Open Communications it is likely that consumer uptake will be limited, potentially limiting investment, innovation and competition.

Vulnerable consumers

³ Which, "Consumer Insight Tracker", 2020
https://consumerinsight.which.co.uk/tracker/trust?search%5Bdate_from%5D=2002&search%5Bdate_to%5D=1903&search%5Bsort_by%5D=unsorted

18. Our research⁴ found that vulnerable participants are not necessarily less engaged than other groups, but some of them are taking very few actions to engage at all, and others who are more affected by some specific barriers than other consumers. In particular, consumers with mental health problems face stronger capability barriers due to the stress of contacting providers while consumers in financially vulnerable circumstances prefer the “safety” of current billing over the uncertainties of switching. Which? believes that Open Communications may help vulnerable consumers to engage more in the market, by offering tailored advice and more comprehensible information. However, some issues need to be considered, such as consumer’s willingness to share personal information.
19. Vulnerable consumers may be less inclined to share information about themselves, especially if sharing these details will lead them to be classified as such. Our research to better understand people’s attitudes and behaviours in relation to data collection and use found that vulnerable consumers are more concerned than the rest of the population about the impact that the sharing of their data could have⁵. This includes concerns that irrelevant data could be misused, for example stigmatising them based on health conditions or financial problems.
20. We welcome Ofcom’s proposal that “third parties should design their services inclusively so that everyone is able to enjoy the benefits of sharing data, including people in vulnerable circumstances”⁶. However we believe that third parties should make sure that their services are safe, understandable and easy to use so as not to discourage vulnerable users from benefiting from them. This would require transparency being at the heart of Open Communications and as well as anti-discriminatory measures for consumers that decide to opt out from providing certain data.
21. We also welcome Ofcom’s consideration of how Open Communications could be designed to help those consumers who currently do not have internet access.

Switching

22. Which? believes that consumer engagement plays a key role in the take up of new services. Open Communications is expected to facilitate switching between providers, allowing consumers to save time in comparing offers and gathering information on their contracts. If properly implemented, Open Communications could facilitate improved consumer engagement in the market.

⁴ Which? “Consumer Engagement with Broadband”, 2019
<https://www.which.co.uk/policy/utilities/4986/broadband-engagement>

⁵ Which? “Control, Alt or Delete? The future of consumer data”, 2018
<https://www.which.co.uk/policy/digitisation/2659/control-alt-or-delete-the-future-of-consumer-data-main-report>

⁶ Section 7.41 of the Consultation



23. Nonetheless, we believe that Open Communications may not be a solution applicable to all consumers. As Ofcom acknowledges, those that may benefit the most from it are consumers that already actively participate in the market. Consumers that are not currently engaged may not seek to use Open Communications. As we stated previously, other initiatives would be needed alongside Open Communications to reinforce consumers' trust and to encourage them to engage in the market. Furthermore, Open Communications should also take into consideration consumer needs and preferences, rather than just what they're purchasing currently, or what they think they might need.
24. Which? believes that Open Communications should be supported by a series of other initiatives aimed at simplifying switching and engagement more broadly. We are aware that Ofcom is looking at this issue, and that discussions are ongoing within the industry.

Accreditation system

25. Which? believes that as part of the development of any initiatives related to Open Communications, it is vital that consumers are able to give clear consent using secure authentication. Firms accessing data must be suitably accredited and have the necessary regulatory oversight, and there must be clear protection and redress mechanisms in place for consumers. Every step of the consumer journey must be transparent, from clear consenting processes upfront, to making sure that consumers are aware of how their data is being used.
26. On this issue, we welcome Ofcom's proposal, and we believe that a strong accreditation system not only will reinforce consumer trust in the market, but it will also help protect their personal information. We are aware that Ofcom is proposing to use its voluntary accreditation system as a reference for the process, as well as awaiting more information from BEIS over a potential cross-platform system that will extend over different sectors as part of the UK Smart Data Strategy.
27. We believe that any accreditation system must be compulsory for both communications providers and third party providers. By being compulsory the system will ensure greater protection for users, establish a list of trusted providers and ensure compliance. Moreover, a compulsory accreditation system will ensure that firms providing new products and services as a result of increased data sharing will meet high standards in terms of transparency, redress and privacy.
28. On the potential of a cross-platform system, we believe that it is important that the UK has a clear and coordinated approach to the regulation and oversight of Smart Data initiatives. We are aware that Smart Data initiatives are now occurring across a wide variety of sectors and we recognise the importance, as well as the potential benefits, of using consumer data across different sectors. Although we welcome this initiative, we also believe that the accreditation service should work to build consumer trust in providers and Open Communications, before looking at cross-



2 Marylebone Road
London NW1 4DF
t 020 7770 7000
f 020 7770 7600
which.co.uk

functional solutions. In particular, cross-sectoral approaches should not result in a lack of accountability when third party providers do not meet the required standards.

Conclusion

29. Which? believes that Open Communications has the potential to greatly benefit consumers and assist them in engaging with the broadband market. However, we believe that consumers should always be in control of their data and made aware of how those data are used. We also would like to see an accreditation system that is compulsory for both providers and third parties providers, with the aim of strengthening consumers' trust in the market and in Open Communications as a whole. Finally, we support the idea of the UK having a clear and coordinated approach to the regulation and oversight of Smart Data initiatives, while ensuring that specific issues of each sector are taken into account.

For further information, please contact Jacopo Lange, Policy Adviser, Which? at Jacopo.lange@which.co.uk

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