Ofcom: Proposals to Revising Voluntary Codes of Practice on Broadband Speeds – Gigaclear Response

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Introduction

Gigaclear welcomes the opportunity to comment on Ofcom's proposed revisions to the residential and business voluntary codes of practice on broadband speeds. We fully support Ofcom's goals of ensuring that customers have clear information to help them compare the speed they are likely to receive, as well as offering protection should the actual speed they receive be significantly below the speed described when they purchased the product. We also commend Ofcom for already having such codes in place long before Regulation 2015/2120 (EU) compelled Internet Service Providers (ISPs) to 'inform end users of the speed which they are able realistically to deliver'.[1] The current codes ensure that consumers and businesses are appropriately informed as to the nature of the speeds they can expect to experience from conventional xDSL solutions. As a point-to-point Fibre-to-the-Premises (FTTP) network operator, we then welcome Ofcom's intention to expand the codes to include FTTP solutions.

Regarding the proposed changes themselves, we fully support all efforts to capture peak time performance when conveying speed estimates. This will give customers a significantly improved view as to the speeds they will experience when they are most likely to use the service. We also commend the proposed caveat to the calculation of the minimum guaranteed speed for FTTP connections. As rightly identified, the speed of full-fibre solutions does not tangibly degrade over distance, so percentile ranges are likely to be narrow. Basing the minimum threshold on the bottom 10th percentile would then give customers who are receiving at or around the advertised speed the right to leave, so contrary to the purpose of the right itself. We then welcome aligning the minimum threshold for FTTP connections with the advertised speed, as opposed to the percentile range of comparable access line speeds.

However, we do have difficulties with the proposals concerning the methodology for capturing the required data. As reflected in Annex 5, it is proposed that 'each panellist must have a unit capable of running the appropriate test software'.[2] At present most smaller providers will not have customer premises equipment (CPE) capable of running such software. Alternative measures must then be considered, otherwise many operators will be unable to sign up to the codes without incurring significant cost that would disproportionately impact smaller providers. Such alternatives must be proportionate and at the same time transparent, ensuring that they cannot be gamed to over-exaggerate expected performance.

We also ask that rules governing how the normally available range is conveyed are amended to accommodate ultrafast services. Under current rules, the normally available speed can be conveyed as a single figure if the range is within a 2mbps tolerance.[3]

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[1] Recital 18 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2120&from=EN

[2] Paragraph 2.3 https://www.ofcom.org.uk/__data/assets/pdf_file/0022/106906/high-level-testing-principles.pdf

[3]Paragraph 2.16 https://www.ofcom.org.uk/__data/assets/pdf_file/0021/106905/draft-code-residential-broadband-speeds.pdf

This is well suited to xDSL technologies, but offers a significantly reduced variance when speeds are above 100mbps. To address this and future proof the codes, we request that this tolerance is reflected as a percentage of the 80th percentile point, rather than a set value.

In the below, Gigaclear sets out alternative measures for addressing the above concerns, as well as setting out our support for the goals of the codes. We look forward to working with Ofcom and hope that our recommendations enable effective competition within our industry and support smaller FTTP providers in becoming signatories to the codes.

Reflecting Peak-time Contention

Do you agree that the codes should require the provision of speed estimates that reflect peak-time network congestion?

Yes, because this reflects speeds at the time when the customer is most likely to utilise the service.

Prior to consultation, Gigaclear is aware that other operators have expressed concern that reflecting peak-time speeds will only capture the subset of customers that contribute to peak time activity, as opposed to all others that use the service outside of peak time. The advertised speed is then arguably depressed to the lowest common denominator level. We understand that some other industry members then recommend that an average of speeds over 24 hours be utilised instead.

Yet if the principle of advertised speed being based on speeds over 24 hours is adopted, Ofcom ultimately takes the view that speeds achievable at 3am are equally as relevant to the customer as speeds achieved at 8pm. Whilst this could be the case on an individual basis, product descriptions for mass-market products must take an aggregated, proportionate view. When this view is taken, it is difficult to deny that speeds at peak times of usage will be of greater utility to the customer over a 24-hour average. If Ofcom were to adopt the 24-hour methodology and the same weight were given to peak and off-peak download speeds, the described speeds would be designed to overstate performance as it would (in part) reflect speeds at times when there is minimal contention on the network. This would then 'lock in' customer expectations being above the technical capability of the service for those that use the service at peak time. For these reasons, reflecting speeds at peak time would better inform the consumer regarding speeds they can realistically expect to achieve at the time they are most likely to utilise the service.

Minimum Guaranteed Speed at Point of Sale

Do you agree that the minimum guaranteed speed should always be given to customers at point of sale?

Under the current codes ISPs are permitted to provide the minimum guaranteed access line speed in after-sale information, as opposed to at the point of sale (unless the customer proactively requests this information).

However, we note that some ISPs choose to provide this within their current sales journey. On comparing signatory sales journeys, we believe that the minimum guaranteed speed is the most valuable data point, as it reflects a minimum service quality that, if not achieved, triggers a process that either improves the speed or offers the right to terminate without charge. As this then functions as a 'minimum acceptable standard', this metric will be a core comparison point when consumers select an ISP.

The presence of a minimum guaranteed speed also shows that for the most common technologies, there can still be substantial variation between the 20th and 10th percentile speed points; thereby ensuring that consumers are not misinformed about the possibility of achieving speeds below the normally available range.

Addressing Slow Speeds

Do you agree that, where a customer's speed falls below the minimum guaranteed level, there should be a limit on the length of time providers have to fix the problem before offering the right to exit? Do you agree that the limit should be 30 calendar days?

Yes. As a rural FTTP network provider, many of our potential target customers are those that would fall within the bottom 10th percentile when being served by xDSL products from BT Openreach. Yet when we engage with these customers, almost all are unaware of their minimum guaranteed speed and their associated right to terminate their agreement without charge. Instead, most simply wish to change ISP in the hope that an alternative ISP will offer better speeds.

This not only points to a lack of awareness regarding a core element of their contract, but also to a poor consumer understanding of the difference between choice of network and choice of ISP.

To then further improve awareness, not only should minimum guaranteed speeds be presented at point of sale, but Ofcom should drive delivery of known, actual (as opposed to estimated) speeds where a broadband connection is already live. In Annex 1 of the consultation, Ofcom note that 'where a broadband service is already being provided at the address in question, the actual speed of that line could be made available'.[4] Whilst Ofcom acknowledges that industry is 'discussing' how this data could be used to offer more accurate estimates, the codes goes no further in setting out how this should be done; they simply include a provision that would allow for such a development.

As the codes are still in consultation phase and they are unlikely to come into force until mid-way through 2018, we urge Ofcom to use the updated codes to establish a clear timeframe for BT Openreach to enable ISPs to reflect known actual speeds in the point of sale, particularly where that speed falls below the 10th percentile range.

[4] Paragraph A1.8 https://www.ofcom.org.uk/__data/assets/pdf_file/0019/106903/consultation-broadband-speeds.pdf

This is not only paramount that these customers understand that their speed is likely to be poor, but also that they could have a better experience if an alternative network is available. This will then facilitate competition and address where consumer harm is highest.

It is also worth noting that Regulation 2015/2120 (EU) compels ISPs to 'inform end-users in the contract of the speed which they are able realistically to deliver'.[5] ISPs are then empowered to demand accurate estimates of such services where such data is readily available from their wholesale provider.

As for the length of such a right, Gigaclear supports the introduction of the 30-calendar day window to resolve the fault. However, we are concerned by the definition of the trigger to the right to leave. In Annex 1, Ofcom proposes that 'providers must allow customers to exit contracts without penalty if their actual download speed falls below the minimum guaranteed download speed for at least three successive days (whether continuously or intermittently) after reporting the problem'.[6] Taken literally, this would undermine the window whereby the ISP is permitted 30 days to address the experienced speed following the initial customer complaint. To address this, the 3-successive day rule should be relevant to the trigger for the right to leave after the full 30 days has passed, as inferred in Figure 4 of Annex 1.

Right to Leave for Associated Products

Do you agree that the right to exit should also apply to a landline service sold over the same line, and to pay-TV services purchased at the same time as the broadband service?

Yes. Many customers purchase their broadband service alongside a TV or phone package.[7] They may choose to do this for multiple reasons, such as savings associated with bundling as opposed to buying separately or where one of the services is supported by another part of the bundle (most notably TV and broadband).

As the bundling of the products creates a dependency (be that financial or practical), release from the broadband contract due to slow speeds can then have diminished value, as termination will materially detriment the utility or cost of the associated services. The right to exit would also likely come with indirect costs, due to the early termination charges of cancelling the associated services. These associated services then function as a barrier to switching. This is compounded where services are contractually dependent[8] or where a 'landline and broadband bundle' customer is forced to find a broadband only solution, which are not readily available across the UK.

[5] Recital 18 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2120&from=EN

[6] Paragraph A1.36 https://www.ofcom.org.uk/__data/assets/pdf_file/0019/106903/consultation-broadband-speeds.pdf

[7] https://www.ofcom.org.uk/__data/assets/pdf_file/0017/105074/cmr-2017-uk.pdf

[8] Where a service provider stipulates that one product cannot be purchased without bundling it with another from the same provider.

Ofcom is then right to address this barrier to switching and ensure that the right to exit for below minimum guaranteed broadband speeds functions as a genuine means of redress.

Expanding the Codes to FTTP

Do you agree that the codes should be capable of being applied in full to all standard fixed broadband technologies, including cable and FTTP?

In principle Gigaclear supports the codes being applied to all standard broadband technologies. However, this can only be possible if in doing so, the codes do not unduly discriminate against smaller providers or ultrafast technologies.

To ensure that this does not occur, we advise that the codes be amended to account for ultrafast products, concerning both conveying the normally available range and packet overhead discrepancies. We also ask that the testing costs incurred by smaller providers are considered when establishing the proposed sampling thresholds.

Regarding the normally available range, the current codes allow the normally available speed to be conveyed as a single point figure if the range is within 2Mbps. A single point range is attractive as, if the customer is adequately informed, it conveys reliability of expected speed to the customer.

Unfortunately it is extremely unlikely that ultrafast products could utilise this, simply because the higher speeds result in the 2mbps allowance offering a comparatively smaller window of variance.

For example, for a gigabit capable product a 2mbps range permits a single point 'normally available' metric within a variance of 0.02%, as opposed to 7% when compared to download speeds of 29mbps.[9]

To address this issue, the tolerance that permits a single point figure should be reflected as a percentage of the upper band of the range (80th percentile at peak time), as opposed to a defined figure. This would ensure that the same rule is implemented fairly across all products, regardless of speeds, resulting in consistent variance and avoiding undue discrimination against faster products.

As for what that variance should be, we believe that the 2015 codes were right to endorse a 2mbps range given the average UK download speed at the time. We then support reflecting the logic of the codes in 2015, but that it is reflected as a percentage in order to future proof the codes.

As the 2015 average download speed stood at 29mbps, the 2mbps range reflected a 7% variance. This should then be the threshold below which the range can be reflected as a single point figure.

[9] 29mbps was the 2015 average UK download speed. Note: 2015 is also the year in which the codes were last reviewed. See: https://www.ofcom.org.uk/__data/assets/pdf_file/0028/69634/connected_nations2015.pdf

Another issue that disproportionately impacts faster speed products is the issue of packet overheads. Packet overheads can impact overall transmission speeds of data, as each packet requires information stored in the packet header, which informs their assembly.

For conventional xDSL products ISPs often marginally overprovision the service to account for such overheads, in order to ensure that the customer experience matches up to that advertised. However, this is not as viable an option for FTTP connections, where to even marginally over provision beyond gigabit speeds would require substantial additional capacity.

Whilst we acknowledge that Ofcom seek to capture and reflect genuine customer experience at peak time, it is important to acknowledge that even when an element of bandwidth is expended on packet overheads, this bandwidth is still ultimately being experienced by the customer. Ofcom should then adopt a testing methodology that allows speed estimates to include bandwidth that will be utilised to service packet overheads.

We also ask that Ofcom and BCAP agree a consistent approach to capturing peak time experience, particularly with regard to the network layer at which such testing occurs and the treatment of packet overheads. Without consensus on this, ISPs could be forced to run two alternative methodologies where one would suffice, resulting in inefficiency that would disproportionately impact smaller providers.

In relation to the High-Level Testing Principles as set out in Annex 5, we support the test principles as set out in section 2. However, it must be noted that many smaller ISPs will not have CPEs capable of running software that will conduct the required testing. Such ISPs will then need to purchase additional hardware, likely resulting in a disproportionate cost to smaller providers. To counter-balance this cost, we urge Ofcom to factor this into bilateral discussions with smaller ISPs when assessing the appropriate level of testing samples required.

As for the relevant test server, we are minded to support the ISP operating the test server, but that this be operated outside of the ISP's main network. In such a scenario, it would be entirely reasonable for Ofcom to request evidence of this design. Ofcom may also seek to stipulate test endpoints, due to the variable congestion points that each endpoint has. These end points, much in the same way as the sample testing group, should be geographically dispersed to ensure a representative sample.