

## Open Communications: Enabling people to share data with innovative services

### *Introduction and Summary*

Virgin Media appreciates the opportunity to respond to Ofcom's early thoughts on Open Communications (OC).

We think this consultation is based on a number of premises:

- There is evidence that many consumers 'misbehave' by making errors in decision making – this typically boils down to paying more than they desire;<sup>1</sup>
- This behaviour can be modified, and regulation should be used to help people change their behaviour for their own good;
- Ofcom's existing interventions to prompt 'engagement' (and others resulting from self-interest on the part of providers) will be insufficiently effective; therefore, an intervention based on the sharing of customers' individual data is justified;
- Those customers who would otherwise continue making errors in decision making will choose to share their data;
- These 'data sharers' will then *change their consumption decision(s)*, often by switching to a new provider, on the basis of the information that they receive from third parties;
- These new decisions will correct for the previous errors [presumably consumers will pay less net of any adjustment for a difference in quality];
- Mistakes can be handled by an Ombudsman;
- There are no countervailing negative consequences for other policy areas sufficient to dent or undermine the case for OC;
- OC can be implemented at a cost that is lower than its benefits;
- In any case, there will be lots of innovation.

Much of this response is devoted to examining, and challenging, many of these premises.

Instead, we argue the evidence that Ofcom presents is no indication of widespread errors in the behaviour of customers. This is unsurprising when customers every year, on average, pay less in real terms for more. Moreover, OC is likely to have little impact because those that have so far resisted all attempts to get them to engage (including the vulnerable) are – for good reasons – unlikely to want to share their data with a third-party and act on the consequences. In short, there is a real danger that a lot of money is wasted chasing a

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<sup>1</sup> On the first page Ofcom refers to customers receiving information about the "*best products for their needs*" [our emphasis]; the implication is that this isn't the service that they are currently receiving.

“nirvana fallacy” where a perceived discrepancy between the “ideal and the real”<sup>2</sup> is deemed sufficient to justify intervention.

We may be wrong. If so, the higher ARPUs<sup>3</sup> that Ofcom is trying to facilitate in this year’s Wholesale Fixed Market Review will be subsumed by savings to monthly bills; thereby denting the incentives to invest in gigabit-capable infrastructure (a priority for both Government and Ofcom). OC may also exacerbate the so-called ‘loyalty penalty’ because providers will offer bespoke acquisition deals to customers they will now have the opportunity to know a lot more about. These are trade-offs that Ofcom neither considers nor acknowledges.

Ofcom’s conception of OC involves the marshalling of new data that will be expensive to implement. The set-up and operational costs of Open Banking should make Ofcom doubtful of the case for OC and cognisant of the risk that it will crowd out operators’ own initiatives to serve customers better.

We continue to argue for a more nuanced approach to consumer regulation. Ofcom (and Government) should work collaboratively with providers to ensure that the needs of the vulnerable are better met. At the same time, enough money should be left ‘on the table’ to encourage investment by avoiding expensive interventions aimed at helping customers whose unit prices and service quality anyway get respectively lower and better every year.

In sections that follow we consider:

- How customers are faring at the moment;
- The apparent motivation behind OC;
- Ofcom’s analysis of customers’ consumption decisions and the barriers they face;
- Whether OC is likely to make much difference;
- The potential trade-offs with other policy objectives;
- The costs of implementation.

Finally, we answer the questions posed by Ofcom.

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<sup>2</sup>*In practice, those who adopt the nirvana viewpoint seek to discover discrepancies between the ideal and the real and if discrepancies are found, they deduce that the real is inefficient”. Demsetz, H (1969) Information and efficiency: Another viewpoint. *Journal of Law and Economics*, 12(1), 1-22*

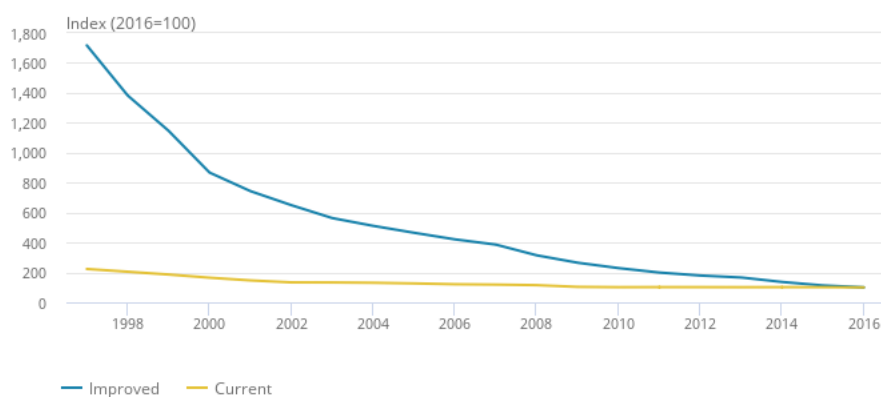
<sup>3</sup> Average Revenue Per User

## The big picture

1. We begin this response with our traditional plea that Ofcom should consider the ‘bigger picture’ of the vastly improved value for money enjoyed by consumers over time. Unfortunately, this gets only a cursory mention in paragraphs 3.3 and 3.4 where Ofcom mentions the prevalence and convenience of the bundling of services and that, on average, customers’ bills have not moved in line with consumption.
2. The story is much better than Ofcom acknowledges. On the 6 July the FT reported that the *decline* in the price of telecoms services over two decades has been so significant that the UK has got its inflation and productivity numbers wrong: inflation should be lower, and productivity higher. The ONS study – the basis of the story – reported that the price of telecoms services fell by 95% between 1996 and 2016. It says, “[i]n industries where there are faster technological improvements, removing this increase in quality from the price series results in a price decline”. In other words, once we account for the vast increase in data consumed (resulting from improvements in quality – in this case vastly increased speeds) unit prices decline dramatically; we repeat below a table from the ONS report.

Figure 1: Improved telecommunication services deflator has a stronger price decline

Current and improved telecommunication services deflator, 1997 to 2016



Source: Office for National Statistics

3. We can use Ofcom’s own data to highlight this effect. Comparing the Ofcom Communications Market Reports from 2007 and 2020.
  - Spend on fixed access, voice and broadband: £41.39 per month; average broadband speed 1.6Mbit/s. (2005).

- Spend on fixed access, voice and broadband: £37.25 per month; average broadband speed 64Mbit/s. (2019).
  - In mobile, average monthly household expenditure on mobile voice and data *decreased* between 2019 and 2013 by over £8 (from £48.8 to £40.2) but monthly data consumption per user rose eight-fold (from 0.27 to 3.0GB).
4. Using ONS data for median hourly earnings<sup>4</sup> we calculate that the average hours of individual work required to pay for broadband and phone in 2005 was 4.7 hours; by 2019 this had fallen to 2.8 hours; a reduction of over 40% – but, as is evident from the data above, to pay for *a much higher quality of service*.
  5. As a consequence, customers have not only seen much reduced unit prices, but as the economist Steve Horwitz has observed “[i]f the work time cost of typical consumption goods has tended to fall over time, it makes those goods more easily accessible to lower income groups.”<sup>5</sup>
  6. In short, customers pay lower unit prices than they did in the past and work for fewer hours to pay for a service of a much higher quality. Furthermore, their monthly expenditure on fixed and mobile communications has declined in real and nominal terms. This is a likely factor in customers’ proclivity to seek out better deals.
  7. We also note that Vodafone, in its recent Full Year results reported a post-tax Return on Capital Employed of 4%<sup>6</sup>. In a similar vein, Enders Analysis reports that “[m]obile returns in the UK are fairly modest overall at 13% with EE the only company earning the sort of target returns that are typically considered adequate.”<sup>7</sup> We therefore feel comfortable in asserting that the benefits of innovation have gone to consumers, rather than producers.<sup>8</sup>
  8. Given such compelling evidence that customers are much better off than they were in years past (but providers are not), there should be a very high bar on a *further* intervention designed to further improve their lot; especially, as we claim below, when it might put other – seemingly higher priority – objectives at risk.

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<sup>4</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/ashe1997to2015selectedestimates> (Table: Median Hourly earnings).

<sup>5</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2559403](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2559403)

<sup>6</sup> <https://investors.vodafone.com/sites/vodafone-ir/files/vodafone/results/fy20full-report.pdf> Slide 9.

<sup>7</sup> Back in play Merger prospects in UK mobile resurrected 6 October 2020.

<sup>8</sup> Ahlfeldt, Koutroumpis and Valetti estimate the consumer surplus associated with broadband Internet speed by using microdata on property prices in England between 1995 and 2010. They find a 3% elasticity of property prices with respect to speed at the mean of the speed distribution in their data. Upgrading a property from a very bad to a very good connection increases the value, on average, by 3.8%. They note that “[t]his is a large effect” and “a good measure of net consumer surplus associated with broadband usage.” <http://eprints.lse.ac.uk/58592/1/sercdp0161.pdf>

### ***It's really all about price?***

9. Early on in the consultation Ofcom says that *“Government and regulators, in the UK and elsewhere, are examining the potential of interventions to enable ‘data mobility’ to address different policy challenges and drive further innovation.”* [#2.5] We must understand from the rest of the consultation what these *“policy challenges”* for telecommunications might be. Our reading suggests (rather like the motivation behind End of Contract Negotiations and Annual Best Tariff Notifications) that it is mostly about the prices paid by consumers. For example:
- *However, even with many good deals available, some people do not get a good deal or do not find it straightforward to navigate the communications market, whether for mobile, broadband, landline, pay TV or a combination of these services. In many cases, this means that they pay more for their services than they need to.* [#3.5]
  - *A considerable number of broadband customers do not switch or re-contract with their provider when their contract ends, although they could save on average between £120 and £150 per year by doing so. Ofcom analysis has found that 40% of broadband customers were outside their minimum contract period (‘out-of-contract’) in September 2019, paying on average £13 more per month than new customers.* [#3.6]
  - *With respect to mobile, in 2018, 11% of customers on bundled handset and airtime (i.e. usage) contracts were out-of- contract. Of these, most (equating to around 1.4m customers) were overpaying and could save money by switching to a SIM-only deal.* [#3.6]
10. The principal case for OC seems to rest on two types of data. First, data on customers’ consumption decisions, with the inference that there are better choices ‘out there’ which should be taken because they satisfy a desire to save money.<sup>9</sup> Second, data on the ‘state of mind’ of some consumers e.g., that they are confused, ignorant or can’t be bothered to look for a better deal. Later, we consider whether these customers are likely to be assisted by OC.

### ***Consumption Decisions***

11. Ofcom uses a mobile market example to show how consumers are making bad choices by purchasing products that *“may not suit their needs”*. It says that quantitative research *“found that 52% of pay monthly mobile users were paying for more data than they needed, while 27% had an insufficient data allowance. Only one in five (19%) said that they typically used about the amount in their allowance without having to keep an eye on their usage.”* [#3.23]

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<sup>9</sup> We believe that Ofcom thinks that there is considerable overlap between these groups and that evidence that money could be saved is a sign of confusion and ignorance etc.

12. But this *factual* data about consumption cannot be used to make a *value* statement about customer behaviour i.e., that many customers are ‘making mistakes’ in the amount of data that they pre-purchase.<sup>10</sup> Ofcom does acknowledge this, “[m]any people deliberately buy more data than they need so that they can rely on their mobile if their broadband connection goes down or to avoid additional charges if they have a particularly high-use month.” [#3.24] However, it then adds that “some people who are paying for significantly more data than they need, or frequently going over their data allowance, may not fully understand their purchasing choices.” We argue that Ofcom is claiming too much in support of OC by citing this data.
13. Although Ofcom introduces the qualifiers ‘some’ and ‘may’, it still adduces this data to underpin its support for OC. This is too strong an inference. Customers may be insuring against bill shock by *deliberately* buying more data than they need, even if they have not had a previous high-use month.<sup>11</sup> This is not a mistake: customers are putting sufficient value on bill certainty (piece-of-mind) to *want* to pay a bit extra to ensure that it happens. It may turn out that the data allowance remains under-consumed each month; but this doesn’t amount to an error on the part of the consumer. To allege this is a bit like saying: “I made a mistake buying a warranty on my washing machine because it didn’t break down”. This is only apparent *ex post*. Consumers make decisions *ex ante*, in the face of uncertainty.
14. It also can be the case that customers *deliberately* buy less data than they might sometimes need in order to encourage themselves to economise in future (in the same way that people buy smaller sized clothing to encourage them to diet).<sup>12</sup> These kinds of ‘self-punishment’ schemes are not uncommon. Alternatively, occasionally paying extra for data consumed may be cheaper than committing to a higher data allowance each month.<sup>13</sup>
15. Ofcom is therefore making too strong a claim about customers’ preferences (i.e., they would be better met from a different package) by quoting seemingly high percentages about the over or under consumption of data. In fact, it cannot know these underlying preferences and therefore should not use this kind of data to infer the benefits of OC. Customers may prefer a situation where they are systematically under or over consuming data versus their allowance. To motivate for OC, Ofcom needs to uncover a (much) narrower cohort of customers: those that will use information about historic data consumption (gleaned from OC) to infer future consumption patterns, and alter their behaviour as a consequence (to their benefit).
16. In a similar vein, the observation that customers could save money by switching supplier is not evidence that customers are making bad decisions. Customers tell

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<sup>10</sup> This looks like moving from an ‘is’ to an ‘ought’.

<sup>11</sup> Another way to think about this would be to say that the consumer is buying an option to consume additional data in the light of uncertainty about future demand. The value of this option will be embedded in the monthly (over)spend.

<sup>12</sup> This is analogous to some customers choosing to be out of contract so that they are free to shop around.

<sup>13</sup> Customers may also knowingly buy more data than they need to get the handset that they want – although some providers now offer customers the option to purchase the handset and airtime separately.

Ofcom that even if they know that they can save money by switching, if the prospective saving is not large enough, they won't be bothered to shop around: ".....two thirds of mobile customers (64%) and more than half of broadband customers (56%) agreed that "the savings I could make on my service would be too low to make it worth spending time looking for a better deal". [#3.22]

17. Market research previously done for Ofcom indicates that triple-play customers need a saving of around £23 per month to switch provider and £20 to persuade them to change deals with their existing provider.<sup>14</sup> By implication, this is evidence that many of the claimed benefits from OC are not 'out there' because they are of insufficient in magnitude to entice customers to act. These people have 'rationally' decided not to shop around because they adjudge that the opportunity cost involved is not worth the effort. In their response to Ofcom's Call for Inputs on helping customers to engage in communications markets, Dr Deller, Professors Hviid and Waddams point out that, "*it is essential to recognise that **consumer engagement involves an opportunity cost for consumers: by spending time engaging with a communications market they are unable to spend time pursuing other activities which might deliver greater benefits.***" (emphasis added).
  
18. Ofcom might consider some of its previous market research which we think indicates that some customers *choose* not to be active even if they know that they can save money. Some customers are happy where they are and believe that they are on the best deal to suit their needs. We summarise below research carried out by Critical Research, which was used to inform Ofcom's proposals for end of contract notifications:<sup>15</sup>
  - Slide 11 – around two-thirds of those that are unsure about contract status confirm that finding a better deal is "not a priority for me".
  - Slide 27 – the large majority (72-87%) of respondents that were unsure/not in contract said they were not looking for a new deal.
  - Slide 29 – 56-60% of respondents who were not looking for a new deal confirmed that it was because they were happy with the service they receive. 20% of triple-play (fixed line, broadband and TV) customers confirmed that one factor in their decision was that they would not save enough by finding a new deal.
  - Slide 29 – the large majority of respondents to Ofcom's survey confirmed that they were aware that they could move to a SIM-only contract.
  - Slide 40 – A significant majority (69%) of triple-play/all bundle customers confirm they are fairly or very confident they are currently on the best deal for them.
  - Slide 41 – the majority of out of contract customers do not intend to start looking for a new deal.
  - Slide 53 – On average, those out of contract or unsure of their contract status estimate they could save £10 per month by signing up to a new deal (although the majority are unsure of the saving).

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<sup>14</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf) Slide 54.

<sup>15</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf)

19. In short, the “revealed preferences” or actual choices of the individuals surveyed are often a poor guide to their well-being and whether they can be assisted in discovering their better choices through OC. Ofcom is *assuming* this to be the case. We do not claim that every customer is acting ‘optimally’, but the data presented by Ofcom do not show how many are not or, more importantly, how many of these would opt to share their data and change their consumption decisions as a consequence. Again, it appears that Ofcom assumes that these are sufficiently numerous to justify the support of OC.

### ***Hassle, Ignorance and Confusion***

20. The consultation is peppered with evidence demonstrating how the state of mind of consumers inhibits good decision making:

- *Less engaged participants said they lacked awareness of their own requirements (for example their usage or speeds). They were also less confident in making decisions about products. [#3.12]*
- *While the wide range of products and prices available is often beneficial, it can also be overwhelming for people when they are looking for a new deal. [#3.14]*
- *Our quantitative research found that 42% of consumers said that they found it difficult to understand whether or not they would make any saving by changing their deal or provider. When out-of-contract customers were asked why they were not planning to look for a new deal, 10% said they did not think they would save enough, while another 9% cited the difficulty of comparing deals. [#3.16]*
- *One in five (21%) UK adults say that they do not feel confident understanding the language and terminology used by providers [#3.19]*
- *Even those who would otherwise feel confident in engaging may put it off because they consider searching for a new deal to be a ‘hassle’ by comparison with the reward (i.e. a cheaper price, more services, or a package that better reflects their needs). [#3.20]*

21. However, again Ofcom makes this data work too hard.

- a. First, it does not acknowledge that consumers might learn over time, both from their own experience and that of others. Some of the near one in five of UK adults who are not confident about terminology may better understand this language with passage of time, often through conversation with others.
- b. Customers may also learn about their consumption patterns. The cohorts of customers who either over or under consume mobile data (in Ofcom’s view) may change over time as customers preferences and behaviours change and they learn about what alternatives are available. Data allowances have been



around for nearly two decades<sup>16</sup>, as has advice about how much to buy (<https://www.confused.com/mobile-phones/guides/what-does-a-gb-get-you-mobile-internet-data>). We know from our own experience that customers do alter their data allowances. [Confidential].

- c. Second, it does not consider that there might exist a cohort of customers who – despite ignorance about the alternatives available – think that their service is basically ‘fine’, but they will engage with the market when something goes array and their ‘mental budget’ for telecommunications does not look like money well spent. For example, see the research done by Which?, “Amongst research participants outside the control group, engagement in the broadband market was rarely proactive. Rather, engagement when it did occur was reactive and in response to a specific prompt. Of these prompts, the majority were felt to be a negative ‘push’ away from their current service, rather than a positive ‘pull’ towards a new service. In particular, the ‘shock’ of an unacceptable increase in price was the most common ‘push’ to engage amongst the sample. By contrast, a faster speed connection, for instance through a superfast broadband package, was not identified as a strong ‘pull’ to engage.”<sup>17</sup>
- d. Finally, a customer identifying as ‘confused’ does not mean that he or she is willing to incur the opportunity costs of alleviating confusion for its benefits. Mario Rizzo explains this well,

*“The individual can say, “I want to save more, but I am too weak-willed.” What does this mean for purposes of economic analysis or public policy? It is entirely unclear. Is the individual expressing a preference or a simple desire? A preference reflects the willingness to incur the opportunity cost, whereas a desire is just a generally favorable attitude toward something irrespective of opportunity cost. The statement itself does not reveal a serious willingness to incur the opportunity cost of more savings. It is evidence simply of his willingness to incur the costs of the statement to attain its benefits. The saying and the doing are different actions. Saying is not by itself evidence of true and comprehensive underlying preferences.”<sup>18</sup>*

For our purposes, we cannot presume that a confused customer is willing to incur the opportunity cost of using OC to (possibly) become less confused.

22. In short, ignorance and confusion may exist but some customers will learn over time or decide that they do not want to make the effort to change their state of mind. Importantly, customers will often be motivated to act in the face of a particularly bad experience with their current supplier. Like it or not, some customers *choose* to

<sup>16</sup> [https://www.mit.jyu.fi/agora-center/inbct/InBCT41/price\\_bundling.html](https://www.mit.jyu.fi/agora-center/inbct/InBCT41/price_bundling.html)

<sup>17</sup> Consumer engagement with broadband Which? Policy Research Report October 2019

<sup>18</sup> *The Knowledge Problem of New Paternalism*, Mario J. Rizzo\* and Douglas Glen Whitman BRIGHAM YOUNG UNIVERSITY LAW REVIEW Fall 2009, p.116

satisfice; they “decide on and pursue a course of action that will satisfy minimum requirements necessary to achieve a particular point”.<sup>19</sup>

### **Remedy ineffectiveness**

23. There are reasons to doubt the *incremental* effectiveness of OC:

- It would come on top of a number of other regulations, third party services and company initiatives to help customers with their purchasing decisions and encourage them to shop around;
- It assumes that consumers who are resistant to all of the enticements to engage (listed below) will be attracted by OC i.e., willing to share their data and act on the basis of what they receive in return;
- It assumes that OC could address some of the deficiencies on the part of customers listed by Ofcom (as arguments highlighting the benefits of OC) e.g., “[m]any providers now offer incentives such as gift cards, cashback and free subscriptions (e.g. for music or video-on-demand services) in addition to the core service. This can make it challenging to work out how the costs of different deals compare, and therefore which one would represent the best value for an individual customer.” #3.15<sup>20</sup>

24. We look at these in turn.

### *Existing Initiatives*

25. There are already numerous ways in which customers are encouraged to understand and renew their consumption decisions and smooth their path to another provider:

- End of Contract Notifications and Annual Best Tariff Notifications act as a prompt to customers to seek out a better deal, especially when the end of the minimum contractual period is approaching.<sup>21</sup>
- The General Conditions require much information to be provided to customers and Ofcom has “proposed new measures to require communications providers to make more information about their services available to digital comparison tools.” [#2.14] – as well as requiring that providers supply more information to customers before they commit to a contract. We note that these new measures have now been confirmed by Ofcom<sup>22</sup>, including a requirement that regulated providers must make available in open data formats to a qualifying third-party:

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<sup>19</sup> Dictionary definition

<sup>20</sup> Note Money Saving Expert/Martin Lewis frequently sets out the ‘net’ impact of these inducements (i.e. effective saving on the monthly charge). There are also numerous newspaper columns and other ‘consumer champions’ who provide similar advice.

<sup>21</sup> Providers can choose to include, for example, consumption metrics.

<sup>22</sup> Ofcom Statement “Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code”, paragraph 6.110 et seq, 27 October 2020

- the prices and tariffs of services provided against recurring or consumption-based direct monetary payments; and
- the minimum quality of service where offered.
- Providers are required, under General Condition C3.7, to give customers access to adequate billing information so that they can monitor their usage and expenditure.
- This requirement is to be enhanced and complemented by additional requirements as a part of the implementation of the European Electronic Communications Code, such that billing information must be “up-to-date” and customers must be notified when a service included in their tariff plan is used up (with this notification to include information about the usage charges that a customer will incur if they continue to use the relevant service).
- Mobile providers are subject to existing requirements to facilitate the setting of ‘billing caps’ by customers.
- Gaining Provider Led switching on mobile (text to switch) and planned for broadband (and bundles);
- Providers have a vested interest in informing customers about the benefits of switching: [https://www.virginmedia.com/mobile/sim-only/pay-monthly-sim?contractDuration=12&tariffID=743335344&intcmpid=mobiledeals\\_posH1;including](https://www.virginmedia.com/mobile/sim-only/pay-monthly-sim?contractDuration=12&tariffID=743335344&intcmpid=mobiledeals_posH1;including) as well as providing apps and bills which show customers how much data they are using versus their monthly allowance.
- ASA regulations on the communication of offers ensure that customers understand the cost of their minimum commitment period and the price that will be payable thereafter;
- Third party comparison websites. The screen shot below is for the author’s postcode and shows the cheapest available phone and broadband offer for speeds up to 30Mbps and a 12-month contract. It took under two minutes to receive this information (the providers of these types of services have a vested interest in making them easy to use). Ofcom observes that these are only used by a minority,<sup>23</sup> but does not explain why those who do not use these sites will opt instead for OC.

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<sup>23</sup> A minority of people and businesses use digital comparison tools to help them compare the fixed line, broadband, pay TV and mobile services available [2.13]. Ofcom doesn’t quote the actual percentage, we don’t know how far below 50% the number is.

Filter your results

Package type

- Broadband
- Phone line rental
- TV

Broadband type

- Standard broadband
- Fibre broadband (14)

Average speed

- 10Mb+ (standard) (21)
- 30Mb+ (fast) (14)
- 55Mb+ (super-fast) (7)

Choose contract length

- 1 month (4)
- 12 months (14)

Results

14 Results sorted by Effective monthly cost

**Shell ENERGY Broadband** **Superfast Fibre** 12 month contract

New broadband customers only ⓘ  
B'band customer service: 4.9/10 (OK) ⓘ

Not part of the Ofcom automatic compensation scheme

Average 35Mb Broadband

Truly Unlimited Downloads  
[Usage details](#)

No calls included  
[Call costs](#)

**'£17.74'**  
Effective monthly cost ⓘ

This effective monthly cost is made up of:

Costs added up:  
£23.99/mth Shell Energy Broadband line rental & broadband

Rewards taken off:  
£75 bill credit from Shell Energy ⓘ  
With the total then spread over the contract

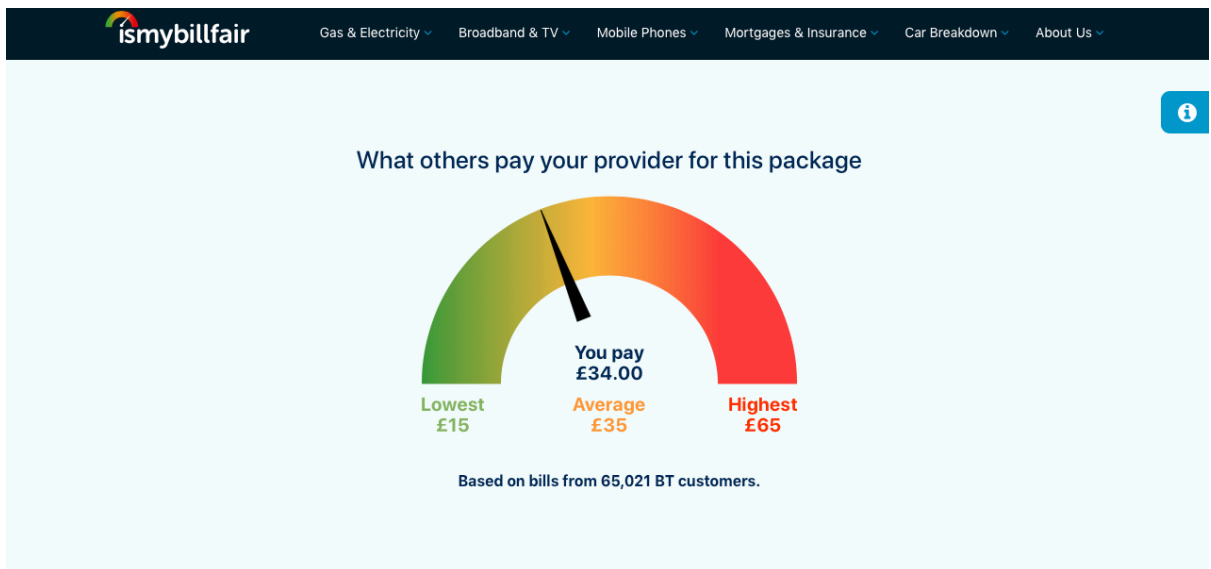
**Get deal\***  
Ends 15 Nov

**Important!** Your £75 bill credit will be automatically added to your account within 90 days of your service going live.

**Shell ENERGY Broadband** **Superfast Fibre Plus** 12 month contract

New broadband customers only ⓘ  
B'band customer service: 4.9/10 (OK) ⓘ

- (<https://www.ismybillfair.com>). This website allows customers to compare what they are paying for their service (broadband plus phone in the example below) with the average paid by other customers. It is simple to navigate and acts as a prompt to haggle with the existing provider for a better deal. Indeed, the site offers to help customers get a better deal or switch provider.



- Help guides <https://www.comparemymobile.com/guides/how-much-data-do-i-need/>
- In the table we list Ofcom's claimed benefits of OC (see Section 6) against the options already available to customers.

<b>Simplify the process of looking for a new deal</b>	This is already very simple through the use of third-party, as well as provider, websites.
<b>No need to approach provider</b>	Third-party comparison websites avoid the need for consumers to approach providers as do provider apps and websites. Providers offer webchat facilities for those that don't want to speak to an agent.
<b>Compare packages easily</b>	See above for third-party comparison websites.
<b>Search for a deal with more confidence</b>	Comparable data about package options already exists
<b>People would be able to make better purchasing decisions by comparing those aspects of packages that are important to them</b>	Third-party websites, courtesy of Ofcom, will have access to premises level data and specialist providers can come top of their recommendations list.  Coverage checkers are available on providers' and Ofcom's websites.
<b>People could make purchases that are better aligned with their actual usage and needs People may benefit from innovation and the launch of new services</b>	Providers' apps allow customers to see how much data they are using each month.  It is impossible to assess the benefit of prospective innovations that do not yet exist. However, those involving budgeting seem well served through other, existing applications.
<b>Open Communications could enable services that benefit vulnerable customers</b>	We have argued elsewhere that vulnerable customers are best serviced by provider getting better at identifying them and targeting solutions at their needs – which can be developed over time as we learn more.  There is substantial evidence of providers having already developed, and continuing to develop, targeted solutions for vulnerable customers. For example, VM's Talk Protected product, Annual Tariff Reviews and Essential Broadband product.

26. Ofcom lists all the initiatives that it has instigated in #2.14. However, there is a danger that these are used as evidence that a further intervention of this nature is required. Ofcom should not cite the need to enforce an existing policy as reason for enacting new policies. If the goals of the existing policies are not fully achieved it is possibly because they cannot be achieved; and further intervention should be resisted.

#### *Recalcitrant customers*

27. There are clearly many ways that customers can be informed about what they buy and what they could buy. Moreover, mobile and broadband services have been available in the UK for decades so we might expect customers to learn overtime. Those that do not engage likely have decided that the expected benefits of doing so are not worth the

time and effort involved. Ofcom offers no evidence that these most recalcitrant of customers would be the ones that choose to share their data (probably with someone they have never heard of) and act as a consequence of the information that they receive back; recall that Ofcom lists significant barriers that OC will need to overcome: confusion, hassle, multiple tariffs, indifference etc. (see #3.15-19).

### *Limits of Open Communications*

28. Ofcom cites confusion over terminology and add-on incentives as a barrier to engagement as data in support of OC, but does not explain how the latter will help overcome these barriers. How will a customer who does not understand Mbps or data allowances be expected to make an informed decision if told that they can double their average speed by paying an extra £5 per month, or that, on average, they have consumed only 40% of their 1Gb data allowance? Moreover, how will a third-party service know how to value a free 12-month subscription to Spotify? Why would a customer who doesn't think that the saving involved is worth the effort in switching bother to look into what third-party services using his data can offer, let alone navigating verification and authentication and being willing to contemplate which level of permission to grant a third-party? (#7.24).

### **Summary**

29. There are good reasons to believe that the take-up (and therefore the benefit) of OC will be low. We do not start with a blank sheet of paper: there are many ways that customers can learn about what they are consuming and whether there are alternatives that they should consider. Those that choose not to are likely to be very hard to budge and, as with Open Banking, we see no evidence that these customers will opt to share their data with a third-party. In short, the data presented do not allow Ofcom to conclude that those who are ignorant or confused about their options, or pay more than Ofcom thinks they should, will want to address these shortcomings through the use of OC; that the latter will resolve these issues; and that consumers will act differently as a consequence.
30. Ofcom, although it would be shifting the goal posts, could respond that OC will make life easier for those that are *already engaged* by reducing the search costs (see 6.1#). This is probably a marginal benefit given the existence of comparison websites (which Ofcom is making more effective via its implementation of the EECC by requiring providers to provide a minimum set of information in open data format) and is, anyway, a difficult case to make because there are few new benefits that would be otherwise unrealised.
31. We have attempted some 'back-of-the-envelope' calculations that show how it may be a struggle to justify the cost of OC:
  - Ofcom cites one million users of Open Banking since its launch in 2018 [#6.22]. However, it is not clear whether this is unique users or holders of bank accounts – in the UK there are 70 million current accounts, but nearly 50 million account holders.

- We assume that there are 800k users of Open Banking, an uptake of 1.6%.
  - If the uptake is the same for broadband lines this equates to 425k users of OC (1.6% of 26.8m).
  - We generously assume that 10% of these are the hardest to reach customers who have always been previously disengaged, and that 30% of them decide to switch because of a recommendation that they receive and they save, on average, £10 per month.
  - This means the *incremental* saving (i.e., from those who would otherwise have been disengaged) from OC in any year is:  $425k \times 10\% \times 30\% \times £120 = £1.5m$
  - If we include mobile at 50m subscriptions an analogous calculation is:  $50m \times 1.6\% \times 10\% \times 30\% \times £5 = £1.4m$ .
32. These are very crude numbers, but they do highlight the potential that the incremental financial benefit to customers from OC may be very low. Note that the *running cost* of Open Banking in 2018 was £38m.<sup>24</sup> Moreover, to support imposing such a high potential capital and operating cost on industry, Ofcom should have convincing evidence that it is going to work.

### **Trade-offs**

33. There is no discussion about how OC might conflict with other Ofcom/Government policy objectives despite the claim that OC “*could increase competitive pressure on communications providers*” [#6.35]. Two obvious candidates are: the greater deployment of gigabit-capable broadband and a dislike of the so-called loyalty penalty.

### **Gigabit rollout**

34. For the areas of the country where Ofcom believes that rivalrous infrastructure competition is in prospect it intends to “*propose remedies which encourage communications providers to build networks for themselves*”.<sup>25</sup> Importantly, this will be done by regulating access services “*such that network investment by competitors is viable*”.<sup>26</sup> (our emphasis). Ofcom has undertaken modelling to ensure that its “*proposals sit within the range necessary to deliver both cost recovery for Openreach and alternative network operators*”.<sup>27</sup> In colloquial terms, Ofcom wants to see ‘more juice in the system’ to encourage competing providers of end-to-end infrastructure to 70% of premises.<sup>28</sup>

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<sup>24</sup> <https://www.ukfinance.org.uk/system/files/Open-Banking-Futures-FINAL.pdf> p.12

<sup>25</sup> WTMR 1.9

<sup>26</sup> 1.10

<sup>27</sup> 1.25

<sup>28</sup> In Volume 4, page 19, paragraph 1.84 (subparagraph b) Ofcom does actually admit that “*retail prices may increase slightly*”.

35. Ofcom summarised its new strategy on a call with analysts on the day the consultation was released (our emphasis):

*We're capping it to CPI but that's a significant departure from the past. If you imagine the past, the counterfactual would have probably been a CPI-X type arrangement. The upshot for that is **we're injecting a lot of additional margin and returns for the whole industry in terms of the network builders**. So, effectively, this is very pro- infrastructure.*

***We've talked about indexing prices and leaving greater margin in the network layer. Again, that would help the investments in these cases.** And, we've also talked about the fact that we will only regulate what we consider to be the entry-level product, which is a 40 Meg product and actually give pricing flexibility above that, again **giving more margin and pricing flexibility for those investors**.*

36. The intent is clear: to improve the prospective returns to builders on *competing* infrastructure to give them greater incentive to build. This, in turn, will motivate (and continue to motivate) Openreach to upgrade its network with fibre to the premises. We support this approach. However, we note that one of the major scale network builders in the UK<sup>29</sup> –Virgin Media– is a vertically integrated entity and is therefore affected by other regulations focused at the retail level that can limit the extent of viable returns which in and of itself has knock-on consequences for incentives for network expansion and fibre deployment.
37. However, the gift of more margin at the network layer to encourage more investment can be quickly undone by OC. If it does result in more switching between networks for better deals (lower prices) or more haggling with existing providers under the threat of leaving then, because providers will need to react, on average customers who have joined (as well as prospective customers) will have a lower lifetime value. The latter is one of the key metrics, alongside cost per premises passed and take-up, that determine the economics of new network investment.
38. We can illustrate this with some very crude numbers.
- Ofcom reports that *"42% of consumers said that they found it difficult to understand whether or not they would make any saving by changing their deal or provider."*(#3.16)
  - We assume, for the sake of example, that half of these use OC and switch supplier to achieve savings of £120 per annum<sup>30</sup>.

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<sup>29</sup> We will also upgrade our entire existing network to gigabit capability by 2021. This process has already started: Virgin Media has upgraded its network in Southampton, Reading, Manchester, Birmingham, Coventry (plus surrounding areas in each location)

<sup>30</sup> "A considerable number of broadband customers do not switch or re-contract with their provider when their contract ends, although they could save on average between £120 and £150 per year by doing so. Ofcom



- 26.8 million broadband connections x 21% x £120 = £675m.
39. This is a material reduction in revenue that would dominate (and negate) Ofcom's approach to infrastructure investment outlined in paragraph 31 above. Note that the sector will already have, in large part, been exposed by a reduction in revenue of similar magnitude because of the impact of EoCN/ABTN (i.e., the (proposed) gift of more margin at the network layer has already been subject to a substantial negating effect, even before a prospective adoption of OC).
40. Put simply, measures to shift producer into consumer surplus have consequences for investment; an acknowledgement of this trade-off is absent from the consultation. Hviid and Waddams put this trade-off well in their work on Retail Energy:

*"In particular we argue that, in the frictionless world which underlies many economic models, the market structure will naturally tend towards monopoly; with more than one firm, the competition would be too aggressive to enable firms to fund their fixed costs. If for policy reasons we prefer the market to support several suppliers, **some money needs to be left on the table to cover fixed costs.**"<sup>31</sup> (our emphasis).*

41. Dr Ian Levy (Technical Director, National Cyber Security Centre) made a similar point giving oral evidence at the Science and Technology Committee in October 2020.<sup>32</sup>

*Chair: Thank you. Dr Levy, you said earlier, in an answer to one of my colleagues, that there is not a lot of money in the domestic telecoms industry—the sector—at the moment. Why is that?*

*Dr Levy: I blame Yih-Choung! [Laughter.] It is a regulatory thing. **The regulatory system has been all about consumer prices, so you have seen consumer price pressure being pushed down, which is great for people like us who actually pay for this stuff, but it leaves the operators with less and less capital reserves.** You then see what we call the over-the-top services..... As a result, you see these market effects, meaning that the operators in the UK find it harder and harder to make significant money, and the investment cycles around the infrastructure are very expensive, capital intensive things that are very slow to repay that initial outlay, and so on. (our emphasis)*

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*analysis has found that 40% of broadband customers were outside their minimum contract period ('out-of-contract') in September 2019, paying on average £13 more per month than new customers."* (#3.6)

<sup>31</sup> Morten Hviid and Catherine Waddams Price, Well-Functioning Markets in Retail Energy, European Competition Journal, April 2014

<sup>32</sup> <https://committees.parliament.uk/oralevidence/1108/default/>

## Loyalty Penalty

42. If OC is widely adopted one possible consequence is that providers will need to compete harder on prices for new customers in order to rank highly on the list of prospective recommendations.
43. One way to do this is via deeper discounts during the duration of the minimum contractual period. This could exacerbate the differential between the price for new customers and those on the back-book who have faced a few years of ‘price walking’. In other words, exacerbating the quantum of the ‘loyalty penalty’.
44. This effect is likely to become more pronounced as providers themselves become third parties, *“we consider that there could be benefits to enabling people to share their data with third parties of different types, including competing communications providers, as well as digital comparison tools and other services.”* [our emphasis] (#2.22). These rival providers are likely to use historic usage data (which they have not had access to before) to poach customers with a personalised offer comprising a very low price during the minimum period.

## Implementation

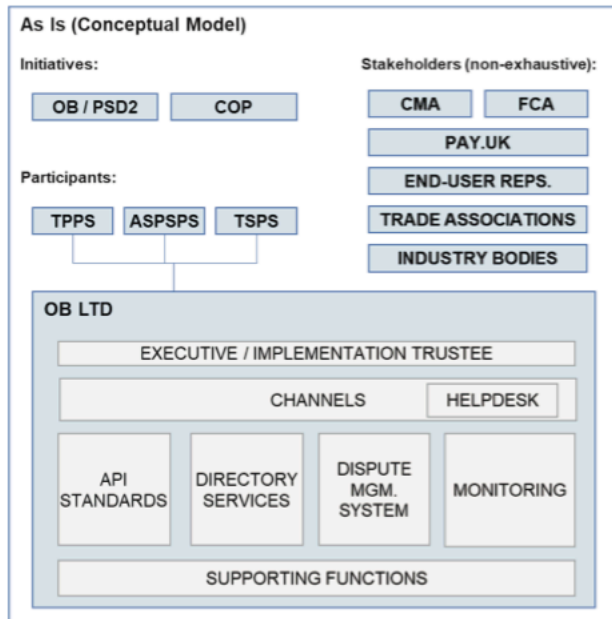
45. Ofcom distinguishes between ‘product’ and ‘customer’ data. Data within both categories appear important to the benefits of OC,<sup>33</sup> but each group contain data not currently collected by providers in a way that can be used for personalised reports. For example, from Table 4:
  - *Where you use any mobile devices or other services out-of-home.*
  - *The different download and upload speeds your fixed broadband or mobile data connection delivers, recorded over time.*
  - *For mobile services, we wish to enable users to share data about speeds where they spend the most time.*
46. The collection of such data would be a huge undertaking. It should be of concern to Ofcom that the banking and finance industry *“has invested an estimated £1.5 billion in infrastructure since the launch of the Open Banking Implementation Entity (OBIE) in 2016”*.<sup>34</sup> The latter also has significant ongoing operational costs (of £38m) apparent from the ‘As Is’ operating model captured in the diagram below.

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<sup>33</sup> *“our research suggested that information about network service quality experience was among the key factors taken into account by participants when searching for a new deal”*. Table 3, page 41. Although Ofcom also says, *71% of respondents who changed provider in the last 12 months did not consider mobile phone signal strength in areas where they spend a lot of time.*” (#6.13)

<sup>34</sup> See <https://www.ukfinance.org.uk/news-and-insight/blogs/open-banking-future-state>

Figure 3.1: Conceptual As is Model



Source: <https://www.ukfinance.org.uk/system/files/Open-Banking-Futures-FINAL.pdf>  
 UK Finance/Accenture Open Banking Future State Report June 2020.

47. Ofcom does acknowledge that “[w]hile data that people need should be available, our approach should take into account the costs of providing it.” (Table 3 p.42) and that “standardisation could be a complex and potentially costly undertaking, at least for some of the data points described in Tables 4 and 5 above.” (#7.19). However, it offers no guidance on how this should be done ex ante.
48. It may be hoped that the shortcomings in the case for OC can be made up by the potential innovation that it will spur. However, the case should not be rescued by imagining services that do not yet exist and where it seems that many are already served by close substitutes that exist via Open Banking (for example, simple budget management apps). In any case, in Open Banking, given the daily volume of debit/credit transactions you would expect to see more opportunity for innovation versus (often) static recurring monthly bills.

## Answers to 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.**

No, customers may *choose* to be ignorant of their options and not bothered to investigate further because either they think their service is good enough and/or do not believe that the benefits of action will compensate for the effort involved. Open Communications requires effort.

Customers – despite many options to help with their confusion – may still be bamboozled about their options. It seems that these customers will be very unlikely to opt for OC and then decide to change their consumption decision as a result of the options they receive.

Similarly, data showing that customers might save money if they acted differently is not strong evidence in support of OC. There are plenty of other explanations for the data described: “I buy too much data because I want bill security – this is more important than saving money each month”; “I don’t know yet whether I need a service with more speed or data so I’ll wait until I decide”; “I’m reasonably happy with my service and will stick where I am unless something goes wrong”; “I prefer the flexibility that being out of contract brings and am happy to pay more for this ‘freedom’”.

Satisficing is a decision-making strategy that aims for a satisfactory or adequate result, rather than the optimal solution. Instead of putting maximum exertion toward attaining the ideal outcome, satisficing focuses on pragmatic effort when confronted with tasks. Ofcom presents no evidence that OC will overcome satisficing.

**Question 2: Is there additional evidence of problems that people and SMEs face when engaging with the market that you would expect Open Communications to help address? Please explain and provide evidence.**

No, and there are a series of regulations, as well as incentives on the part of providers, to encourage consumers and SMEs to engage with the market.

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

We think that these have been exaggerated because (see question 1 above) data showing that customers could save money or can’t be bothered to shop around is not good evidence to support OC. Moreover, there are already many ways that customers are encouraged to engage in the market, but no evidence that those that currently do not would be persuaded to share their data with a third-party and act differently as a consequence.

Other than an acknowledgement that customers could be ill-advised by their third-party and require the intervention of an Ombudsman-type figure, there is no discussion of the possible dis-benefits of OC: a) that it is a colossal waste of money that crowds out investment into other initiatives that could benefit customers; b) it is so successful that it reduces average ARPUs and dents the incentives for investment in resilient high-speed networks; and c) it exacerbates the ‘loyalty penalty’ by incentivising providers to occupy the top slot in the recommendations list, or target rivals’ customers with personalised discounted acquisition offers.

**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?**

No, to believe this you would have to assert that those in vulnerable circumstances – who have so far resisted all efforts to get them engaged – would agree to share their data with a third-party that they have likely never heard of, and change their consumption decisions as a result.

Instead we believe that those who can, and are willing to be, identified as vulnerable should receive targeted help. This should be designed in collaboration with Government and Ofcom. Virgin Media has shown a willingness to adopt this approach with, amongst others: Talk Protected, Annual Package Reviews and Essential Broadband. This has the advantage of directing help where it is most needed, but leaving enough money in the pot to encourage investment in gigabit-capable broadband.

**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.**

Ofcom has not acknowledged *any* trade-offs with its other policy objectives. Taken in the round, or in some cases even individually, these could push the cost-benefit case for OC into the red.

**Question 6: Do you agree with the core principles that we have identified for the design of Open Communications?**

Yes, it is clearly critical that consumers decide whether to share data and which data to share; that customers authenticate themselves; that data is securely shared with third-parties that meet certain minimum standards.

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

We agree that *“it may be disproportionate to impose requirements to share data on smaller providers that have fewer customers and may be less able to bear the technical requirements and costs.”* [#7.5] But then raising awareness of smaller and specialist providers cannot be claimed as a benefit of Open Communications (*“The use of Open Communications to provide comparisons based on a wider range of non-price characteristics*

*(such as better service quality) could raise awareness of smaller and more specialist providers, including full fibre networks. This might lead users to choose a new provider that they may otherwise not have considered and that may be more suitable for their needs.”)*  
[#6.15]

**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?**

See answer to Question 6 above.

**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?**

We are doubtful that OC will pass the cost/benefit test. In particular, certain types of information identified by Ofcom as underpinning future services will be particularly expensive to collect e.g., *Where you use any mobile devices or other services out-of-home and the data speeds achieved.*

Customers should decide whether to share information with third-parties about their particular status. However, the sharing of these types of data, to be of use, does rather presuppose that others will share data about the services that they offer vulnerable customers – thereby inflating the cost of providing OC.

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

We agree that customers should have a means of redress if they are poorly served by a third-party. An Ombudsman model would likely be an effective option, but should be funded by the third-parties providing services. The possibility that OC could result in detriments for some customers because of poor decisions should be considered in any future cost-benefit analysis.

**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?**

Yes, the need to gather data that does not currently exist in the right form will be particularly burdensome.

In Open Banking there exists considerable ‘oversight’ expenditure (see the diagram at paragraph 46 above) - this appears to be missed by Ofcom.

**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?**

Costs will be significantly affected by the number of categories of information that providers are required to share rather than the make-up of the customers served.

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

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

It is too early to provide answers to these questions.

**Virgin Media  
November 2020**