Consultation response form

Your response

Question	Your response
Question 1: Functioning of the net neutrality framework **(a) Which aspects of the current net neutrality framework do you consider work well and should be maintained? Please provide details including any supporting evidence and analysis.** **(b) Which aspects, if any, of the current net neutrality framework do you consider work less well and what impact has this had? What, if any, steps to you think could be taken to address this and what impact could this have? Please provide details including the rule or guidance your response relates to and any supporting evidence or analysis.**	We note that changes to net neutrality are moving in the direction of stronger enforcement rather than weakening provisions in both the USA and Europe. The UK should look at the evidence-base from those jurisdictions. Given the international nature of online businesses and many telecoms companies, a strong degreee of alignment with international regimes is desirable. (a) Zero-Rating continues to be a controversial area, where platforms can gain unfair competitive advantages, that other Competion policies are seeking to reduce. The EU framework is currently being reformed by BEREC after the CJEU issued rulings in two German cases and the direction of the reform might lead to strengthening of the net neutrality rules on the issue of Zero-Rating. This would align with initiatives in the UK and EU to create greater competitive incentives for platforms, through interoperability and so on. It would not make sense to weaken protections while policy as a whole is recognising that platforms are creating monopolisitic positions. We are also concerned that government policy is driving against the net neutrality principle of the user choosing their own terminal equipment, by favouring and demanding filtered DNS results. Mozilla' for instance, is not rolling out DoH (DNS over HTTPS) because of government presssure. The impacts of filtering on net neutrality are also improperly assessed. However, our blocked.org.uk project shows that incorrect blocks on fixed and mobile networks continue to be a problem for legitimate businesses. Disruption is made to content delivery and technical platforms, email portals and mislcassified websites. The vast majority of complaints we received come from businesses

	who feel their ability to reach customers is disrupted through widely used filters. Appeals systems are lacking on fixed lines, and ISPs refuse to fix problems if their providers refuse to reclassify sites, even where it is readily apprent to an independent viewer that the sites concerned pose no threat to children.
Question 2: Use cases, technologies, and other market developments **(a) What, if any, specific current or future use cases, technologies or other market developments have raised, or may raise, particular concerns or issues under the net neutrality framework?** **(b) What, if any, steps do you think could be taken to address these concerns or issues and what impact could this have? Please provide details of the use case, technology or market development and the rule or guidance your response relates to, as well as any supporting evidence and analysis.**	We are not in a position due to lack of time to add further to the report mentioned below by Epicentre Works, which analyses some of the threats from 5G, but would ask that you look at their report in detail, especially as it covers impacts including the UK market prior to Brexit. (a) DNS provision is threatened by the broken filtering technologies mentioned above. (b) Ofcom should help telecoms companies to move away from whole network filters, and remind Government that end users have the right to choose DNS products, and that they should not be trying to dissuade legal provision of widely used, global and legal services from Mozilla and others.
Question 3: Value chain **Are there particular business models or aspects of the internet or other value chains that you think we should consider as part of our review? Please explain why, providing details including any supporting evidence or analysis.**	

Question 4: International cases studies **Are there any international case studies or approaches to net neutrality that you think we could usefully consider? Please include details of any analysis or assessments.**	in the US the Biden administration is also going in the pro net neutrality direction. Biden recently proposed candidates to fill FCC vacancies and those include outspoken net neutrality advocates like Gigi Sohn. See https://www.protocol.com/policy/sohn-fcc In the EU, we would draw your attention to the reports made by Epicentre Works: https://en.epicenter.works/document/1522 which provides considerable analysis of the economic impacts of zero-rating, showing that violations of zero-rating have anti-competitive effects, generally favouring market encumbents, and causing access markets to deliver 9.9% higher consumer prices; and their legal analysis of CJEU decisions relating to NN: https://en.epicenter.works/document/3724 showing the reasoning that EU courts have applied to the current regime and the value the EU system places on market access.
Question 5: Guidance and approach to compliance and enforcement **Are there specific challenges with the existing guidance that we should be aware of (e.g. ambiguity, gaps)? Assuming the rules stay broadly the same, which areas could Ofcom usefully provide additional clarity or guidance on? Please provide details.**	Enforcement against violations appears to have been quite lax regarding Zero-Rating in particular, and entirely absent regarding the impacts of filtering. At the very least, regarding the latter, Ofcom should be ensuring that users always agree to filtering and that imposing it without prior agreement as occurs on some mobile networks is regarded as a de facto net neutraity violation.
Question 6: Annual report **Do you find Ofcom's annual monitoring report useful or are there any changes you think we could usefully make either to the content or how we communicate this?**	
Question 7: Other **Is there any other evidence or analysis that you are aware of and/or could provide to aid our review?**	This is a bad time to be creating further regulatory uncertainty. Government is legislating on Online Harms as well as considering wholesale changes to Data Protection. Competition frameworks are also developing swiftly. The net neutrality framework would be better reviewed once the impacts of these can be understood. Each may change the business landscape in ways that impact net neutrality objectives, both positively and negatively. As importantly, it is necessary

	for the sector to be able to apply its full attention to these changes; there is a danger of producing too much change, too fast.