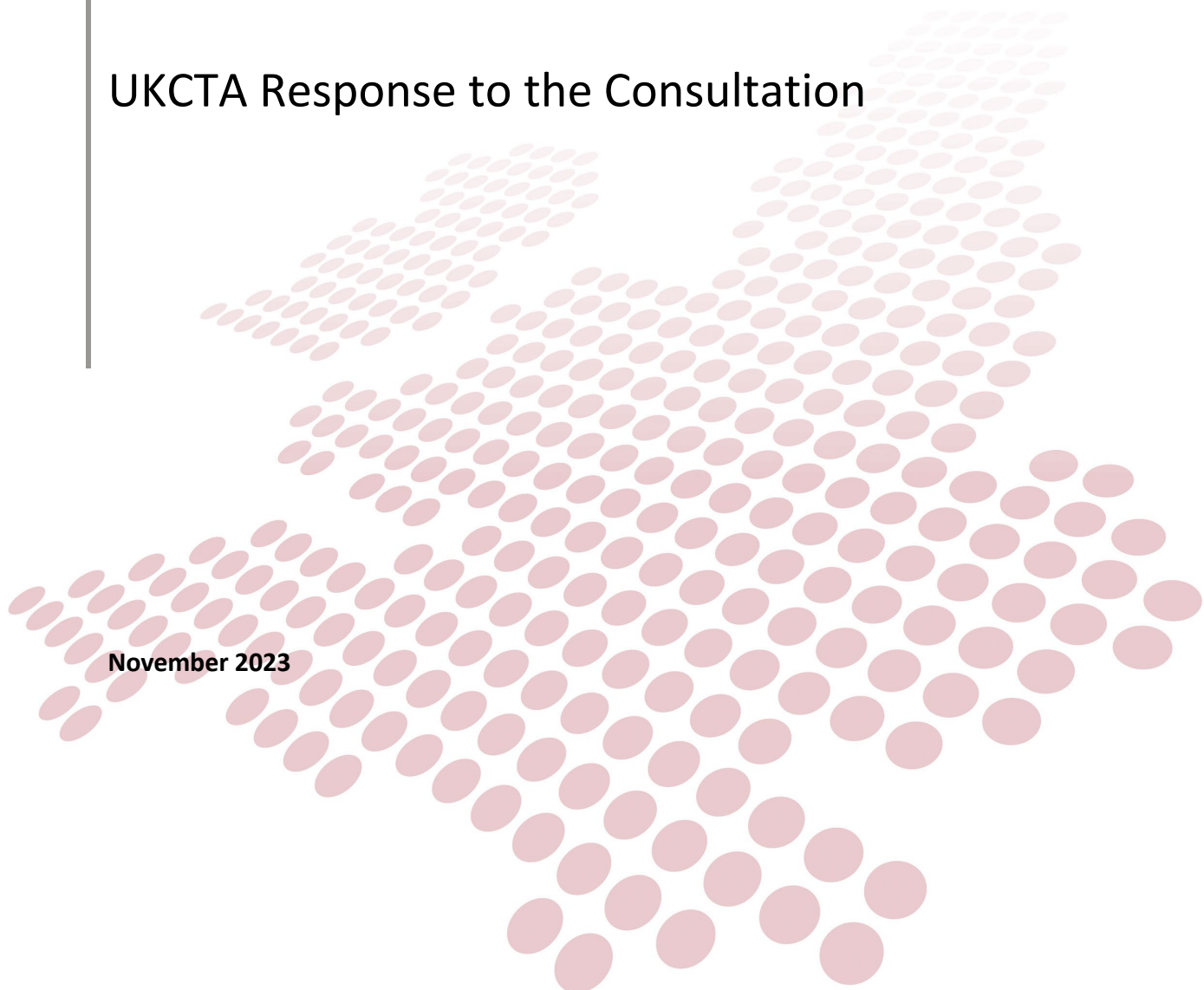


Open Communications: a Smart Data
scheme for the UK telecoms market

UKCTA Response to the Consultation

November 2023



Introduction

1. This submission is made by the UK Competitive Telecommunications Association (UKCTA). UKCTA is a trade association promoting the interests of fixed line telecommunications companies competing against BT as well as each other, in the residential and business markets. Its role is to develop and promote the interest of its members to Ofcom and the Government. Details of [membership](#) can be found at www.ukcta.org.uk. Its members serve millions of UK consumers and business customers.
2. UKCTA welcomes the opportunity to comment on this consultation. UKCTA is very supportive of DSIT undertaking this consultation process. The development of the concept of a smart data scheme for the telecoms market is clearly at an early stage and this consultation gives both Government and stakeholders an early opportunity to identify the issues that need to be further considered before a clear plan can be put forward for implementation. A lack of understanding of what consumer telecoms products and services are available would be a barrier to take up. However, our members are concerned that it is not the right time to implement an Open Communications initiative given the regulatory interventions recently introduced.
3. The telecoms sector is undergoing a significant period of investment, worth billions of pounds. The build out of digital infrastructure supported by Government through such programmes as Project Gigabit has boosted competition in both the wholesale and retail markets and is underpinning futureproofed connectivity. Both in terms of digital infrastructure build and consumer information initiatives there is still much that can be done. Our members believe that these consumer information initiatives should be allowed to bed in, and their impact monitored to understand where the further interventions are most needed, including the potential implementation of a smart data scheme.
4. The UK is a tough environment to invest in and any further measures which stretch budgets and resource away from completing the digital infrastructure rollout and innovating to improve the quality of the service, should be carefully considered.
5. Getting the balance and timing right is essential. UKCTA members are supportive of the Government's desire to ensure consumers can be in control of their data and are keen to engage positively and constructively with Government and Ofcom on smart data.

Consumer Awareness and understanding

6. The introduction of a smart data scheme is being considered at a time when a number of consumer benefit interventions in the communications market are either relatively new for example end of contract notifications (EoCN) annual best tariff notifications (ABTNs) and Social Tariffs or near future enhancements such as one touch switching (OTS). We believe it would be beneficial to analyse the effectiveness of these interventions. It would also be helpful to allow time for the new interventions to settle down before considering the introduction of additional remedies. Ofcom has over the last several years been very focussed on the protecting consumer interests and enabling consumers to better understand the products and services available in an ever more competitive marketplace.
7. The consultation has relied on analysis of the competitiveness and customer satisfaction findings that are significantly out of date. Ofcom's [report](#) of May 2023 sets out that broadband and landline are performing better than the energy services.
8. The recommendations identified by the Government commissioned [GigaTAG Report](#) to increase consumer understanding – included greater clarity over terminology and Government-led information campaigns. The report delivered in June 2021, included recommendations¹ for Ofcom to develop common terminology that can be used consistently by industry to improve consumer understanding. In addition, they called for Government to initiate both local and national information campaigns at the appropriate time. UKCTA would fully support progress being made on these recommendations as a preparatory step to development of open communications.
9. Only with the fundamental building blocks of consumer engagement and frictionless switching already in place will any of the potential benefits of Open Communications come to full fruition.
10. The consultation identifies unengaged customers as a homogeneous group and assumes that unengaged customers will be able to and be interested in using an Open Communications scheme. We consider research should be carried out to identify characteristics of unengaged customers, reasons why they don't engage (e.g., happy with current provider, lack of perceived saving, lack of digital skills, no access to digital tools, suspicion etc.) and then look at potential solutions. Analysis of Ofcom's EoCN and ABTN interventions could help shed light on customers' engagement levels and preferences. Subsets of unengaged customers could result in a more targeted approach (similar to Social Tariffs which are accessible to groups of consumers meeting certain eligibility criteria).

¹ GigaTAG, [Final Report](#), Jun 2021, p20

11. Further exploration of benefits is needed. The consultation only mentions the benefits of increased switching and consumers saving time. It also mentions an unquantified benefit of innovative services offered by third parties. Once research into consumers has taken place, relevant stakeholders could discuss the potential benefits in much greater detail. There is not currently enough information about who Open Communications would help to assess whether it would help those people.

12. Analysis of the current market in more detail is needed. The assertion is that unengaged customers will benefit from an Open Communications scheme. The consultation contains many generic assertions about the difficulty to navigate the market and how it has become more difficult for consumers to find competitive deals without any evidence. References are made to research dating from 2018 and 2019. The market has since changed significantly:
 - 12.1 New entrants and new services have created a more competitive market;
 - 12.2 Regulatory interventions (EECC contract requirements, EoC and ABTN, but also text to switch for mobile service and the new one Touch Switching process which will be implemented);
 - 12.3 The way consumers are using their service. It is likely that lockdown has made consumers more aware of their connectivity needs.

The impact of these changes should be taken into account when assessing the benefits and costs of an Open Communications scheme.

13. Significant analysis based on accurate information rather than assumptions are needed to underpin the impact assessment which is currently of little value because of the lack of any firm proposal by DSIT as to the parameters of a smart data scheme. The impact assessment:
 - 13.1 fails to be clear on the definition of harm.
 - 13.2 shows very limited engagement with the current telecoms market context.
 - 13.3 provides questionable reasoning to support the view that there is insufficient competition.
 - 13.4 Is mistaken in its analysis that telecoms is getting more complex, and
 - 13.5 Inappropriately includes comparisons with other sectors.

14. Open Communications will only be useful if used, but there are numerous reasons to suspect uptake will be low, if only simply because customers already have access to the information that is relevant. Our members are concerned that a small subsection of consumers who are already engaged will be the only beneficiaries of a smart data scheme at the moment whereas the need is certainly more significant across the wider consumer community.
15. We include as part of the UKCTA response an independent critique of the Impact Assessment which accompanied the consultation document.

Customer benefits

16. The telecoms sector already has many measures in place to help vulnerable or unengaged customers. We are yet to see the long-term effects of these measures. We first need to see the effects of current measures in order to assess if more needs to be done for customers and whether Open Communications will address those issues.
17. The consultation suggests that consumers need easier access to data points relating to their broadband service such as price, speed and type of service. A number of UKCTA members already provide this information (and indeed much more beyond this) to their customers via online customer account pages or dedicated apps. Given the significant potential costs associated with creating a detailed solution based around APIs, Government should strongly consider whether more incremental measures utilising these existing datasets will achieve the same desired effects as a full-blown smart data scheme. This could include, for example, considering the provision of this data to customers in an extractable form file. This approach could have several benefits – it is likely to be far more viable for smaller broadband and mobile providers, as well as being able to be implemented in a quicker timeframe than creating an API. Furthermore, it may allow businesses to create the file using their existing systems thus having less direct impact on their existing technology roadmaps, helping to manage the regulatory burden on UK businesses. With input and oversight from Ofcom, UKCTA members and other network providers could work together to agree some common parameters for such an approach.

Business Customers

18. Business customers do not need access to the type and format of information being considered as part of the Open Communications proposal. We set out the reasons for this below:

19. Bespoke solutions: business broadband providers tailor their services to specific business demands. Contracts between businesses and their providers are complex, deal with multiple services, and are bespoke to the customer's needs at a point in time. Requiring standardised data provision would therefore be meaningless to such customers and may only increase burden on the communications provider who will be engaged in a contract renewal to cater to each client's unique needs. Further, for business customers their needs will likely change over time due to business and technical transformation e.g., technology migrations, site changes, application changes etc. it is rare that customers will take exactly the same product set as the previous term (unlike consumers who typically require some form of single-line connectivity product). The Open Communications proposal would therefore not be of use to such customers who do not need to be able to compare with the prior contract and solutions that they received. We also do not believe that the proposed Open Communications solution would ever be able to capture such complexity.
20. Better knowledge of their needs and technology: larger businesses are likely to access or employ individuals with specialist knowledge (such as IT consultants) to support their decision-making as well as have greater leverage to negotiate better deals with providers directly. They will often run RFPs to procure and source the best solution for them from multiple providers. Even if it were possible to provide all the relevant information to a business customer on their existing services and use of them, it would at best be pointless when a customer is looking to renew, and at worst could even act as a hindrance to organisations by stopping them from negotiating and lead to them purchasing more expensive, less tailored, off-the-shelf services. Having bespoke, individual interactions around the customer's needs is surely preferable to an automated notification process and meets business customers' needs more effectively.
21. Business customers are less driven by price: business broadband pricing can be intricate, involving complex negotiations, service level agreements, and custom packages. There are many other qualitative considerations that would be impossible to build into an Open Communications regime e.g., need for resilience, equipment compatibility, multiple site types requiring different connectivity etc. Requiring full transparency in every element of pricing or service offering is simply not feasible given the complexities involved.
22. Potential to be counterproductive: Business broadband providers already respond to RFPs and other requests. Requiring extensive data disclosures could shift their focus towards compliance and admin, potentially impacting service quality.
23. We note that the specificity of business customers was also recognised by Ofcom in its statement on [End of Contract Notices and Annual best Tariffs](#)

in February 2020. Ofcom stated:

“Larger businesses with higher numbers of employees are more likely to use more specialised, higher capacity services such as dedicated internet access and leased lines. Contracts used by larger businesses for more specialist services tend to be individually negotiated with each supplier. Therefore, it is reasonable to assume that larger businesses are more likely to have a specialist responsible for the management of their communications services and are more likely to be better equipped to manage their communications contracts.”²

Ultimately business customers do not need this data. Therefore, extending Open Communications to businesses is unduly burdensome on the providers that service them without producing any benefit for such customers.

24. Additionally, the industry is dealing with other major infrastructure style compliance projects which are complex and costly e.g., OTS, Telecoms Security and Huawei Designated Vendor Directions in addition to their BAU rollout plans. Given we believe that the costs are likely to be significant, it should be considered whether such an intervention is justified at the time on an already heavily burdened sector.

Costs

25. The consultation provides little insight into the cost for industry. In order to carry out an accurate impact assessment more detailed and up to date cost information needs to be gathered from providers. The complexity of obtaining some of the information will add to cost that has not been considered. Resellers and MVNOs depend on other parties in the value chain for certain types of information requiring additional investments in systems and APIs. Information on costs is essential to carry out an accurate impact assessment and cost benefit analysis to decide whether Open Communications is a feasible and financially sensible solution. Individual members will provide more detailed costs analysis in their standalone responses.

Conclusion

26. UKCTA members agree that consumer understanding is fundamental to enabling engagement in the telecoms market. However, we believe that given the plethora of current initiatives on consumer information, the time is not right to start building a smart data scheme. UKCTA members are supportive of exploring with Government and Ofcom an industry led approach building on the success of the current initiative.

² [End of Contract Notices and Annual best Tariffs](#), Statement, February 2020, para 8.10

Annex A

Robert Kenny

A critique of the Open Communications Impact Assessment

November 2023

About the author

Rob Kenny has extensive experience on issues of broadband policy and regulation, and has undertaken numerous projects in this area for clients such as BT, Sky, Virgin Media, Vodafone, Gigaclear, G.Network, Ofcom and the Australian Government. He was also an advisor to Malcolm Turnbull, then Australia's Minister for Communications. He is an author of a prize-winning academic paper regarding subsidies for superfast broadband. Previously he headed strategic planning for Hong Kong Telecom, and corporate development for Level 3.

Disclaimer

This is an independent report prepared for UKCTA. The opinions offered are purely those of the author. They do not necessarily represent the views of UKCTA, individual UKCTA members, nor the views of all Communications Chambers members.

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1. Executive summary

This paper critiques the DSIT Open Communications Impact Assessment.¹

Faulty analysis of the market

The IA is all encompassing in its ambition for IA, asserting it will address low market engagement; loyalty penalties; information asymmetries; switching rates; innovation; and take-up of new services.

The IA believes that intervention is necessary because – it claims – there is a lack of competition in the sector. However, it simply does not consider evidence to the contrary, such as dozens of new entrants into fixed broadband, substantial investment in infrastructure, rapidly falling prices and so on. Prices for popular mobile packages have fallen by half in real terms since 2015, for example.

The IA also mentions but then sets aside the array of recent interventions in the market, such as ECNs, GPL switching and so on.

The IA compares telecoms unfavourably to other sectors, but customer satisfaction is on a par with very competitive sectors such as ‘entertainment & leisure’ and ‘travel & hotels’, and broadband and mobile switching rates exceed those in electricity, gas and banking.

Overestimate of benefits

The IA asserts that Open Comms will be the solution to the problems it perceives in the market. However, it has not considered how the data it proposes for sharing will materially improve consumer decision making. Many of the proposed data points are already readily available, or simply not very relevant to choice of plan or supplier. To take one example, Open Comms includes line speed as one aspect, but price comparison websites already embed line speed tests that are substantially quicker and simpler to use than would be Open Comms.

The IA also does not consider the practical barriers to use of Open Comms. For example, 68% of mobile customers who are out of contract are confident that their current deal is the best for them.² They may not be right, but they are unlikely to use Open Comms. Users will also need to choose to visit a price comparison website (where Open Comms will be offered), and have login credentials for their current provider. We roughly estimate that only one in ten of those choosing to switch will both visit a PCW and have login credentials.

¹ DSIT, [Open Communications: a Smart Data scheme for the UK telecoms market: impact assessment](#), 6 September 2023

² Ofcom, [Switching tracker 2023 data tables](#), 30 October 2023

The IA also errs in its understanding of the current loyalty penalty. For example, it repeatedly cites a 2019 Ofcom estimate of the penalty in mobile of £182m. However, Ofcom has since updated this figure, and calculated that the penalty had fallen to £83m just one year later.³ The key problem that Open Comms is intended to address is already diminishing rapidly, and this greatly reduces its benefits.

Having overstated the problem, the IA overstates the extent to which Open Comms would ameliorate it. It claims a 5% reduction in the loyalty penalty. This estimate appears to be primarily based on the IA's view that Open Banking increased switching by 10%. However, this figure was in turn based on a very short term view of bank switching. Longer term data shows that switching was actually *lower* after the introduction of Open Banking than in the preceding period.⁴

More generally, there is minimal evidence that open data initiatives increase switching. According to a report published by New Zealand's Commerce Commission, "open data initiatives may not actually resolve low switching rates in a meaningful way".⁵

Understatement of costs

The IA also underestimates costs. One important factor is that it significantly understates the number of providers affected. For instance, it does not appear to have considered the alt-nets, of which at least 38 offer retail broadband.

It also hasn't considered upstream impacts. Underlying wholesale suppliers will need to create APIs to pass through relevant data they hold to retail providers. This has the potential to be a barrier to innovation. For instance, if an MNO wished to offer roaming onto Starlink (as Optus does in Australia), would Starlink be required to provide average user speed data to the MNO? Would it be worth their while to set up systems for this for one contract in the UK?

The IA also doesn't consider opportunity costs from diversion of scarce IT resources at operators, nor does it factor in the 'waterbed effect' of increased prices for other consumers.

However, even for the narrow scope of cash costs it *does* consider, the IA's figures suggest that these costs are likely to be greater than any credible estimate of reduced loyalty penalty. Thus the IA has not made the case that Open Comms is a beneficial intervention.

³ Ofcom, [Telecoms customers saving millions as Ofcom rules bed in](#), 30 November 2021

⁴ Pay.UK, [Eight million switches: making changing bank accounts simple and stress-free](#), October 2022

⁵ Behavioural Insights Team [for Commerce Commission], [Behavioural Biases in Telecommunications](#), May 2019

2. Introduction

DSIT is consulting on Open Communications.⁶ It says:

“Open Communications would be a data portability initiative and would stem from the Government’s Smart Data Review and its continued work through the Smart Data Council. If progressed, it would require broadband and mobile operators to provide their customers, on request, data relating [to] their connectivity service, for example, usage statistics, price, and speed.”⁷

Accompanying its consultation document, DSIT has published an Impact Assessment.⁸

This paper provides a critique of the Impact Assessment. We first look at the IA’s analysis of the market. We find that the IA has failed to consider the wider market context, and appears in several places to be based on a significantly out-of-date perception of telecoms.

We then turn to the IA’s assessment of benefits. Both the likely volume of additional switching and associated benefits appear to have been overestimated, particularly regarding more vulnerable consumers.

Next we look at the IA’s assessment of costs. This assessment is much too narrowly focused on direct implementation costs (although even these have been greatly underestimated). Likely negative market impacts are not considered or are simply assumed away. Important issues such as privacy are not even mentioned.

Finally, we draw our conclusions.

⁶ DSIT, [Open Communications A Smart Data scheme for the UK telecoms market](#), September 2023

⁷ Page 10

⁸ DSIT, [Open Communications: a Smart Data scheme for the UK telecoms market: impact assessment](#), 6 September 2023

3. Issues with the analysis of the market

3.1. Unclear definition of harm

The IA summarises the problem IA is intended to address as follows:

“Telecoms is a complex market to navigate, requiring time and technical knowledge for consumers to compare and choose deals. The impact of this complexity is limited market engagement, low switching rates and persistent loyalty penalties, with around a third of consumers out of contract and paying more than necessary for connectivity services. Intervention is required to address information asymmetries, improve consumer engagement and switching in mobile and broadband, increase telecoms innovation and competition and drive take-up of new services such as gigabit-capable connections and 5G”.⁹

Thus the IA expects Open Comms to address an extraordinary array of issues: (purported) low market engagement; loyalty penalties; information asymmetries; switching rates; innovation; competition; and take-up of new services. To say the least, it is a bold claim that any initiative – and Open Comms in particular – could have meaningful impact across a range of issues so broad.

The IA also *only* considers Open Comms as a remedy to all these challenges. It does not look at any alternatives, nor assess whether these might have a better balance of costs and benefits than Open Comms.

Further, even taking this statement of harms at face value, it is not clear why DSIT is choosing to tackle telecoms in particular. For example, there are purchase decisions of far greater complexity than broadband or mobile. The purchase of a laptop, a car, a smartphone, health insurance or a hotel stay would involve many more product attributes to assess, and several would involve even greater technical knowledge. If DSIT is proposing to intervene on the basis of complexity, this would appear to set a precedent for intervening in many other sectors.

The statement of harm also refers to ‘persistent loyalty penalties’. However, loyalty penalties (or discounts for new users) are extremely common and enduring across the economy:

⁹ Page 1

Figure 10: Examples of products and services sold with initial discount

Alarm monitoring	Magazines	Restaurant clubs
Apartment rental	Managed IT services	Storage units
Banking services	Martial arts lessons	Subscription food boxes
Bookkeeping	Music streaming	Subscription software
Car leasing	Newspapers	Subscription vitamins
Child care	Online dating	VPN services
Coworking space	Pay TV channels	Warranty plans
Dance lessons	Personal coaching	Water cooler services
Electricity	Podcast hosting	Website hosting
Gyms	Pool cleaning	Weight loss programmes
Health insurance	Racehorse management	

Thus, as with complexity, if initial discounts / loyalty penalties are a justification for intervention, they will justify interventions in many sectors. Further, the claim that loyalty penalties are ‘persistent’ in telecoms is incorrect. As we discuss later, they have fallen substantially.

3.2. Very limited engagement with telecoms market context

The IA does not address the reality that telecoms as a sector is already both intensely competitive *and* heavily regulated.

For instance, there are now 106 companies deploying fibre broadband in the UK, after a surge of new entrants in the period 2019-2022. These players include both large, nationally ambitious companies and some that are more locally targeted, but the new entrants are increasing choice for consumers and offering aggressive pricing. In the 18 months to August 2023, the median price of 100 Mbps broadband from these alt-nets fell by 25% in real terms.¹⁰

This surge of new entrants has already had dramatic impact on the wholesale market, encouraging fibre deployment by both Openreach and Virgin Media and providing choice to retail ISPs. It will have increasing impact on the retail market as the footprint of the entrants expands.

However, this extraordinary increase in competition in fixed broadband – a once-in-a-generation development – is not mentioned in the IA.

¹⁰ Communications Chambers, [A survey of the gigabit deployers : 2023](#), October 2023

In addition to this increase in competition driven by market entry, Ofcom has also introduced a substantial set of pro-competition measures.

Figure 1: Selection of recent measures to support switching

Measure	Announced	Effective
Text-to-switch	Dec 2017 ¹¹	Jul 2019
End of contract notifications / ABTNs	May 2019 ¹²	Feb 2020
Improved information for price comparison websites	Oct 2020 ¹³	Dec 2021
Limits on non-coterminous linked contracts		Dec 2021
Ban on locked handsets		Dec 2021
24 month limit on handset contracts		Dec 2021
Right to exit a contract for change in service		June 2022
Gaining-provider-led switching for all broadband		April 2023 ¹⁴

Some of these measures have been in the market long enough that they have already had significant impact, others can be expected to have increasing impact in the future. But much of the data the IA uses predates these impacts, and thus effectively ignores the benefits of these measures.

Operators have also expanded significantly their social tariffs, and in the year to February 2023 uptake quadrupled.¹⁵

Competition and regulation have already made it challenging for many UK telecoms companies to cover their cost of capital. This applies both to incumbents and to new entrants, and the problem is likely to get worse as rising interest rates increase that cost.¹⁶

Against this background, investment incentives in telecoms should be an important concern for policy makers. However, the IA does not give this issue any serious consideration. Rather, it simply asserts that “Increased competition will ... boost ... investment”.¹⁷ In fact, if competition is already robust, increased competition may reduce investment.¹⁸

¹¹ Ofcom, [Consumer switching: Decision on reforming the switching of mobile communication services](#), 19 December 2017

¹² Ofcom, [Helping consumers get better deals](#), 15 May 2019

¹³ Ofcom, [Fair treatment and easier switching for broadband and mobile customers](#), 27 Oct 2020

¹⁴ Note that while this is in effect for switches between operators on Openreach networks, it is pending for switches across networks

¹⁵ Ofcom, [Affordability of communications services](#), 24 April 2023

¹⁶ See, for instance, FT, [Can the UK’s telco giants course correct?](#), 29 May 2023; Communications Chambers, [A survey of the gigabit deployers : 2023](#), October 2023

¹⁷ Page 56

¹⁸ See, for instance, Georges Vivien Hougbonon & François Jeanjean, [“What level of competition intensity maximises investment in the wireless industry?”](#), *Telecommunications Policy*, August 2016

The IA posits that Open Comms will result in a transfer of value from telecoms players to consumers. The assumption that this would result in increased investment by telcos is - to say the least – counter-intuitive, given the wider context of the industry.

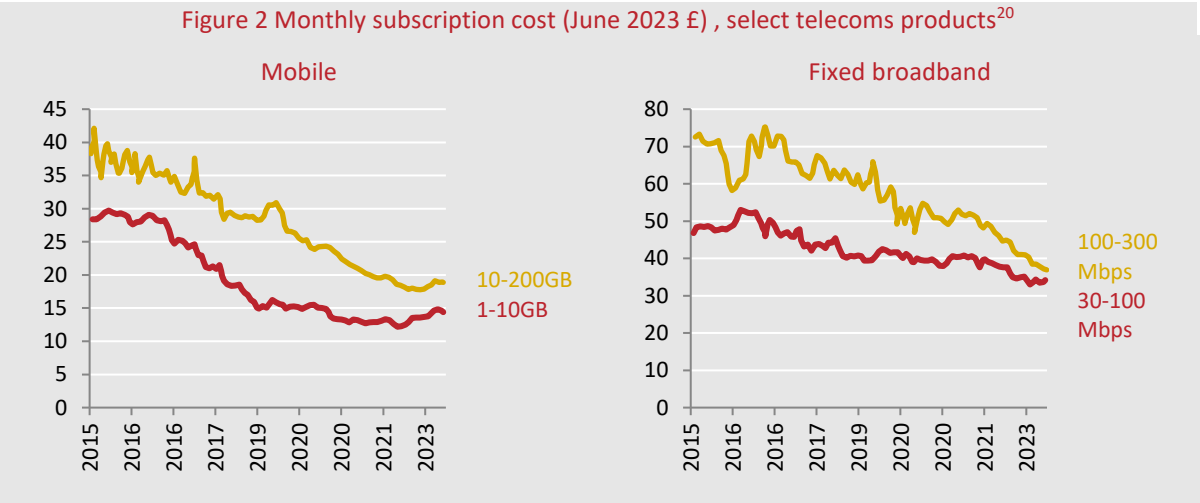
3.3. Limited and flawed consideration of pricing trends

The IA claims:

“The average UK household spent around £79 per month on telecoms services in 2022. This figure has remained fairly flat over time, and is likely to remain a considerable household expense”.

This claim is misleading on two grounds. Firstly, it ignores inflation. On an inflation-adjusted basis, spend has not been flat, but rather has fallen from £104 to £79 in just five years.¹⁹ Secondly, it ignores the fact that the decline would be even steeper if consumers weren’t actively choosing to increase their spend by upgrading to higher speed or higher data allowance packages.

If we consider pricing of particular products, a very different picture emerges:



Taking mobile packages with data allowances of 10-200 GB, the average price of these has fallen by over 50% in real terms since 2015, and the price of 100-300 Mbps broadband has fallen by almost as much.

¹⁹ Ofcom, [Communications Market Report 2023: Interactive data](#), 20 July 2023

²⁰ Ofcom, [Communications Market Report 2023: Interactive data](#), 20 July 2023. Mobile products include unlimited texts and minutes

Price trends should be an important consideration both in an assessment of competition and in the calculation of any benefits of interventions to adjust prices. Thus the fact that the IA does not even consider them is a serious omission.

3.4. Faulty reasoning supporting view that there is insufficient competition

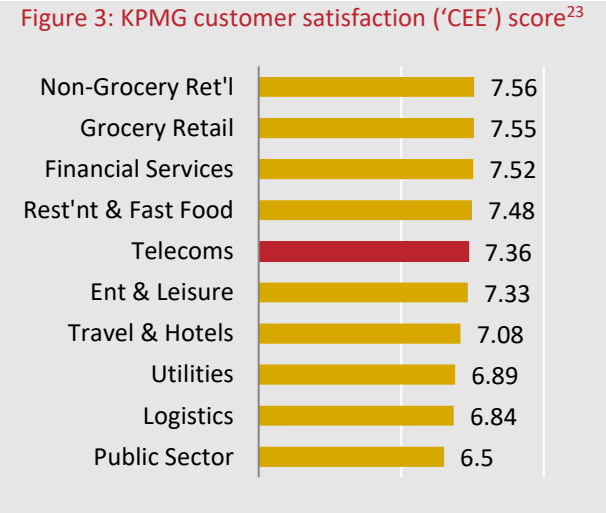
Consumer satisfaction

In making its case that telecoms is insufficiently competitive, the IA starts by citing the CMA’s view of competition. It says:

“[T]he CMA’s 2020 State of Competition report assesses industries across metrics including concentration, dynamic competition, mark-ups, consumer satisfaction and trust, and data on consumer and business experiences during the pandemic. The CMA finds that telecommunications/media is amongst the worst performing industries, consistently ‘lower down the rankings when measuring different consumer and business outcomes’ and has amongst the lowest satisfaction scores.”²¹

In fact the CMA made a narrow point about customer satisfaction, but added “there might be reasons other than competition driving these scores”.²² Thus it is entirely inappropriate for the IA to use the CMA report to suggest inadequate competition, when the CMA carefully avoided any such conclusion itself.

Further, in arguing that purportedly low customer satisfaction in telecoms suggests weak competition, the IA is selective in its choice of data. For instance it does not include KPMG’s survey (Figure 3) which shows telecoms to have higher satisfaction rates than intensely competitive sectors such as ‘entertainment and leisure’ and ‘travel and hotels’ (and only just behind ‘restaurant and fast food’). If telecoms’ customer satisfaction is similar to these undoubtedly competitive sectors, it is unclear how it can be evidence that the sector is insufficiently competitive.



²¹ Page 15
²² CMA, [The State of UK Competition](#), 30 November 2020
²³ KPMG, [UK customer satisfaction holds firm](#), November 2022

The IA also ignores Ofcom data showing that satisfaction with mobile and broadband (87% and 82%) was well above that with gas (74%) and electricity (72%).²⁴

Switching rates

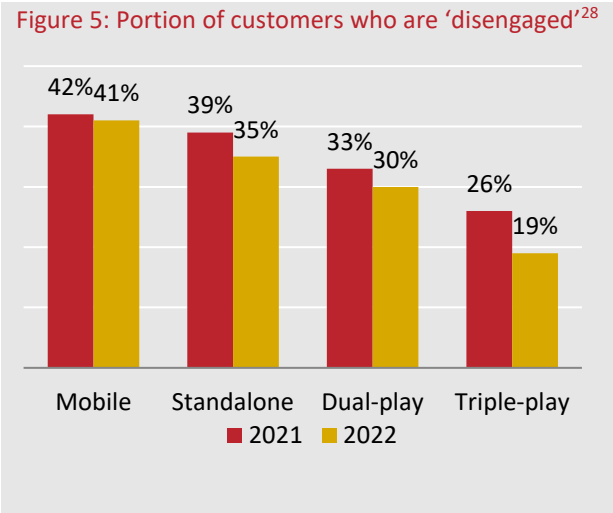
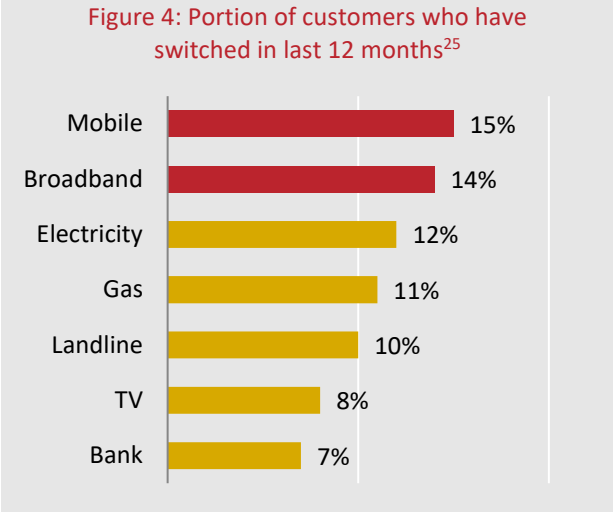
The IA implies that low switching rates in telecoms indicate weak competition. However, the IA makes no attempt to define what ‘low’ is. Further, Ofcom data suggests that telecoms switching rates are actually *higher* than comparator sectors.

Moreover, mobile switching rates are rising substantially. They have risen to 15% in 2023, up from 9% in 2017.²⁶ This is likely a result of the range of existing measures to support switching discussed above.

Market engagement

The IA also links market engagement to purported weak competition. It says: “poor market engagement is a persistent issue in the complex telecoms market”.²⁷ Again, the IA simply asserts that market engagement is ‘poor’, without offering any view on what would be satisfactory rates. It also offers no evidence on engagement rates in other markets that would allow benchmarking.

Finally the idea that market engagement is a ‘persistent’ issue is disproved by the IA’s own evidence. It cites Ofcom data on disengaged customers, which shows that rates of disengagement have fallen across all relevant products. For example, the level of disengagement fell seven percentage points in a single year for triple-play customers. This may well be the developing impact of existing interventions, but certainly belies the idea of a persistent problem with engagement.



²⁴ Ofcom, [Comparing customer service: mobile, landline and home broadband](#), 18 May 2023. While these figures may have been affected by the energy crisis, figures from a year earlier were broadly similar

²⁵ Ofcom, [Switching tracker 2023 data tables](#), 30 October 2023

²⁶ Ofcom, [Switching tracker 2023 data tables](#), 30 October 2023; Ofcom, [Pricing trends for communications services in the UK](#), 17 May 2018

²⁷ Page 40

²⁸ Communications Chambers calculations based on data from Ofcom, [Pricing trends for communications services in the UK](#), 1 December 2022, cited on Page 11 of the IA

Ofcom's view

The IA's claim of inadequate competition clashes with Ofcom's view that telecoms "[c]ompetition is delivering more investment and lower prices for people and businesses".²⁹

As we have seen, prices in both fixed and mobile have fallen substantially. This alone suggests that there is vibrant competition in telecoms.

3.5. Misconception that telecoms is getting more complex

The IA says:

"As the sector evolves in both complex and technical ways, it becomes increasingly difficult for those unfamiliar with the telecommunications sector to navigate their way through the market."³⁰

The consultation document makes a similar claim:

"The average consumer is increasingly required to possess technical knowledge to be able to engage in the market successfully - such as understanding the difference between a gigabit and gigabyte, fibre-to-the-cabinet (FTTC) and fibre-to-the-premise (FTTP), and establish how they fit their particular connectivity needs."³¹

However, this idea that telecoms is getting more complex is wrong. For example, a decade ago we might have written:

"[The consumer needs] technical knowledge to be able to engage in the market successfully - such as understanding the difference between a megabit and megabyte, coax and ADSL, and establish how they fit their particular connectivity needs."

Issues of units and broadband technology are not new.

Further, broadband products were arguably more complex then. Many had limited traffic, compared to the simplicity of nearly ubiquitous unlimited allowances today. Consumers were more likely to need a landline, whereas today they may rely on their mobile. The choice of speed was more difficult then, in that low speeds were more likely to

²⁹ Ofcom, [Supporting phone and broadband customers through the cost-of-living crisis](#), 13 July 2023

³⁰ Page 8

³¹ Page 6

be constraining, whereas today even lower speed packages are more than adequate for typical usage.

Finally, consumers have many more years of experience, and so are less likely to be puzzled by product features.

Thus the idea that there is increasing complexity that justifies Open Comms is false. On contrary, complexity seems to be falling.

3.6. Inappropriate comparisons with other sectors

Open Banking comparison

The IA seeks to apply experience from other sectors to Open Comms, but these comparisons are often inappropriate or appear to misinterpret the data.

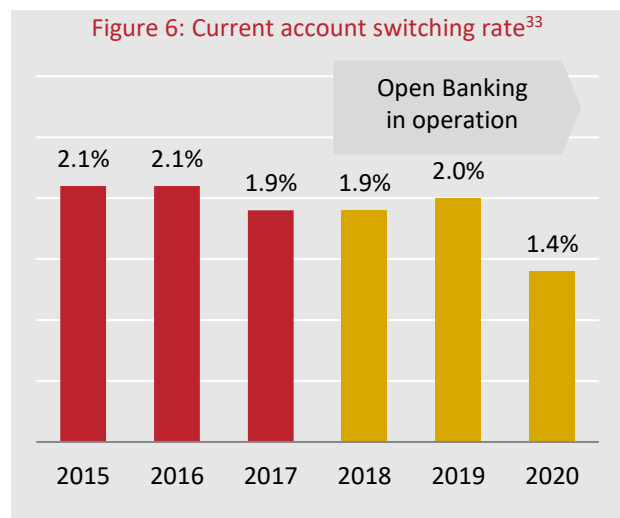
For example, regarding Open Banking, the IA says (citing a paper by Giovannetti and Siciliani³²):

“Comparable data portability initiatives provide indications of significant benefits to consumers. Open Banking saw a 10% rise in the level of switching activity in just 2 years”.

The source of this 10% figure is not clear - it is not in the cited paper. However, longer run data (Figure 6) makes it clear that while switching rates were slightly higher in 2019 than in 2017 (the last year before Open Banking was introduced), they were in fact *below* the rate of switching across the three years prior to OB being implemented.

This is not to say Open Banking isn't valuable – but rather than the benefits are not primarily associated with switching. The IA notes a report published by certain representatives of the Open Banking Implementation Entity, which says “estimates aggregate benefits of up to £12bn a year for consumers” from OB.³⁴

The first point to note that this is not a forecast of the benefits, but rather “the potential value **if all consumers adopt**. ... This



³² Emanuele Giovannetti & Paolo Siciliani, [The Impact of Data Portability on Platform Competition](#), November 2020

³³ Pay.UK, [Eight million switches: making changing bank accounts simple and stress-free](#), October 2022. Note that the pandemic likely suppressed switching in 2020

³⁴ Faith Reynolds & Mark Chidley, [Consumer priorities for open banking](#), 25 June 2019. See also Faith Reynolds & Mark Chidley, [Publication of Consumer Priorities for Open Banking report](#), 25 June 2019

quantification therefore gives the ‘size of the prize’ for policy makers to target, however being aware that it will be only achieved with mass adoption.”³⁵ [emphasis added].

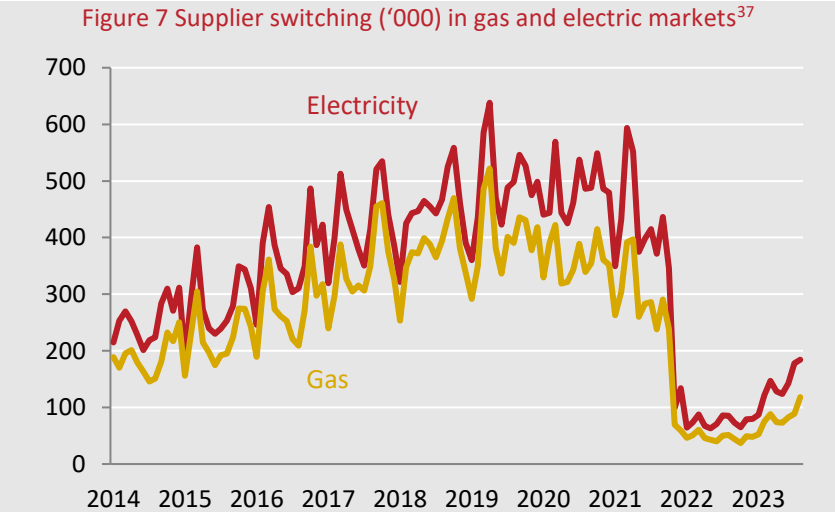
Even now – five years into Open Banking - only 7m consumers and businesses have used Open Banking, and these 7m will not be using the full set of services considered in the report. Thus actual benefits are likely to be far below the £12bn figure cited.

Secondly, the report considers a wide array of OB benefits which have no parallel for Open Comms. For instance, the £12bn includes the benefits of alerts to avoid overdraft fees.

For these reasons, the Open Banking evidence offered in the IA does not support the argument for Open Comms. Indeed, the apparent lack of any impact on consumer switching suggests Open Comms may be far less beneficial than the IA claims.

Energy markets

The IA compares telecoms switching rates to gas and electricity, suggesting that higher and rising switching rates for energy suggest that there is a problem in telecoms.³⁶ However, the IA’s conclusion here depends on using outdated data (up to 2020). More recent data shows that since 2021 switching rates for energy have collapsed, and are now well *below* those in telecoms:



This collapse in switching is likely due to the energy crisis, which is obviously highly specific to energy and gas. But this simply highlights the danger of simplistic cross-sector comparisons. It would be wrong

³⁵ Faith Reynolds & Mark Chidley, [Consumer priorities for open banking](#), 25 June 2019 (page 59)

³⁶ Page 12

³⁷ Ofgem, Retail market indicators [accessed 30 October 2023]

to point to the current energy data in comparison to telecoms, and conclude there was a serious problem with energy switching – but it is equally wrong to conclude that the earlier data implied there is a serious problem with telecoms switching.

Digital markets

Regarding digital markets the IA says:

“Effective competition is crucial in many digitally enabled markets, which often feature winner-takes-most characteristics meaning natural competition is not necessarily sufficient to solve problems. One such barrier to competition is unequal access to data.”³⁸

As far as it goes, this statement is valid. A new search engine may lack the valuable data on search histories that incumbents enjoy. But this is simply irrelevant to telecoms, which is not a ‘customer data’-based business in the same way. Complete ignorance of a customer’s history is no barrier at all to their new telecoms supplier providing them excellent service.

The IA asserts that:

“access to consumer data, encourages entry and expansion for both new and existing telecoms providers, who are able to acquire and use individuals’ data to create innovative services”.³⁹

If this were true, we might expect new providers to seek data remedies to support market entry. As far as we are aware, there has been no active pursuit of such remedies over forty years of post-monopoly telecoms in the UK. Even in response to Ofcom’s 2021 consultation on Open Comms, G.Network is the only named new entrant to express even lukewarm support for the proposal.⁴⁰

3.7. Conclusion

The IA’s analysis of the market is both incomplete and contradicted by the evidence:

- It asserts as harms certain features of the telecoms market that are extremely common across the economy, setting a worrying precedent

³⁸ Page 16

³⁹ Page 16

⁴⁰ “G.Network broadly supported the idea of Open Communications, but suggested that Ofcom should first consider other interventions”. Ofcom, [Update on Open Communications: Enabling people to share data with innovative services](#), 7 July 2021

- It makes no attempt to engage with the increasing intensity of competition in the telecoms sector
- It argues that competition is supposedly weak in telecoms on the basis of customer satisfaction, switching and engagement, but ignores data showing that telecoms both performs well on these metrics and is improving
- Nor does it fully account for the range of interventions (many very recent) which have put into place to address issues such as the loyalty penalty
- It appears to have misinterpreted pricing data, and thus ignores the critical fact that prices in both fixed and mobile have fallen substantially
- It has also misinterpreted data from other sectors, crucially leading to a false conclusion that Open Banking has had material positive impact on current account switching rates

4. Benefits

We now discuss the IA’s analysis of the claimed benefits of Open Communications

4.1. Lack of clarity on how Open Comms will improve customer choice in practice

The AI relies heavily on assertions that more data would result in better decisions. To take one example, it says:

“When better informed by data, and supported by related tools, consumers are able to make different consumption choices more suited to their needs”.

While such statements are plausible in the abstract, the IA has not engaged with how the specific data proposed for sharing would actually improve decisions.

Proposed data already readily available

A first issue is that for Open Comms to make a meaningful difference, the data would have to be unavailable (or at least time-consuming to obtain) by other means. In fact several key data points are already readily available.

For instance two of the proposed data points are fixed download and upload speeds. However, Compare the Market (for example) already offers a tool⁴¹ that tests your line speed, compares it to the typical range in your neighbourhood and offers alternative plans – in less than 40 seconds. This is almost certainly quicker than the time it would take to authorise an Open Comms data share to Compare the Market. Thus the marginal benefit of this speed data on Open Comms is likely to be minimal.

Similar issues apply to information on pricing, discounts and so on. This information is most relevant when a customer is nearing the end of their contract – but it is already made available to them via an ECN⁴² at that time. This greatly limits the incremental benefits of Open Comms.

Data not informative to the customer decision

A second issue is that the data provided under Open Comms must be informative to the consumer decision. A pivotal choice for fixed broadband is the speed of service. As the IA says: “it is important for

⁴¹ Compare the Market, [Broadband speed test](#) [accessed 5 November 2023]

⁴² End of contract notification

consumers to know [what download speed] is sufficient for their usage needs”.⁴³ However, none of the data discussed for sharing under Open Comms is informative as to required speeds.⁴⁴ How, then, will it help consumers make better broadband decisions?

Indeed, while the IA notes that in 2018 the CMA felt that open data might be an appropriate intervention for broadband, it ignores that the CMA also said “smart data solutions ... seem most likely to be effective where usage patterns are highly differentiated and where providers’ pricing models are based on usage.”⁴⁵ However, today broadband packages almost universally allow for unlimited usage. Thus the CMA’s logic also seems to suggest that Open Comms will not materially help consumers make better decisions.

The IA also says:

“A well functioning market is one where consumers have reasonably clear and complete (‘perfect’) information on what they purchase. In telecoms, this represents clear information about consumer consumption of telecoms products, such as mobile phone tariffs, data consumption, call minutes, internet speed requirements and use.”⁴⁶

This suggests further confusion on the potential benefits of Open Comms. Speed requirements are not one element of ‘consumer consumption’. To take just one example, if I am unfortunate enough to have a poor ADSL connection, my current speed consumption may be far below my speed requirements.

Finally, where consumers need speed is at the device. However, operators can only measure (and report via Open Comms) speed to the router. If the constraint on the user’s experience is poor in-home wi-fi, then Open Comms data on their current line speed is not helpful.

Data addressing matters that are not in fact a choice for consumers

The IA says “5G [is] in the process of being deployed ... Ensuring consumers can understand these new products will increase commercial opportunities and innovation of suppliers”.⁴⁷ However, 5G is already included in virtually all mobile plans, and will likely be included in essentially all plans before any implementation of Open Comms. If 5G is available by default in all plans, how will Open Comms

⁴³ Page 28

⁴⁴ The Consultation (page 28) suggests that fixed broadband usage would not be one of the data points to be shared – but even if it were, it has minimal value as a predictor of required line speed

⁴⁵ CMA, [Tackling the loyalty penalty](#), 19 December 2018

⁴⁶ Page 10

⁴⁷ Page 8

have any impact? It can't encourage consumers to switch to a 5G plan if 5G is already ubiquitous.

The IA also claims that "The coverage and benefits to 5G are not yet being widely seen within UK society". However, outdoor coverage is now 85%, and continues to rise.⁴⁸ If a particular consumer has not experienced 5G, it is much more likely to be due to their handset choice than their network choice. Again, it's not clear how Open Comms might be relevant to address this issue (which anyway will diminish due to the natural replacement cycle of handsets).

4.2. Lack of consideration of barriers to use of Open Comms

Lack of consumer enthusiasm

The IA considers disengagement with telecoms services, and sees this as a significant problem. However, it does not consider that the very issues likely to make a consumer disengaged are also those that are likely to make them unlikely to be a user of Open Comms.

For instance, one reason for consumers to be disengaged is that they think they are already on the best deal. According to Ofcom's Switching Tracker, 68% of mobile customers who are out of contract are nonetheless confident that their current deal is the best for them.⁴⁹ While this view may not be correct, if a consumer believes it, they are unlikely to consider shopping around *with or without* Open Comms – Open Comms is addressing a problem they don't believe they have.

There are other indicators that consumers may be uninspired by Open Comms. Again considering mobile customers out of contract, 79% agree "The amount I pay for my mobile service is small, compared with my other monthly household bills". If most customers are not particularly worried about their total mobile bill, they may be unexcited about modest savings from a new contract. The loyalty penalty may be large in aggregate but that does not follow that it is significant to many individual customers.

Lack of provider login details to enable use of Open Comms data

Open Communications can only help a consumer if they can authenticate their identity so the price comparison website (or other third party) can pull data from the consumer's current supplier(s).

However, a 2020 Populus online survey for Ofcom⁵⁰ found that only one third of broadband and one third of mobile customers had logged

⁴⁸ Ofcom, [Connected Nations Summer update 2023](#), 7 September 2023

⁴⁹ Ofcom, [Switching tracker 2023 data tables](#), 30 October 2023

⁵⁰ Populus (for Ofcom), [Open Communications](#), 4 August 2020

into their supplier account online in the previous 12 months. It seems likely that the other two thirds might not have registered, or might not have ready access to their password. Thus Open Communications would be less likely to be used by these two-thirds of online consumers, since they may be unable to authenticate their identity.

Limited inclination to use price comparison websites

In practice, Open Comms data only has real value when provided to a third party, typically a price comparison website (PCW). However, most consumers do not use PCWs. Analysis of data from the Populus survey suggests that 32% broadband customers who had looked to compare broadband offers had made use of a PCW. For mobile offers, the figure was even lower, at 26%. Thus the great majority of potential switchers are unlikely to be on a site that invites them to make use of Open Comms data.

Availability of Open Comms data on price comparison websites

Even if a consumer visits a PCW, it doesn't mean Open Comms will be available. Such websites may not choose to use it. PCWs primarily make their money from commission, *when a user switches supplier*. For this reason, they typically do not show you offers from your existing supplier, since if one of its offers is preferable, the PCW will make less money. This begs the question as to whether a PCW would in fact make use of Open Data, which provides information about your existing supplier rather than alternatives.

Need to overcome friction

The IA states that a goal for Open Comms is “[f]rictionless access to data and sharing”. However, in reality there is considerable friction involved in sharing such data. As Figure 8 shows, there are multiple steps for the user, even after they have arrived at the PCW, with their provider log-in details to hand.

This involved process is likely to be perceived as more trouble than it's worth by many consumers. There are also other more intangible frictions, such as concerns about sharing private information with a PCW, that will further reduce usage of Open Comms.

Figure 8: Steps to authorise use of Open Comms data

1. Click to make use of data sharing
2. Review and consent to the types of data the third-party site will import
3. Select current provider and be redirected to them
4. Provide credentials (ID, password) to the current provider
5. Provide relevant Two Factor Authentication if required (e.g. one-time PIN sent by text)
6. Specify the relevant accounts (e.g. certain mobile numbers on a family plan)
7. Confirm to the current provider the data to be shared with the third party and consent
8. (If multiple relevant current providers, such as pay TV and broadband, repeat steps 3-7 for each)

Combined impact

Thus Open Comms will be relevant to consumers who are:

- Actively engaged in switching; *and*
- Have login details for their current provider; *and*
- Intend to make use of a price comparison website as part of their research; *and*
- Happen to choose a website that offers Open Comms; *and*
- Are not put off by the complexity and friction of using Open Comms

It seems likely that quite a small number of consumers will pass all these tests, but further it seems improbable that such active and sophisticated consumers would be facing much of a loyalty penalty in the first place.

Vulnerable consumers are even less likely to pass all these tests. For example, Ofcom research found that disabled people were 11 percentage points less likely to use price comparison websites than those who weren't disabled.⁵¹ Vulnerable consumers are also less likely to have the digital sophistication to use Open Comms. Thus benefits for this group may be minimal.

4.3. Estimates of the baseline loyalty penalty that are entirely inconsistent with Ofcom

The IA makes clear errors in its assessment of both the mobile and fixed baseline loyalty penalty.

The mobile baseline

The IA sets out a methodology for its calculation of the mobile loyalty penalty in the baseline scenario.⁵² We have sought to reproduce this methodology, but have not been able to reconcile our results with those shown in the IA.⁵³

However, the two key sources for the IA's analysis are Ofcom and Citizen's Advice, and the IA's results appear to be entirely inconsistent with these sources. The IA starts from Ofcom's 2019 estimate of the mobile loyalty penalty (£182m), and adjusts it using certain more recent data from the CA. However, Ofcom itself provided an updated

⁵¹ 52% vs 63%. Populus (for Ofcom), [Open Communications](#), 4 August 2020

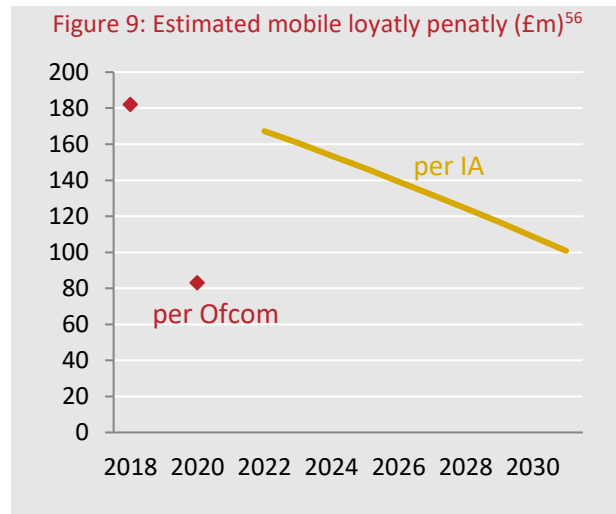
⁵² Pages 43-45

⁵³ Page 46

estimate in November 2021, of £83m⁵⁴ (a figure since cited by the CA).⁵⁵

This figure compares to the IA's estimate (for 2022) of approximately £170m. Even by 2031, the IA estimates the penalty at £100m, still well above Ofcom's estimate for 2020. Thus the IA's baseline for the penalty does not appear consistent with its own sources.

More generally, it is unhelpful that the IA repeatedly cites the Ofcom 2019 figure of £182m when the more recent Ofcom estimate of £83m is available. Given that the loyalty penalty is one of the key harms that Open Comms is purported to address, it is a critical piece of evidence that it had *already* fallen substantially.



Further, there is every chance the actual penalty has decreased further since 2020 (and will continue to do so), given the various market interventions put in place, the sharp increase in mobile switching rates and so on. For example, Ofcom noted in 2022:

“We would expect the overall proportion of mobile customers who are out-of-contract to continue to reduce as more people receive annual best-tariff notifications (ABTNs).”⁵⁷

The IA makes no allowance for this. The IA also dismisses social tariffs:

“Ofcom predicts [social tariffs] could benefit out-of-contract vulnerable customers by £70 each on average and mitigate harm from out-of-contract practices, but as of yet only some providers have taken up voluntary practices.”

This is misleading. While it is true that social tariffs are not universal, they are widespread, available to 85% of broadband customers⁵⁸ and to most mobile customers.⁵⁹

Finally, the IA takes no account of pricing impacts. As we have seen, both prices and total spend on mobile have been falling. Even if a percentage premium were to remain for out-of-contract customers,

⁵⁴ Ofcom, [Telecoms customers saving millions as Ofcom rules bed in](#), 30 November 2021

⁵⁵ CA, [Overcharging consumers in a cost-of-living crisis: The loyalty penalty: 4 years on](#), August 2022

⁵⁶ Sources per text

⁵⁷ Ofcom, [Pricing Trends for Communications Services in the UK](#), 1 December 2022

⁵⁸ Ofcom, [Affordability of communications services](#), 24 April 2023

⁵⁹ Based on market shares from Barclays, [Vod/3UK M&A - Wider implications](#), 22 June 2023

these falling prices would reduce the absolute value of the loyalty penalty. Particularly in the long term, this would mean that the IA's approach further overstates the penalty.

The broadband baseline

The IA makes broadly similar errors in its assessment of the broadband baseline, using historic data when more recent figures are available, and ignoring trendlines.

The IA says that “[a]t present, the impact of price differentials on out-of-contract customers is just under £500 million per year”⁶⁰ In fact this is an Ofcom figure for 2019 (more precisely £485m).⁶¹ However, more recent data from Ofcom⁶² shows that this figure had fallen appreciably just one year later, to £451m, a 7% decline. The number of out-of-contract customers had fallen from 8.7 to 7.4m (or from 40% to 35% of customers). The IA makes no mention of these reductions.

As with mobile, it is likely that the decline has continued since, not least because of the array of additional interventions to support broadband switching. However, the IA says:

“We ... assume that the proportion of out of contract customers remains constant at 35%, which we deem to be the best available assumption.”⁶³

Given that this proportion fell from 40% to 35% in a single year (as discussed above) this is a surprising assumption. Indeed, Ofcom's latest Switching Tracker Study found that just 18% of broadband customers reported being out-of-contract (excluding 'Don't knows').⁶⁴ This single issue alone suggests that the IA's estimate of the current loyalty penalty may be overstated by a factor of two – and by extension its estimate of benefits may be similarly overstated.

Again as with mobile, the IA appears to have ignored the impact of the long run trend of falling prices to reduce the loyalty penalty.

⁶⁰ Page 50

⁶¹ Ofcom, [Helping consumers get better deals: Review of pricing practices in fixed broadband](#), 28 July 2020

⁶² Ofcom, [Helping customers get better deals A review of the impact of end-of-contract notifications and pricing commitments by broadband and mobile providers](#), 30 November 2021

⁶³ Page 49

⁶⁴ Ofcom, [Switching tracker 2023 data tables](#), 30 October 2023

Vulnerable customers

The IA also makes no mention in the rapid decline in the loyalty penalty for vulnerable customers. According to Ofcom (regarding mobile customers):

“We found there was a large reduction in the monthly price differential paid by customers identified by their provider as vulnerable, from £4.40 to £2.30 [2019-2020]. This indicates that the commitments secured by Ofcom are having a positive impact for many vulnerable customers.”⁶⁵

Existing interventions are already helping this group.

Timing

The IA does not make clear which period it was considering in assessing the benefits of Open Comms. This is an important issue for two reasons.

Firstly, if the loyalty penalty is falling over time, then the benefits of Open Comms also decline. Such benefits can only begin to accrue once Open Comms is in place, and this may take some time. BT (in a 2021 submission supportive of Open Comms) suggested that a four to five year development period *after* the specification of requirements would be appropriate to keep costs manageable.⁶⁶ We also note that Pension Dashboards, announced in the 2016 budget, now have a deadline for delivery of 2026.⁶⁷

In practice it seems likely Open Comms will have minimal impact on the market before the end of this decade – by which time any remaining loyalty penalty may be modest.

Secondly, the nature of Open Comms is that the costs will be immediate, while the benefits will be in the distant future. This has important implications for the net present value (and risk) of the proposal.

4.4. Overestimation of the extent to which Open Comms would increase switching

Having (over)estimated the loyalty penalty, the IA’s next step is to make an assumption as to how much this might be reduced by the

⁶⁵ Ofcom, [Helping customers get better deals A review of the impact of end-of-contract notifications and pricing commitments by broadband and mobile providers](#), 30 November 2021

⁶⁶ BT, [Open Communications - BT Consultation Response](#), 10 February 2021

⁶⁷ House of Commons Library, [Research Briefing: Pensions dashboards](#), 17 August 2023

Open Comms proposals. It uses a figure of 2% and 5% for Option 2 and Option 3 respectively.⁶⁸

At first sight these figures may appear low. However, they are in fact quite aggressive. They depend on two factors – the number of out-of-contract customers who end up using Open Comms, and the portion of any loyalty penalty those customers save as a result.

As we have discussed, to benefit from Open Comms, a customer must: (i) be actively engaged in switching; (ii) have log-in details for their current provider; (iii) use a PCW; (iv) happen to use a site that offers Open Comms; and (v) not be put off by the friction.

Consider just two of these constraints – log-in details and use of a PCW. We noted that only 33% of customers had used their supplier’s website in the last year. Take this as a proxy for those with ready access to log-in details. We also noted that only 32% of mobile customers used a PCW when switching. Combining these two factors suggests that only 10.5% of out-of-contract switchers would be in a position to use Open Comms, before taking into account the impact of disengagement, availability of Open Comms, and reluctance to make use of it given the friction.

Further, even those making use of Open Comms will not necessarily save their full loyalty penalty, given that they may not choose the cheapest offer, may decide it’s not worth the bother of re-contracting and so on. Indeed, they may not even see the best offer available to them. Full use of Open Comms requires use of a price comparison website, but these are certainly not complete in their offers. For instance, many alt-nets are not present on such sites, and often they do not show you offers from your existing supplier..

In this context, the IA’s assumption that under Option 3, 5% of the loyalty penalty will be eliminated looks highly aggressive.

The IA offers very limited evidence to support this assumption, and mainly relies on assertion. Taking its points in turn:

“Citizens Advice indicate around ... half of broadband customers remain with their provider as they trust them, despite four in five paying a loyalty penalty - if only a low proportion of these customers were informed of this penalty

⁶⁸ Under Option 2, customer data will be downloadable on request. Under Option 3 it may be provided via APIs

via Open Communications, this would constitute a significant benefit.”⁶⁹

However, they can only be informed of the penalty if they actively seek to use Open Comms. For the reasons set out above, few are likely to do so. Further, simply being aware of cheaper offer is not the same as taking it up. Finally, the survey underpinning the figures in this statement date from 2017.⁷⁰ Since then, there have been a raft of interventions to simply switching.

“[E]vidence indicates that around one in ten individuals report that difficulty or complexity in the switching process prevents them from switching. Given that the expected impact of data portability is easier access to user data, improved switching applications and price comparison, it is likely and reasonable to assume that Open Communications will have a positive impact on switching rates”.

Again, as discussed above, making use of Open Comms is actually quite involved, and is likely be particularly challenging for those who find the existing situation complex. The one-ten figure is also from the same 2017 survey cited above, and has little current relevance.

“Open Banking ... appears to have had a positive impact, with a slight uptick in the level of switching activity by 2020, of around 10%.”

As we have seen (page 12) this is a misinterpretation based on looking at data over only a very short period. In fact, it is not clear that Open Banking has had any impact on switching rates at all.

“The Open Banking Implementation Entity (OBIE) estimates aggregate benefits of up to £12bn a year for consumers, and a further £6bn for businesses”

In reality, this is an estimate of the benefit if *all* consumers adopted Open Banking.⁷¹ Therefore it is entirely irrelevant to the question of how many consumers might adopt Open Comms.

Thus in practice, the IA offers no relevant evidence for its assumption, which appears to be highly aggressive based on the portion of customers who are likely to be in a position to use Open Comms.

⁶⁹ Page 46

⁷⁰ Citizens Advice, [The Cost of Loyalty](#), February 2018

⁷¹ See page 13

Regulators in other parts of the world have been much more cautious. For instance, a report published by New Zealand's Commerce Commission said:

“evidence from other jurisdictions [regarding Open Data] is mixed, with limited examples of major successes. In addition, initiatives that essentially go beyond open data (for example, not only providing data, but also providing the results of searches using that data) also see very low rates of switching. This suggests that open data initiatives may not actually resolve low switching rates in a meaningful way”.⁷²

4.5. Greatly exaggerated benefits for TPPs and SMEs

The IA says:

“We expect one of the main beneficiaries of data portability in telecoms to be third party platforms (TPPs). Such businesses will be able to capitalise on newfound data access in order to create new products, diversify or enter the market. ...

If similar benefits [to those in Open Banking] were seen as a result of telecoms open portability, large benefits would accrue to these TPPs.”

However, the data provided via Open Banking is inherently more useful than Open Comms data. Open Banking data can inform credit ratings, feed into accounting systems, support customer budgeting and so on. Open Comms data is simply not as informative – consider how much you can learn about someone from their mobile bill compared to their bank statement. Thus (beyond price comparison websites) Open Comms data is likely to see limited use.

The IA does acknowledge that benefits from Open Comms will be lesser, and describes a report by Frontier as saying:

“Cost savings were also noted to vary across sectors, though communications accrued fewer benefits than banking and finance sectors”.

In fact, the Frontier report is considerably more emphatic, saying that for small and medium firms there might be benefits (on an NPV basis) of £29,450m from banking open data, £5,610 from finance and just £10m from communications.

⁷² Behavioural Insights Team [for Commerce Commission], [Behavioural Biases in Telecommunications](#), May 2019

4.6. Conclusion

The IA has dramatically overstated the current loyalty penalties in both broadband and mobile; has ignored the trendline of ongoing declines due to the many existing interventions in the market; and also greatly overstated the impact that Open Comms may have. Since these errors are multiplicative, its estimates of the benefits of Open Comms are overstated by orders of magnitude.

Against Option 3, the IA has estimated the NPV benefit of increased switching at £258.3m for broadband and £35.7m for mobile, or £294m in total. Simply correcting for the initial overstatement of the loyalty penalty would reduce this to below £150m. A more realistic assessment of the potential impact on switching might reduce it to near-zero (as suggested by the Open Banking data).

5. Costs

5.1. Significant ambiguity in what is being assessed

A difficulty for the IA's assessment of the benefits and costs of Open Comms is that the data to be included is still an issue of great uncertainty. Indeed, it is one of the key questions in the Consultation.

However, depending exactly which data is to be shared, costs (and to a lesser extent benefits) could vary significantly. For example, one potential data point discussed in the Consultation is "the average connection speed over the course of [the customer's] contact". There is no guarantee that mobile operators even monitor connection speed for individual customers, never mind collect the data over the months to enable such a calculation. Nor is there any guarantee that the technology is readily available to capture this data.

Thus if this was a requirement, it could come at substantial cost to operators. This possibility (and similar potential issues for other data types) is not even considered in the IA.

Further, the Impact Assessment considers claimed benefits from data types that are not even mentioned in the Consultation. For instance, the IA says:

"the exact new services and innovation that could be realised by improved [data] portability is uncertain, but new potential services may include: ... advanced comparison tools allow consumers to find the best deal based on factors such as historical usage, location or service quality".⁷³

However, the location of mobile usage⁷⁴ is not a data type considered in the Consultation.

Beyond issues of data to be shared, there are also important operational questions. According to the Consultation:

"Questions such as funding, governance and administration of the scheme, and how to maintain security of the data supplied are important - however, these aspects will be informed by the feedback we receive from this consultation."

⁷³ Page 56

⁷⁴ It is conceivable the IA was meaning location in the sense of home address for fixed broadband, but it would be wrong to attribute any benefit to Open Comms to this. Consumers can (and do) enter their home postcode to provide this information, without needing an open data remedy

However, the answers to these questions will also have major impact on costs.

These various ambiguities as to what is being assessed are a significant issue for the IA's assessment of costs.

5.2. Underestimate of the number of providers directly affected

The IA operates on the assumption that Open Comms would be an obligation on retail providers of telecoms services. The IA refers to:

“a high exposure business base of around 60 firms which will be primarily affected by regulation, covering around 20 internet service providers, 4 Mobile Network Operators, and 35 mobile network virtual operators”⁷⁵

The claim that there are just 20 ISPs is incorrect. It is sourced to uSwitch, 'Broadband deals by provider'. uSwitch is a price comparison website, and such sites tend to cover only part of the market. In particular, they very often don't cover alt-nets. However, there are at least 38 alt-nets offering retail broadband services.⁷⁶ This is in addition to the large number of 'traditional' ISPs. Thus the IA's estimate of 20 ISPs is significantly understated.

5.3. No consideration of upstream impacts

Beyond retail providers, the IA says:

“It is also possible that other telecoms businesses will need to briefly familiarise themselves with the new legislation.”

No consideration of costs triggered for underlying wholesale providers

This greatly understates the impact. Underlying wholesale providers may well be the only source of necessary data for retail providers to meet their Open Comms obligations. For example, it may be the wholesale provider who is in a position to measure and report the reliability or speeds of the underlying line.

There are two cost implications. Firstly, such providers will need to measure and capture this data on a per line basis (which perhaps they were not otherwise doing). Secondly, mechanisms will need to be put in place to share this data with the relevant retail ISPs. There will need to be technical arrangements (such as a new API for the wholesale provider, and integration of this data into the retail provider's systems)

⁷⁵ Page 33

⁷⁶ Communications Chambers research based on operator websites

and legal arrangements (since the retail provider will need to secure and pay for this additional aspect of wholesale service).

Potential foreclosure of valuable innovation

There is potentially an even greater cost than any of these. If participation in the UK wholesale market requires operators to meet a set of Open Comms requirements, it may discourage operators from participating at all.

To take a practical example, consider a UK mobile operator looking to supplement its mobile coverage via roaming onto Starlink in remote areas. (This is what Optus in Australia has already announced). One data point proposed for Open Comms is “the average connection speed over the course of their contact”.

In order to provide this data, the UK MNO would need to know the average speed of the customer’s connection while that customer was on Starlink, and Starlink would have to provide this. However, Starlink may well not measure this today, and if so would have to put systems in place purely to serve this UK customer, for what is likely to be a small volume of traffic. It may simply not be worthwhile financially. Thus Open Comms has the potential to foreclose useful innovation in the market.

Another example is the potential for MNOs to move to speed-based rather than traffic-based pricing (as KPN in the Netherlands has recently announced). However, if Open Comms required the reporting of traffic volumes, MNOs would need to continue to monitor and report traffic – at considerable expense – even though it was no longer relevant to their pricing model. This would materially weaken the business case for such a change.

5.4. Cash costs are uncertain, but very likely to outweigh any switching benefit

The IA acknowledges that costs of Open Communications are highly uncertain:

“[We offer] wide-ranging estimates of costs, and given the limited evidence we do not present a point estimate of costs”.⁷⁷

Some uncertainty is inevitable, given that Open Comms is still ill-defined. Further, IT projects are notoriously subject to cost overruns. However, this represents significant risk for the Open Comms

⁷⁷ Page 31

proposal, particularly since the costs to operators will be fixed (in that they will not depend on uptake of Open Comms), whereas the benefits will very much depend on uptake. There is the potential for great value destruction.

The IA provides three main reference points for the costs of Open Comms: GDPR, pensions dashboards and BT. We take these in turn.

GDPR

The IA cites estimates of the costs of compliance with GDPR from a previous impact assessment.⁷⁸ These figures - £50,600 per year for a 'highly exposed' business, for example - are on their face implausible as an estimate of the costs of Open Comms.

As the IA acknowledges:

“further evidence is needed to cost the gathering and formatting of data, service management and development, API development and authentication, which are likely to be significant.”⁷⁹

Indeed, such costs (not included in the GDPR cost) are likely to represent the very great majority of Open Comms costs. Thus it is not clear why the IA deems the GDPR figures to be relevant evidence.

Pensions dashboard

The IA also refers to data portability in pensions (to enable 'pension dashboards'). It reports an impact assessment estimate of 1-year discounted costs to industry of £245m-£1,480m. The IA notes that there are more companies in the pensions sector than in telecoms, and this may inflate costs.

Once again the IA is using out-of-date data. DWP issued a new impact assessment in June 2023.⁸⁰ While this did not include total discounted costs, using undiscounted figures provided in this new IA, we calculate discounted costs of £720-£1,351m. The lower bound has risen dramatically, both due to upward revisions to the cost to industry, and due to the incorporation of costs to public administration, for regulatory oversight of the scheme, provision of digital architecture and the like.⁸¹

⁷⁸ DCMS, [Data: a new direction - Analysis of expected impact](#), 2021

⁷⁹ Page 34

⁸⁰ DWP, [Pensions Dashboards Impact Assessment \(2023 amending regulations\)](#), 8 June 2023

⁸¹ Note that we have excluded DWP costs, which in part relate to provision of state pension data, since this has no analogue in Open Comms

While the specifics of pensions dashboards are undoubtedly very different than those of Open Comms, even if Open Comms costs were just half the *lower* bound of estimated pensions dashboards costs, it would more than wipe out all the claimed £294m benefit of increased switching. (As we have seen, the IA has anyway greatly overestimated this benefit).

BT

BT, in response to the Ofcom consultation on Open Comms,⁸² suggested implementation costs of £40m-100m, just for itself. This figure excludes any ongoing operational costs. Very roughly we might estimate a lower bound for ten year costs of £50m.

Given that dozens of companies will have to implement Open Comms, the industry cost will be a high multiple of this. Even if it was just six times this lower bound estimate, it would offset entirely the IA's £294m overestimate of switching benefits.

Conclusion

The GDPR figures have no evidentiary value. The pensions dashboard and BT figures strongly suggest that the costs of Open Comms will outweigh any switching benefit.

We also note that the IA omits any mention of BEIS' 2022 estimate of Open Comms cost⁸³ – a central estimate for the one-off cost of £610m and annual costs of £53m.

Finally, all these figures are not actual figures for the cost of open data initiatives, but rather ex-ante estimates. As we have noted, such costs are difficult to forecast. For instance, Open Banking costs greatly outstripped early estimates. The 2014 ODI/Fingleton report for HMT and the Cabinet Office said:

“Non-bank experts that we spoke to said consistently that the cost of implementing data access is unlikely to surpass £1m for a bank. Banks were less confident about likely costs, but thought that the figure would be much higher”.⁸⁴

In reality, Open Banking costs were in the region of £1.5bn.

Thus the IA's reliance on various forecasts as its reference points further increases the risk in the impact assessment.

⁸² BT, [Open Communications - BT Consultation Response](#), 10 February 2021

⁸³ BEIS, [Final stage Impact Assessment – Smart Data primary legislation](#), 18 July 2022

⁸⁴ Open Data Institute and Fingleton Associates, [Data Sharing and Open Data for Banks: A report for HM Treasury and Cabinet Office](#), September 2014

5.5. No consideration of opportunity costs from diversion of IT resources

The IA considers the costs of Open Comms to providers narrowly, in cash terms. However, much of the demand imposed on providers will be for IT resource, to develop and maintain systems. Skilled IT personnel familiar with a particular operator's existing systems are scarce and precious. Diverting them to Open Comms will inevitably delay other projects, representing a opportunity cost in addition to the cash costs.

A number of other projects driven by policy or regulatory initiatives which call on IT resource are already in flight, such as gaining-provider-led switching and the removal of Huawei equipment from the network

More generally, these scarce resources are used in virtually all innovation in the sector, so diverting them to Open Comms comes at the expense of new products and features. Far from supporting innovation, Open Comms may in fact delay it.

5.6. IA assumes away the waterbed effect

Given pressures on margins in the telecoms sector, there is a high probability that price reductions in one area may lead to price increases in another – the 'waterbed effect'.

The IA simply assumes this away:

“There is a chance that if a large proportion of customers begin switching, that providers may be incentivised to increase prices for in-contract customers to recover lost revenue. This potential 'waterbed' effect is considered to be minor, if at all, due to the relatively small proportion of new switchers assumed.”⁸⁵

These likely price increases are not factored into the IA's analysis. However, the IA's logic is flawed. The issue is not whether the waterbed effect is large relative to total operator revenues, but whether it is large relative to any savings for certain customers due to a reduction in loyalty penalty. If so, it may substantially or entirely offset the IA's calculated benefit.

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It is certainly Ofcom's view that the waterbed effect may be material. In its 2020 review of broadband pricing, it wrote:

"Other things equal, the waterbed effect is larger the more competitive the market. In that regard, we note there has not been a significant market power finding in retail broadband (even the largest individual provider, BT, has less than 40% of customers) and all providers compete hard to attract new customers ... and [r]eports by independent analysts have indicated that competition in retail broadband is likely to remain intense."⁸⁶

5.7. No consideration of privacy impacts

Privacy is a key issue for Open Comms, but is simply not mentioned in the IA. It is important, since broadband and mobile are often household purchases, and thus Open Comms has the potential to breach the privacy of non-payer individuals in the household. For example, the IA suggests location data might be shared under Open Comms. This would allow (say) a bill-paying spouse to see the location history of their partner.

Conceivably this issue could be addressed by texting each mobile number associated with an account to seek permission, but this would add greatly to the friction involved in using Open Comms, and might put the non-paying spouse in the awkward position of having to explain why they weren't willing to share this data.

Thus once privacy issues are factored in, either the costs of Open Comms are likely to increase or (if relevant data points are dropped) the benefits will decrease.

5.8. Conclusion

Despite significant ambiguity in the IA's definition of Open Comms, the evidence provided to-date suggests that cash costs to businesses are likely to be substantial and greater than any 'loyalty penalty' benefit to consumers.

There are other important costs in addition. Businesses will carry opportunity costs due to the loss of scarce IT resource, and in-contract consumers are likely to see increased pricing due to the waterbed effect.

⁸⁶ Ofcom, [Helping consumers get better deals: Review of pricing practices in fixed broadband](#), 28 July 2020

6. Conclusion

The IA starts from a false premise – that there is a lack of competition in the market, and consumers are suffering from unfair practices. As Ofcom itself has said, the market is competitive, and what the IA perceives as unfair practices are common and widely accepted across the economy.

In fact, the telecoms sector is providing extraordinary benefits for consumers, with substantial investment to upgrade infrastructure combined with rapidly falling prices. A range of voluntary commitments and regulatory interventions provide further protection for consumers.

Contrary to the IA's assertions, the telecoms sector is performing well in comparison to banking, energy and other sectors.

Against this background, the need for another intrusive intervention in the form of Open Comms is not clear. Nor is it clear how Open Comms would help customers. Much of the covered data is either already readily available, or not particularly relevant to the consumer decision. Further, Open Comms can only be useful if used, but there are numerous reasons to suspect uptake will be low.

The IA estimates substantial benefits, but does so based on using historic figures from Ofcom when more recent Ofcom data suggests the loyalty penalty has already fallen substantially. It also assumes substantial switching as a result of Open Comms, when bank switching data suggests little or no impact.

Even on the IA's own cost figures, costs are likely to outstrip credible estimates of consumer benefit, and the IA has set aside some substantial categories of costs.

Thus the IA has not made the case that Open Comms is a beneficial intervention.