



Smart Data Review

BT's Response to BEIS consultation

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Executive summary

In our sector, we agree that a smart data initiative could be a useful tool to help people engage differently in the market to understand the suitability of different products based on a holistic set of factors that represent their requirements, not just price.

We offer a range of different services to our customers – fixed voice; broadband; mobile voice and data; and pay-TV. Each of these services can be tailored to meet the customer's requirements in a variety of different ways, with variants in speed, mobile data packages, and devices to name just a few.

Fierce competition between communications providers drives us to continue to innovate, invest in our network and technology, and offer differentiated services in order to attract and retain customers. This competition is good for consumers, who benefit from lower prices and the wider choice of products and services.

Our sector is heavily regulated. Consumers are protected by a range of regulatory initiatives, including specific conditions in Ofcom's General Conditions of Entitlement¹ which are the regulatory conditions that all providers of electronic communications networks and services must comply with if they want to provide services in the UK. These rules regulate matters such as contract duration, transparency of terms, fairness of termination procedures and billing integrity.

With such a broad range of products and services on offer, it's important that consumers are able to easily identify what's available and how suitable it would be for them. The existing comparison websites in the market tend to focus primarily on price, in part because they are not able to compare what's available in the market with the customer's existing package (e.g. a like-for-like on speed, data, content, coverage, quality of service etc.). We think that smart data could empower consumers and enable them to make comparisons more easily.

There are valuable lessons that we can learn about the use of smart data in the communications sector from what has already been introduced in other sectors, such as MiData; the Pensions Dashboard and Open Banking.

However, it's important to recognise that the way in which people use data in the communications sector, and the way in which it is regulated, is different to utilities and financial services.

For example, although people use our products and services every day (and can have near-instant access to information about their data usage and billing via the MyBT and MyEE apps), they do not tend to transact with communications providers as frequently as with their bank.²

We see the potential consumer benefits of introducing a smart data initiative in the communications sector. It could provide even greater transparency to consumers about the

¹ Ofcom General Conditions of Entitlement: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>

² For those who wish to have near-instant access to information about data usage and billing, we offer this to our customers via the MyBT and MyEE apps.

products and services that they use. It could also be a useful engagement tool for consumers, including vulnerable customers and the people and organisations who support them.

However, the Government seems to be suggesting that a similar intervention to Open Banking would be the best way forward. In our opinion, this won't deliver the right consumer outcomes. Introducing a system which reduces competition to only being on price when our sector is characterised by technological, product and customer service innovation that has hugely benefited customers and is an important element of the competitive dynamic could have serious negative consequences.

Furthermore, Open Banking was mandated by the Competition and Markets Authority (CMA) after a market investigation showed that low levels of competition and innovation in banking and high barriers of entry had resulted in expensive retail banking products and often poor service quality. These issues have not been identified in the communications sector.

We are particularly concerned about the proposal to enable automatic switching, facilitated by third party providers (TPPs), in the communications sector. The benefits of this intervention in telecoms have not been set out, and they carry significant risks. It could even put vulnerable customers at risk of losing an essential service.

We consider that a more effective means of delivering the smart data initiative would be for industry, supported by Ofcom, to develop a solution which meets the Government's smart data goals in a way which works for consumers in the communications sector.

Ofcom, rather than a new Smart Data Function, could oversee the development and governance of a smart data initiative for the communications sector, including setting and monitoring technology and security standards.

To ensure cross-sectoral alignment where appropriate, Ofcom could share best practice and ensure that technological standards are interoperable via co-ordination with other sectoral regulators and the UK Regulators Network (UKRN).

This review comes at a time when there are more than 20 recent or ongoing initiatives by Government or regulatory bodies in relation to digital regulation more broadly. These cover issues such as digital competition, investment, consumer fairness and protection. We encourage the Government to be mindful of the wider proposed changes in the regulatory landscape and structure, so as to ensure that the framework for any smart data initiatives contribute towards an overall regulatory regime for digital that is effective, clear and fair.

1 Introduction

- 1.1 We welcome the Government's ambition for an economy where consumers' data works for them. At BT, we too want to see consumers able to use their data to make informed decisions about the best products and services, and for it to be as easy as possible for people to engage in the market.
- 1.2 Innovation is key to what we do at BT, and in our sector generally. It's how we compete across our three consumer brands (BT, EE and Plusnet), and attract and retain our customers.
- 1.3 We welcome the Government's support for a smart data initiative that empowers customers and improves engagement in the market. But it must be done in a way that reflects how people use communications services.
- 1.4 The retail markets we operate in are fiercely competitive. Prices are low, innovation is constant and customer satisfaction is high. This is clear from Ofcom data.
- 1.5 Average monthly household spend on communications fell by 8.45% (from £91.27 in 2018 to £83.56 in 2019) while monthly mobile data use increased by 37% in 2018 and by 26% in fixed broadband.³
- 1.6 Ofcom's latest Customer Satisfaction Tracker Survey found that 83% of fixed broadband consumers and 93% of mobile customers were fairly or very satisfied with their overall service.⁴ The UK's satisfaction levels compare favourably to other large European countries (namely France, Germany, Italy and Spain).⁵
- 1.7 The telecommunications industry is making significant investments in delivering the digital communications infrastructure for the UK, improving connectivity for all consumers and benefitting society. A stable and predictable regulatory environment that promotes effective competition whilst ensuring that the most vulnerable customers are protected is important for investors' confidence in the market.
- 1.8 At a retail level, we're constantly investing in the products and services to provide the best possible experience for our customers. For example, BT Whole Home WiFi, which delivers seamless, high-speed Wi-Fi all around the home with discs that automatically connect everyone to the fastest, strongest signal.
- 1.9 Smart data offers greater transparency to customers about their communications services and it could be a potential tool to make it easier to engage in the market.
- 1.10 However the way in which people use communications services is quite different to utilities. In the communications sector, people's choices differ to reflect their different needs and requirements. Some people want the fastest broadband speeds available;

³ Ofcom Communications Market Report 2019 <https://www.ofcom.org.uk/research-and-data/multi-sector-research/cmr/cmr-2019> and Ofcom: Connected Nations reports (<https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research>)

⁴ Ofcom Satisfaction Tracker Survey 2019: https://www.ofcom.org.uk/data/assets/pdf_file/0022/145525/comparing-service-quality-2018.pdf

⁵ Ofcom International Communications Market Report 2017, 18 December 2017, p.82, figure 45, https://www.ofcom.org.uk/data/assets/pdf_file/0032/108896/icmr-2017.pdf

others are happy with a lower speed at a cheaper price. Some people want the latest handset with 5G connectivity; others prefer to continue using their existing handset with 3G data and voice. Some people want to watch Premier League football; others prefer to watch free-to-air television. Some customers are happy to engage with their service provider online; others prefer UK call centres or instore support.

- 1.11 We are interested in developing a smart data solution that could empower consumers and enable them to more easily compare communications services on a meaningful and personal like-for-like basis. Comparisons could be made between different communications packages on a wider range of relevant metrics than those currently included on most comparison sites, focussing on what matters most to each customer, not just price.
- 1.12 They should apply to all elements of communications service bundles - fixed and mobile voice, data and pay-TV.
- 1.13 It also must consider the way in which customers interact with communications services, and the changes required in order for them to be protected in the switching process.
- 1.14 The consultation refers to the potential benefits of introducing smart data in regulated markets. We agree with some of these, but disagree with others.
- 1.15 We see real value in smart data initiatives which could be introduced in the communications sector to:
 - Use data to help those on irregular incomes understand their likely outgoings and plan better for the future;
 - Act as advanced comparison tools which allow consumers to find the best deal based on additional factors such as historical usage, location or service quality, and compare prospective deals with their current deal; and
 - Understand what parts of a bundle they are using and see whether they are paying for elements that they are not using and what appropriate bundles are available.
- 1.16 We already offer different ways in which customers can monitor their household bills and usage, for example, via the MyBT or MyEE apps, or online billing.
- 1.17 As we have noted above, it might not always be possible to compare “better deals” between providers because there could be multiple reasons why switching provider at that time would not be beneficial. “Better” means different things to different people and it’s difficult to adopt a metric to measure this.
- 1.18 There are many reasons why automatic switching services that enable consumers to set their preferences and let the service switch them automatically if a “better” deal appears, would not be in the customer’s interest in telecoms.
- 1.19 As noted above, there are many different associated parts of a communications service which make it difficult to compare packages on a like-for-like basis. Price is only one component of what matters to a customer when choosing a communications bundle and switching services could result in a change to their broadband speed, or the level

of mobile coverage which they receive. Physical changes might also be required in order to switch telecoms provider – a new router, a change to wiring (into and/or in-home) if switching between network providers, or a new set-top box.

- 1.20 Furthermore, a key difference between telecoms and utilities is that in telecoms, there is a user-device (mobile, tablet, home router, set-top box or smart TV) at the end of the connectivity that people interact with. This matters greatly to customers, and communications providers optimise devices on their networks to compete and to offer the best customer experience.
- 1.21 When a customer switches between communications providers, they have the opportunity to find out what this will mean for their device(s) and for their specific requirements. For example, what speed of broadband they will get, or what their mobile coverage will be? This information will be provided by their new provider before they decide to switch. Automatic switching removes this important step in the process, which could lead to customer confusion, bill shock, or devices no longer working.
- 1.22 The risks of introducing automatic switching must not be underestimated. They far outweigh any potential benefits.
- 1.23 Taking all this into account, whilst we welcome the Government's initiative to consider whether smart data can be used to improve the consumer experience, we strongly urge that caution should be taken as to how any initiatives are introduced.
- 1.24 Whilst there are lessons that we can learn in telecoms from initiatives such as MiData, the Pensions Dashboard and Open Banking – these are all initiatives that have been designed for a specific market. They cannot be lifted across to telecoms which is a different market where customers use connectivity differently than they use energy and financial services.
- 1.25 As a next step, we propose that communications providers come together, supported by Ofcom, to consider how smart data might be introduced in our sector in a way that is proportionate and brings the maximum benefit to customers.
- 1.26 We invite the Government to support and work with industry and Ofcom to develop and test concepts to ensure that this works and can be introduced in a timely manner.

2 Enabling data driven innovation in consumer markets

(Q1) Do you agree with the proposed objectives and expected benefits of Open Communications? Are there any benefits or risks that we should consider?

We agree that smart data could be used to empower consumers

2.1 We support the government’s ambitions to use smart data to stimulate innovation and improve outcomes for consumers in the communications market. However, it must be done in a way that reflects how customers consume and engage with services in each particular market and the competitive dynamic in that market. To do otherwise risks undermining rather than enhancing competition and risks consumers ending up on deals that are worse for them.

What works in one sector will not necessarily work in another

2.2 Regulated markets – utilities, communications, rail and financial services – provide services that people often consider essential.

2.3 However, there are many important differences between each sector. Each is regulated in a different way, reflecting their different characteristics. There are also big differences in how people engage with products and services in each sector, and the value which they place on them.

2.4 This flows through into both the intensity of competition and the nature of the competitive dynamic in different sectors. Service is more binary in utilities (where the service either works or doesn’t work, making price the most important point of differentiation between providers) than in telecoms, where speeds, coverage etc. also play an important role.

We disagree with the scale and scope of the so-called “loyalty penalty”

2.5 Smart data is listed in the consultation document as being “especially beneficial in the communications market given the scale of the loyalty penalty.” This is a reference to the super-complaint raised by Citizens Advice and subsequent report published by the CMA.⁶ We do not agree with this analysis. Ofcom has examined tens of millions of customers’ tariffs and has been clear that the phrase “loyalty penalty” doesn’t capture the complexities of the market. Ofcom CEO Sharon White recently said:

“...the wider market is more complicated. Some broadband companies charge more to long-term customers who sign a new deal. Others are offering them their best deals. In mobile, the situation is different again. Many long-term customers are actually getting better deals than new customers. For people who pay monthly for their mobile handset, more than a quarter would pay more if they switched to a similar SIM-only deal tomorrow”⁷

⁶ CMA report on Tackling the Loyalty Penalty, December 2018: <https://www.gov.uk/government/publications/tackling-the-loyalty-penalty/tackling-the-loyalty-penalty>

⁷ Speech by Sharon White at Ofcom/Which? Fairness event, 3 June 2019, <https://www.ofcom.org.uk/about-ofcom/latest/media/speeches/2019/fairness-must-come-first>

- 2.6 The telecoms market currently exhibits a high level of customer engagement reflecting the gains from engaging, the variety of triggers which prompt engagement (e.g. handset upgrades) and the existing tools for understanding usage and making accurate comparisons. These, together with improvements to switching processes have lowered barriers to search and switching.
- 2.7 Ofcom data shows that at least a fifth of consumers in each market (fixed voice and broadband; mobile and pay-TV), except stand-alone landline, have made a change to their service and/or provider in the last 12 months.⁸
- 2.8 By comparison in energy, a CMA survey found that 56% of respondents had never switched supplier, did not know it was possible or did not know if they had done so; and 72% had never switched tariff with an existing supplier, did not know it was possible, or did not know if they had done so.⁹
- 2.9 In banking, the CMA found that “a substantial proportion of customers are paying above-average prices for below-average service quality which suggests these customers would be better off switching product.” The CMA report also states that “while some banks offering lower average prices and/or better quality services have been gaining market share, this was at a slow pace.”¹⁰
- 2.10 In telecoms, we (and other operators) seek to enhance customer engagement because customers are more satisfied and loyal if they choose the services which best suit their needs. This provides an opportunity to deepen customer relationships and reduce churn (consistent with normal competitive dynamics).
- 2.11 The loyalty shown by satisfied customers should not, therefore, be confused with disengagement – customers who are happy with their service and their supplier may not be very active in regularly shopping around. Nor should metrics like tenure be misinterpreted given that long tenure customers may nonetheless be engaged (e.g. by switching tariffs to get the best value based on usage needs or by negotiating discounts).
- 2.12 When asked whether there should be just one price for everyone, Sharon White said that that: *“could mean new customers end up paying much more...worse, it would mean that no new companies could come in and undercut on price. These are serious, complex issues, and we will act on what the evidence tells us. Where people are losing out, it’s usually not because they’ve stayed with their provider for a long time. It’s because they haven’t engaged with them for a long time.”*¹¹
- 2.13 Taking Ofcom’s views into account, and with our knowledge of how consumers engage with communications services, we strongly believe that the best use of smart data in

⁸ Ofcom Access and Inclusion Report, 2018: https://www.ofcom.org.uk/_data/assets/pdf_file/0018/132912/Access-and-Inclusion-report-2018.pdf

⁹ CMA Energy Market Investigation, 2016:

<https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

¹⁰ CMA Retail Banking Market Investigation, 2016:

<https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>

¹¹ Speech by Sharon White at Ofcom/Which? Fairness event, 3 June 2019, <https://www.ofcom.org.uk/about-ofcom/latest/media/speeches/2019/fairness-must-come-first>

the communications sector is to facilitate another means of engaging with communications products and services, rather than forcing consumers to move between suppliers, which carries significant risks and which doesn't address Ofcom's analysis of how consumers can get the best deal.

- 2.14 We do not support the scale and scope of potential consumer harm as set out in the loyalty penalty and would urge government to give careful consideration to Ofcom's analysis around price differentiation as the CMA also stated that "the loyalty penalty estimates we present should not be interpreted as a measure of the extent to which prices are currently too high overall".¹²
- 2.15 Furthermore, we do not agree with the methodology which Citizens Advice used to calculate the so-called loyalty penalty. For example in mobile, it took the difference between current high-end handset subsidy contracts and the equivalent sim only contract and then multiplied that on the number of handset customers who are out of contract. That is not an appropriate calculation to make.
- 2.16 Ofcom has found that "it is an over-implication to assume that all out-of-contract customers are paying too much. This is a complex issue, with the average figures masking considerable variations in the impact on different groups of out-of-contract customers". Ofcom's report cited that a material proportion of bundled customers (27%, around 600k customers) would be better off remaining on their current deal. These customers tend to be those that have been out of contract for longer. Ofcom concluded that it would actually cost these customers an average of £6/month extra if they switched to an equivalent sim-only contract with their provider.¹³
- 2.17 For this and other reasons, we strongly dispute the figure of almost £1bn loyalty penalty identified by Citizens Advice.
- 2.18 The concerns raised by Citizens Advice's super-complaint to the CMA on the loyalty penalty stated that customers who remain with their provider for a long time beyond their minimum contract period may face unsatisfactory outcomes and differential pricing as opposed to customers who shop around. It also called out that it may be difficult for vulnerable customers to engage in telecommunications markets.
- 2.19 We appreciate that in policy terms, it may be desirable for there to equal outcomes for all customers, as well as equal opportunity to engage. However in practice, price differentiation is a natural outcome of competitive markets. It is wrong to characterise differential pricing as evidence of broken markets.
- 2.20 The super-complaint talks about the loyalty penalty but the other side of the coin is the 'switching prize' or 'engagement dividend' available to consumers who do engage with the products and services in the market and shop around. Without incentives to engage with the market, competition and consumer engagement will inevitably weaken.
- 2.21 All consumers (including both engaged and unengaged) benefit from competition,

¹² CMA response to super-complaint made by Citizens Advice, 2018:

https://assets.publishing.service.gov.uk/media/5c194665e5274a4685bfba/respose_to_super_complaint_pdf.pdf.

¹³ Ofcom Mobile Handset Credit statement: https://www.ofcom.org.uk/data/assets/pdf_file/0037/157699/statement-and-consultation-mobile-handsets.pdf

which drives efficiency and innovation. But marginal customers (i.e. those who engage most) do naturally benefit most.

- 2.22 As set out by the CMA in its response to the loyalty penalty super-complaint, if regulators were to intervene to flatten price differences, then engaged customers, including vulnerable customers, would end up paying more.¹⁴

Consumers are well-protected in the communications sector

- 2.23 Consumers have a high degree of protection through general consumer law, primarily the Consumer Rights Act 2015, and through specific sectoral regulation enforced by Ofcom. These rules are primarily found in Ofcom's General Conditions of Entitlement with reference to the Communications Act 2003. These rules regulate matters such as contract duration, transparency of terms, fairness of termination procedures and billing integrity.
- 2.24 Ofcom has introduced additional consumer protection initiatives since the CMA review took place last year, such as enabling customers to gain their PAC code to be able to retain their mobile phone number when switching provider without requiring the customer to contact the provider that they are leaving.¹⁵
- 2.25 Ofcom is also a very active regulator when it comes to publishing data about quality of service and customer complaints about communications providers.¹⁶

We agree with the Government that smart data could empower consumers and enable them to more easily compare communications services on a like-for-like basis

- 2.26 Consumers need to be able to compare communications deals on non-price characteristics such as service quality and speed/coverage in their area. Smart data could play an important role in helping consumers to get the best deal for them.
- 2.27 We also agree that smart data could help support consumers to engage in the market and enjoy the benefits of mobile and broadband services.
- 2.28 Finally, we agree that a smart data service in our sector should require communications providers to share customer and product data covering mobile, fixed phone, broadband and pay-TV services, including bundled services (subject to competition and data protection laws).
- 2.29 However any smart data initiative needs to be designed in a way that works well for and protects consumers. An initiative which removes the direct engagement between a customer and supplier is extremely risky. We do not want to return to a situation in which customers suffer from "slamming". This is the most severe form of mis-selling, when a customer's service is transferred from one communications provider to another without their knowledge of consent. Ofcom has introduced tough rules to clamp down on slamming. It's important that smart data does not create a situation in which this

¹⁴ CMA response to super-complaint made by Citizens Advice, 2018:

https://www.ofcom.org.uk/_data/assets/pdf_file/0037/157699/statement-and-consultation-mobile-handsets.pdf

¹⁵ <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/end-it-with-a-text-mobile-switching>

¹⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/145525/comparing-service-quality-2018.pdf
and <https://www.ofcom.org.uk/research-and-data/multi-sector-research/telecoms-complaints-data>

becomes more prevalent again.

We do not agree that the current draft of the Open Communications proposal is the best initiative to deliver on these goals

- 2.30 We understand the Government's ambition to enable third party providers to access communications data via open data formats such as APIs.
- 2.31 However, this must be done with customer consent in a way that is transparent and genuinely benefits the customer rather than the third party platform.
- 2.32 As currently drafted, the Open Communications proposal requires significant regulatory, legal and technical changes to the current market, and leaves many of the issues around technical feasibility and authentication, liability and redress out.
- 2.33 There is also a significant risk that, rather than promoting innovation from new entrants in the market as TPPs, Open Communications could enable very large corporations with an existing customer base to enter the market at scale. TPPs can and do provide useful services, but they can also themselves acquire and benefit from market power, as identified in the recent Furman Review.
- 2.34 Introducing a smart data initiative which assumes that TPPs will always act in the best interest of consumers, without considering what their business models will be and how they will be incentivised to promote different products and services, carries several risks. For example, it could decrease rather than increase market competition overall, potentially creating larger cross-sector bundles from which customers find it difficult to switch. This is particularly the case for digital firms that can leverage their datasets in digital markets and combine them with data acquired through smart data in a manner that is not replicable by existing communications companies.
- 2.35 Communications companies that are not active in digital markets (such as search, social media or online shopping) cannot compete effectively if digital firms are allowed to combine smart data with their own data, which is not currently open to third parties. The smart data initiative is therefore contrary to the initiatives in other sections of Government, such as the proposed role of the Digital Markets Unit in facilitating effective competition in digital markets.

We are concerned about the negative outcomes of automatic switching via Open Communications

- 2.36 It is not in consumers' interests to introduce a solution which enables automatic switching between communications suppliers.
- 2.37 Whilst this might be beneficial in markets with more homogenous products and services, such as in energy, it does not account for the benefits consumers get from being able to tailor packages with many variables to the one that best meets their needs when it comes to broadband, mobile and TV services.
- 2.38 Automatic switching in our sector runs the risk of consumers not getting the right deal for them as it would not enable each customer to tailor what it wants to fit its needs at that time. At worst, it could result in loss of access to essential communications services,

or content which customers most want.

- 2.39 Automatic switching would not focus on all of the factors that people consider when they make purchasing decisions about communications services.
- 2.40 Ofcom data shows that when purchasing two or more communications service as part of a bundle, price is important, but my no means the only factor that people consider.¹⁷
- 2.41 In mobile, 65% of people consider price as a factor. Coverage is cited as being equally as important. Other factors that are important to customers include mobile data; call minutes; whether there is an upfront cost; the handset.
- 2.42 When purchasing bundles of two or more communications services (e.g. fixed voice and broadband, or fixed voice broadband and pay-TV), people consider factors such as what they are likely to use the internet service for and what types of calls they are likely to make, to inform what broadband speed they're likely to need and whether or not they would like to purchase calling plans.
- 2.43 There are also practical reasons as to why automatic switching wouldn't work as switching between different network infrastructure often requires a home visit from an engineer, and even switching between operators on the same network usually requires a new broadband router and/or set top box.

(Q2) What is the most effective approach to implementation to ensure the success of Open Communications in enabling innovation and delivering the best consumer outcomes?

We think the best way of delivering this initiative is via a voluntary industry solution

- 2.44 We have shared our thoughts as to how a smart data initiative might work in the communications market, with the Government, Ofcom and industry.
- 2.45 Now that the Government has expressed an interest in delivering this initiative, we consider that the most effective means of delivering the best outcome for telecoms customers would be via a voluntary industry solution, supported by Ofcom.
- 2.46 Developing a solution that accounts for the many different product and service offerings within our industry will be complex. As companies that already have a lot of experience in product, technology and service innovation, we are well-placed to utilise our creativity to develop a solution that works well for customers. The smart data solution that would work best in the communications market is more complex than initiatives that work in more utility-style markets, and as such, this sort of creativity is important in getting the right solution.
- 2.47 Should there be support for this, we will continue to engage with relevant Officials, Ofcom, the Open Data Institute and others in the sector to determine what a voluntary

¹⁷ Ofcom Consumer Engagement Quantitative Research 2018: <https://www.ofcom.org.uk/research-and-data/multi-sector-research/general-communications/consumer-engagement-with-communication-services>

solution of this kind would entail.

(Q3) Are there any further actions we should take to enable consumers to benefit from Smart Data in regulated markets?

2.48 Our focus is on how smart data could work to deliver good outcomes for consumers in the markets in which we operate. However, we welcome the opportunity to learn from initiatives in other sectors whilst appreciating the differences in how people engage with communications services.

(Q4) In which other markets, outside of the regulated and digital markets, would there be the greatest benefits from Smart Data initiatives? Please explain your reasoning.

2.49 We do not have a view as to in which other markets, outside of the regulated and digital markets, there would be greatest benefit from smart data initiatives.

2.50 However, as we noted in our response to the Digital Competition Review, if as a result of the increasing prevalence of smart data initiatives, we face increasing competition in digital markets, then existing ex-ante regulation in telecoms markets may need to adapt to take account of the growth of digital competition.¹⁸

(Q5) What other roles might industry find it useful for Government to perform in addition to it acting as a facilitator for Smart Data?

2.51 We think that the Government's role should be to encourage and enable industry and sectoral regulators to develop frameworks and structures for smart data initiatives that deliver good outcomes for consumers in relevant markets. These frameworks should be simple and not too prescriptive.

2.52 It is also important that the incentives for each of the players to be considered for any smart data initiatives, including what the business models for the TPPs using the data would be.

2.53 In setting up frameworks, the Government and sectoral regulators should join together the different bits of relevant legislation and regulation. It would not be a good outcome if smart data initiatives leave data holders such as communications providers with risks under existing rules such as GDPR.

(Q6) Do you agree that we should establish a cross-sector Smart Data Function with the proposed responsibilities set out above?

We do not think that a new central Smart Data Function should be established

2.54 Whilst we agree that it would be useful to co-ordinate standards and share information between sectors about how smart data is used in their market, we think that sectoral regulators are best placed to ensure that smart data initiatives work in their sector,

¹⁸<https://www.btplc.com/Thegroup/Policyandregulation/downloadcentre/2018/DigitalCompetitionReview/BTResponsetoGovernmentDigitalCompetitionReview181214.pdf>

especially for those in vulnerable circumstances.

- 2.55 Expertise and ideas could be shared between sectoral regulators as part of the work of the UK Regulators Network so as to ensure that the smart data initiatives are consistent with each other and potentially interoperable if there is consumer demand for them to become so in the future. For example, it could share learnings between sectors and ensure consistency of technical standards.

The initial priority of sectoral regulators should be to support the development of smart data initiatives that work well in each of their markets

- 2.56 Ofcom, and other sectoral regulators, should focus initially on building effective smart data initiatives in each of the relevant markets first and ensuring that they deliver the right consumer outcomes. Only then will consumers trust the initiatives and be willing to engage with third party providers.
- 2.57 This would require significant work, including facilitating industry agreements on which metrics should be included in smart data initiatives; establishing the governance framework and the technical standards for how this information can be shared between providers; and overseeing the use of data by third party providers, once their business models are better understood.

(Q7) What would be the best form for the Smart Data Function to take? Should it be, for example, a new body, part of an existing body, or in some other form?

The duties of the Smart Data Function should sit within each sectoral regulator

- 2.58 We do not think that a new Smart Data Function should be established. Rather the Government should ensure that sectoral regulators have the necessary powers to introduce regulations and Codes of Practice in this area as appropriate and that coordination and learning should take place across sectors through UKRN.

(Q8) How can we ensure that the costs of the Smart Data initiatives are shared fairly between the participating businesses?

The costs of running smart data initiatives should be shared between suppliers and TPPs

- 2.59 The cost of providing data via APIs should be paid for by whoever uses the data, including any TPPs that seek to build new business models based on the data that would be made available.
- 2.60 The customer will continue to benefit from a model which ensures that competition remains strong and the costs of funding the initiative aren't directly or indirectly passed to the customer.

There are several models that could be used to ensure that the costs of the smart data initiatives are fairly shared between the participating businesses

- 2.61 If an accreditation regime managed by Ofcom is considered appropriate for TPPs wishing to use data about communications services, one model could be a for a fee to apply for accreditation as a TPP, or for the TPP to be required to pay to access richer or

smarter data.

- 2.62 Under this model, once accredited, anyone using the smart data initiative could be charged an annual fee which would fund the costs of maintaining the TPP register and providing advice on data and security standards.

3 Using data and technology to help vulnerable customers

(Q9) What other actions could the Government or regulators take to support the use of data and innovative services to improve outcomes for vulnerable customers?

We want to ensure that everyone can access the benefits of being connected

- 3.1 As noted in the consultation document, some vulnerable people do not have access to the internet or a smartphone, or they lack trust in unfamiliar services.
- 3.2 We are working to address this. We support those who are financially vulnerable for example with the BT Basic service. Low-cost mobile phone packages and pay-as-you-go options are available widely in the market at very affordable prices.
- 3.3 We also provide additional customers service support via dedicated teams of support agents to customers who have identified themselves as being vulnerable.
- 3.4 We recognise there is still more we can do and have formed a working group with the other main providers to share views on best practice and ways to improve our support for customers who experience vulnerable circumstances.

There is no one size fits all approach to vulnerability, nor is there a common definition across sectors

- 3.5 Whilst no one would disagree that vulnerable customers should receive extra help where appropriate and that they should not be taken advantage of, it is difficult to find a common definition of what is meant by vulnerability. Different regulators, the Government, Citizens Advice etc. have all published information about helping vulnerable customers, but there is no common definition.
- 3.6 We can all recognise vulnerability when we see it in individuals that we meet or know, but when starting from a large database of millions of customers, the best way of ensuring that we classify vulnerability accurately and with appropriate care is through self-identification. If a customer tells us that they are vulnerable for a particular reason, we can seek their consent to record this so that we can offer them the right level of care and support.

We agree that data and technology could help vulnerable customers, but this should reflect how customers engage with services in each sector

- 3.7 When assessing how smart data initiatives can benefit customers who have identified themselves as being vulnerable, it is important that the way in which people engage with products and services in that sector are considered. An initiative that supports vulnerable customers in one sector could have an adverse effect in another.
- 3.8 For example, whereas there might be benefits to vulnerable customers of automatic switching services in energy where the only material differential between services is price, applying this initiative in telecoms could have an adverse effect, potentially cutting off a customer's broadband service if they no longer have the right router or in-home wiring set-up. They might find that they can no longer access their favourite TV channels, or that their mobile handset does not work or that their phone number has

changed because it wasn't ported properly. Or they may simply find themselves on a package that does not reflect their future priorities, because that package was more expensive given their historic usage.

- 3.9 We do understand that there are some people who consider themselves to be vulnerable who would not be comfortable using smart data services. For this reason, we agree that smart data initiatives could support provide support by enabling trusted third parties to use smart data on their behalf. We are committed to considering how charities, consumer organisations, carers and those with Power of Attorney for a vulnerable person could use a smart data communications solution on their behalf.

We are not yet ready for data sharing between providers

- 3.10 Whilst in principle we agree that there is likely to be benefit in sharing data on vulnerable customers between communications providers and potentially with different sectors, this is a longer-term ambition.

- 3.11 We have implemented the requirements of General Condition C5¹⁹ and now the industry and Ofcom is working together to go further and put best practice guidance in place. But we think that it is too early to start sharing information such as vulnerability flags between providers at this stage.

- 3.12 This is a complicated area as it is important that personal sensitive information such as this is handled sensitively, with the appropriate customer awareness and consent, and that it is not used in a way that could have an adverse impact on the customer, in compliance with applicable competition, consumer and data protection laws.

- 3.13 Furthermore, the incentives for sharing information between providers must be right. If vulnerability flags have a bearing on a customer's pricing (e.g. if it entitles the customer to a discount), it risks distorting the incentives both for the provider and the customer to record accurate flags. Therefore vulnerability flags under General Condition C5 should be about how customers are treated, not what price they pay.

We support the creation of the Vulnerable Consumer Challenge

- 3.14 At BT we are committed to supporting vulnerable customers as well as we can. Since 2011, we have worked with AbilityNet to run the Tech4Good Awards²⁰. The aim is to recognise organisations and individuals who use digital technology to improve the lives of others and make the world a better place.

- 3.15 We welcome the Government's proposal to create a Vulnerable Consumer Challenge to bring together innovators, charities and regulated businesses to stimulate the development and deployment of innovative, data-driven technologies that improve outcomes for vulnerable consumers. It fits well with existing initiatives such as Tech4Good and Open Banking for Good, which is cited as an example in the consultation

¹⁹ This condition aims to ensure that communications providers give sufficient consideration to the particular needs of people with disabilities and people whose circumstances may make them vulnerable:

https://www.ofcom.org.uk/data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

²⁰ <https://www.tech4goodawards.com/about/>

document.

Sectoral regulators can ensure that smart data initiatives work for all customers by moving towards more of an outcomes-based model of regulation

- 3.16 We think that companies such as ours which have direct contact with customers are best-placed to design initiatives to support vulnerable customers. We conduct a wide range of research to better understand our customer base, and we design our products and services with their requirements in mind.
- 3.17 The National Audit Office recently published a report which found that regulators monitor data on consumers' experiences and outcomes, but do not routinely use this information to assess their own performance.²¹
- 3.18 To properly address the public policy issues that affect all consumers in the market, it is important that regulatory interventions are reviewed and considered not only in terms of benefits for the market as a whole but also in terms of outcomes for all consumer groups.
- 3.19 We think that this outcomes-based approach to regulation is a good framework on which to base smart data initiatives. Different sectors are likely to design different solutions to reflect the way in which consumers use and engage with their products and services.
- 3.20 Success should be measured not by the types of initiatives that are introduced, but on whether they deliver on the Government's ambition to ensure that the UK is a forward-thinking economy that leads the world in its approach to innovation and technology, exploiting new data-driving technologies and services to improve consumer outcomes.

(Q11) How can we ensure that the Smart Data Function improves outcomes for vulnerable customers? Do we need to consider any further actions?

- 3.21 We agree that it is essential that the needs of vulnerable consumers should be central to any smart data initiative.
- 3.22 As we work with others in the industry, supported by Ofcom, to develop a smart data initiative for the communications sector, we will keep front of mind the need for the solution to be easy to use and understand.
- 3.23 We do not think that a new Smart Data Function is necessary. Rather we will work with Ofcom to support the development and delivery of smart data infrastructure for the benefit of consumers in our sector.
- 3.24 It and other sectoral regulators could support the Vulnerable Consumer Advisory Panel and the Vulnerable Consumer Challenge to identify any barriers to the development of

²¹ <https://www.nao.org.uk/wp-content/uploads/2019/03/Regulating-to-protect-consumers-in-utilities-communications-and-financial-service-markets.pdf>

smart data services in the communications sector, and in other regulated industries.

- 3.25 Ofcom, working with other regulators via UKRN, could establish a set of principles for the delivery of smart data initiatives, with vulnerable consumers at the core.

4 Protecting customers and their data

(Q12) Do you agree these protections for when TPPs use Smart Data are needed? Are there others we should consider?

If consumer are to trust smart data initiatives, it is crucial that their data is protected and only used in ways which they are comfortable with and which are compliant with applicable laws

- 4.1 Any smart data initiative must use secure APIs or advanced technology such as blockchain to transfer data between providers, and it is essential that when consumer data is used, it is done so in a way that is fully transparent and with appropriate customer consent.
- 4.2 There must be a framework in place to ensure that it is clear to all parties where liability sits and that consumers have a right to redress if they are not happy with how their data has been used. These protections should be of the highest standards which are proportionate to the risk.
- 4.3 If a system emerges whereby sectoral regulators accredit certain TPPs to use communications data, we do not support the right for accredited TPPs to share data obtained with non-accredited TPPs.
- 4.4 Finally, any such initiative must comply with applicable laws, in particular competition, consumer and data protection.

We do not think that additional protections are required above and beyond those under existing data protection legislation

- 4.5 The priorities identified in the Government's consultation response are already incorporated in the General Data Protection Regime (GDPR).
- 4.6 It offers appropriate protections to ensure that:
 - TPPs should only be able to access consumer data once the consumers' explicit consent has been gained and that this should be identified through a secure authentication process;
 - Consumer data will only be shared through secure APIs;
 - TPP access to consumer data should be time-limited and it should be as simple for consumers to revoke access as to grant it;
 - Only accredited TPPs should be able to access data (not just high-risk data).
 - The Information Commissioner's Office (ICO) has the powers to ensure that there is a clear way to ensure swift consumer redress in the event of data loss or misuse, and that there are clear liability rules to ensure a transparent system for settling disputes between data holders and TPPs.

(Q13) How should our proposed approach to accreditation operate in practice if it is to effectively ensure that consumers' data are protected and minimise burdens for TPPs?

The first step in deciding how to regulate TPPs should be to understand what business model they will operate

- 4.7 In our view, the way in which TPPs should be regulated will be dependent on the commercial model in which they are operating. For example, will they be purchasing wholesale services?

If an accreditation model is chosen, we think that sectoral regulators, rather than a new Smart Data Function, should be responsible for accrediting TPPs

- 4.8 As noted above, greater clarity is needed about what the potential business models would be for TPPs operating smart data solutions in the communications sector. We need to understand how they will be incentivised, what role they will play in the communications market and how they will engage with customers, in order to consider what sort of accreditation regime would be necessary.
- 4.9 If an accreditation regime is considered necessary, then more work is needed to establish what this would mean for TPPs using data about communications services at a personalised level.

There is no justification to intervene in the way people engage with regulated companies

- 4.10 The Governments' vision for smart data is that it encourages new forms of digital services into regulated markets. It states that some of these services may give consumers the option of having their primary relationship with these TPPs, rather than with a broadband provider or energy supplier, for example.
- 4.11 The consultation does not provide any detail as to why this seismic change in how people engage with regulated companies will benefit consumers. Nor does it provide any detail as to what it sees as the problems with the way in which the market currently operates, save referring to the CMA's work on the so-called loyalty penalty, which Ofcom is already seeking to address.
- 4.12 It would be hugely detrimental to consumers to remove the ability for them to engage directly with their service supplier. It could cause significant delays, for example if they report a fault and the message is not passed on by a TPP to a supplier. It could lead to bill-shock and mis-selling if terms and conditions are not made clear by the intermediary. It creates an environment in which people are disempowered. They are no longer in charge of deciding who provides their essential services.

The TPPs who stand to benefit the most are those who already have existing relationships with customers or users, but who do not (and will not be incentivised to) invest in UK national infrastructure

- 4.13 If the market is distorted in such a way as to ensure that consumers have their primary relationship with TPPs rather than suppliers, it could have a severe impact on

competition, and on the incentives and ability of all suppliers to innovate and invest in networks and services.

- 4.14 Furthermore as noted above, it is important the business models of TPPs are carefully considered to ensure that a smart data initiative of this sort does not decrease, rather than increase, market competition overall.

We support bringing comparison services into scope of regulatory powers

- 4.15 If smart data initiatives expand the scope of comparison services, and greatly increase the amount of customer data which they have access to, then they should fall within the scope of the existing enforcement powers of the relevant sectoral regulators. In our view these comparison services are already, and may become more, integral to the customer experience and therefore critical to customers' trust in these markets. Regulation is key to maintaining and building this trust.
- 4.16 However, the issue of whether to strengthen the enforcement powers of regulators by enabling them to seek financial penalties from the courts for breaches of consumer law remains a live topic, which we await further details of in the Government's forthcoming Consumer White Paper. Any initiative that increases consumer protection regulation must be outcomes based, and consider not only the implications for today's customers, but also the potential impact on the consumers of tomorrow. For example, whether it will enable necessary investment to be made in innovation and investment.
- 4.17 We do not consider it appropriate for any decision to be reached about the future consumer enforcement powers of regulators until the Government has completed its ongoing review.

(Q14) What are the advantages and risks of introducing a cross-sectoral general authorisation regime for TPPs?

- 4.18 Given that there will need to be different smart data initiatives in different regulated sectors in order to reflect how consumers engage with the products and services in each market and the different regulatory regimes, we cannot see a simple way of introducing an authorisation regime that would work across sectors.
- 4.19 Different sectors are also regulated in very different ways – with licensing regimes, General Conditions etc. applying in different sectors. An authorisation regime would have to reflect all of these differences.
- 4.20 As stated in the consultation, TPPs are not in scope of Ofgem's or Ofcom's regulatory powers and so requirements differ between TPPs and regulated businesses, even when they are performing similar activities.
- 4.21 If sectoral regulators were to accredit TPPs in their own sectors, it would be important to ensure that the system would enable regulators to share information about TPPs

across their sectors, so as to ensure that issues that have affected a TPP in one sector are taken into account in respect of their involvement in another sector.

4.22 Until smart data initiatives have been designed and implemented in different regulated sectors, it is too early to tell what sort of accreditation or authorisation system might be required.

4.23 However, if such a regime is introduced, we support the Government's requirements that:

- TPPs would not need to obtain approval to operate in the energy or communications markets, but they would need to adhere to requirements set by Ofcom and Ofgem; and
- Ofcom and Ofgem would designate activities that are in scope of the regime and set rules for each activity. TPPs would only be required to follow the requirements that pertain to the activities they perform to ensure that requirements are flexible and can adapt to new business models.

(Q15) What other options should we consider to ensure that consumers are protected when using TPPs?

4.24 The best way of ensuring that consumers are protected when using smart data initiatives is by enabling these to be developed in a way that reflects how people engage with the products and services in that particular market. This is best achieved through industry initiatives, supported by the appropriate sectoral regulator.

4.25 Third party providers can play an important role in enabling customers to engage with their products and services, but the business case and consumer benefit of them doing so remains to be determined.

4.26 Furthermore, their scope should not extend to an intermediary role between suppliers and end customers. It's important for a range of customer service, legal and regulatory reasons that people are aware of who supplies their utilities and essential services.

4.27 Moving away from this model to a "more radical" world in which customers have their primary relationship with TPPs would undoubtedly pose significant risks to consumers, from which the regulatory framework must ensure that they are protected.

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