



NON-CONFIDENTIAL VERSION

Response to the CMA's call for inputs on the 'loyalty penalty' super-complaint by Citizens Advice

12 October 2018

Executive Summary

- We are pleased to respond to the CMA's call for inputs on the 'loyalty penalty' super-complaint by Citizens Advice. With almost 30 million customers, and more than 620 stores on the high street, our Consumer division is the largest provider of consumer mobile and fixed broadband communications services in the UK. We operate through three brands, BT, EE and Plusnet, each of which is tailored to different customer needs.
- The retail markets we operate in are fiercely competitive, prices are low, innovation is constant and customer satisfaction is high. The telecommunications industry is making significant investments in delivering the digital communications infrastructure for the UK, improving connectivity for all consumers and benefitting society as a whole. A stable and predictable regulatory environment that promotes effective competition is important for investors' confidence in the market. At BT, EE and Plusnet, we are constantly striving to offer great service and innovative products. We led the roll out of 4G services and are at the forefront of 5G investment and we have taken the lead in bringing superfast broadband to millions of customers. Since 2017, we have been answering 100% of EE's customer calls in the UK and Ireland and we are committed to extending this to BT by 2020.
- Consumers have a high degree of protection not only through general consumer law, primarily the Consumer Rights Act 2015, but also through specific sectoral regulation devised and 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. Ofcom is a very active regulator.
- The super-complaint raises concerns around the outcomes for any customers who remain with the same provider for a long time beyond their minimum contract period and challenges the fairness of differential pricing. It also calls out that it may be difficult for vulnerable customers to engage in telecommunications markets.
- Whilst we appreciate that as a matter of policy some may view it desirable for there not only to be equal opportunity to engage but also equal outcomes in markets, price differentiation is an outcome of these competitive markets. It is wrong to characterise differential pricing as some form of 'scam' or that this is evidence of broken markets. 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. All consumers (including both engaged and unengaged) benefit from competition – which drives efficiency and innovation – but marginal customers (i.e. those who engage most) do naturally benefit most. The super-complaint's demand for intervention may well end up harming, not protecting, some vulnerable consumers. The complaint ignores the fact that engaged consumers also include vulnerable consumers (e.g. consumers with low financial means) who could be made worse-off by any intervention.
- The super-complaint has called out five markets, two in telecommunications and three in financial services, but considers that the 'loyalty penalty' should be addressed via similar remedies wherever it arises. The telecommunications markets are quite different in their characteristics to financial services and the regulatory regimes are presided over by different specialist sector

regulators, Ofcom and the FCA respectively. We do not consider that there is sufficient commonality between these sectors to make a cross-sector review beneficial or appropriate.

- One of the key differences between the telecommunications sector and the other sectors mentioned in the super-complaint is the much wider range of parameters against which providers compete. Competitive parameters in fixed broadband include speeds and reliability of service as well as price. Broadband is often sold with other plans including fixed line telephone (as is traditional) and television plans with discounts offered for taking the services together. It's a mature market, so providers compete vigorously for each other's customers. Ofcom's research has shown that, across fixed and mobile markets, out of contract customers would want substantial monthly savings to consider it worth switching provider or signing-up to a new deal with their current provider. The market reflects this through steep introductory discounts to attract and retain customers, sometimes coupled with other incentives to increase their loyalty. For example, BT currently offers Cloud Storage, Virus Protect and Parental controls free with its consumer broadband packages.
- In the mobile market providers also compete on a number of parameters including network speed, coverage, customer service, as well as price. Communications providers offer mobile connectivity in a variety of ways: 1) Pay monthly plans where the customer pays a relatively small upfront cost for a handset on the promise that they enter into a 24 month minimum term contract for airtime services; 2) SIM only plans where a customer agrees to a minimum term (usually 30 days or 12 months) for 'no frills' connectivity services; and 3) Pay-as-you-go plans, where a customer can choose from monthly bundles paid for in advance or traditional pay as you consume options. We run offers on all these forms of plan to attract and retain customers: these may be some combination of discounts on the upfront cost of the handset or on the monthly airtime payments due or extra services or products for free. Pay monthly plans are attractive to customers due to the low upfront cost of devices and the additional benefits they offer. Customers who take a pay monthly plan with handset from EE have access to service and advice from nearly 12,000 customer facing staff in EE's retail stores and call centres across the UK and Ireland. Our advisors offer customers help, advice and technical support with their handset, including settings and applications, as well as handset repair services and handset insurance options. Customers appreciate the fact they only have to deal with one company to resolve any issues relating to either the device or the service received i.e. we're a one-stop shop.
- We understand the questions the super-complaint is raising around the outcomes for a minority of mobile and broadband customers particularly those that are vulnerable. We are already engaging with Ofcom to address such issues, and are happy to continue engaging in discussions with Ofcom, Citizens Advice and other parties about the extent to which certain outcomes should potentially be removed through regulatory or legislative interventions, but we caution against using a sledgehammer to crack a nut. As the retail mobile and broadband markets are competitive and there are no excess profits being made, this will entail a set of difficult trade-offs: other customer groups may have to pay more, competition may soften though dampened incentives to engage and predictability that fosters investment may be undermined. It is important that these trade-offs are fully considered ahead of any intervention, so they are conscious choices to restrict market outcomes, not unintended consequences.
- We already have in place products and services for vulnerable customers developed through insight and dialogue with charities that represent different groups of vulnerable customers. We are also ready to discuss further initiatives to make it easier for vulnerable customers to engage

with the market, with industry, Ofcom, Citizens Advice and other parties. As is illustrated through a series of case studies in the super-complaint, Citizens Advice's advisors already perform a valuable role in advising consumers who may be vulnerable for different reasons and it is likely industry could help these efforts by working jointly with Citizens Advice.

- Ofcom is already heavily engaged with the issues raised by the super-complaint in so far as the broadband and mobile sectors are concerned, and we have been discussing those issues with Ofcom both formally and informally. As of 1 October, new Ofcom rules requiring providers to have policies for identifying vulnerable customers to ensure they are treated fairly also came into force. On balance we consider that Ofcom is best placed to continue its consideration of these complex issues. However, the CMA has extensive experience in competition and consumer issues and we could see it providing very valuable input into this debate perhaps through the UK Competition Network.
- There is a further dimension to consumer engagement work, namely BEIS's Smart Data Review. This cross-government review will consider how government can accelerate the development and use of new data-driven technologies and services to improve the consumer experience in regulated markets. The review will report to the newly established Consumer Forum, chaired by the Minister for Consumer Affairs, which brings together Ministers and the CEOs of sector regulators. We consider that this is the right place to assess these issues rather than as part of a market study and as the CMA is already engaged through that process this will ensure that there is no duplication of effort.

1. The issue at the heart of the super-complaint

- 1.1. At the core of the super-complaint is the issue of fairness – is it right or desirable that customers who are engaged with the market pay less than those that don't? Answering this question is not straightforward and involves assessing difficult trade-offs.
- 1.2. The starting point is two-fold; is there a competitive market such that customers have choice and, if there is, are customers in a position to exercise that choice? On the first point, the answer is an unambiguous yes, retail telecommunications markets are highly competitive with constant innovation and a very wide range of offers. Customers are well served by competition.
- 1.3. Exercising that choice requires information relevant to making an informed choice to be readily available in a digestible form, easy switching processes, and ability on the customers part to assess what offers best meet their needs. Information needed to make an effective choice in retail telecommunications markets is readily available, whether through websites, in-store or by phone. Unlike in other markets there is no need to get a series of quotes to engage; information on tariffs and options is publicly and simply available. However, we acknowledge that there may be more that can be done and we are, for example, broadly supportive of Ofcom's proposals on end-of-contract and out-of-contract notifications.
- 1.4. Switching for both fixed and mobile is easy; for instance 90% of mobile customers who had switched at least once considered the process to be very or fairly easy.¹ We believe that for the vast majority of customers, engagement in telecommunications markets is straightforward but we acknowledge that for some customers, particularly those that are vulnerable, this may not be the case. In June 2018, as part of our engagement with Ofcom on consumer engagement, we discussed EE's proposal for specific actions for vulnerable customers. Within this we detailed that work needed to be done to define and identify 'vulnerable' and we offered to work with Ofcom on this. We remain open to further dialogue on this issue.
- 1.5. Where does this leave the majority of customers, who have the information to engage, are able to, but don't? We believe that those that choose to engage should get a better deal than those that don't. Otherwise, nobody would engage and there wouldn't be competition. Everyone (including both engaged and unengaged consumers) benefits from competition – which drives efficiency and innovation – but marginal customers should and will benefit most. In other words, in competitive markets, no matter how good customer engagement is, it will not deliver the same outcomes for everyone. To the extent that society wishes to see fairness not only in terms of equal opportunity to engage but equal outcomes, customer engagement in competitive markets won't deliver. And to the extent that government and regulators intervene to create more equal outcomes, that in itself will have the effect of dampening customer engagement and reducing competition. There's a trade-off to be made here and the relative costs and benefits need to be carefully considered.
- 1.6. This submission represents the view of our three consumer-facing units, BT, EE and Plusnet. Throughout this document, when we refer to "BT" we mean the consumer facing brand BT; not BT Group, the company which operates the three consumer-facing brands.
- 1.7. Our submission explains the points above and additional points as follows:

¹ CMA, Final Report on the anticipated acquisition by BT Group plc of EE Limited, https://assets.publishing.service.gov.uk/media/56992242ed915d4747000026/BT_EE_final_report.pdf, para 10.73.

Section 2 explains the highly competitive nature of retail mobile and retail-fixed broadband markets along with the benefits that customers have reaped from competition.

Section 3 briefly discusses ease of switching and the widespread availability of the information consumers need to engage. That information is readily understandable by most customers. We acknowledge however that there may be more that can be done to improve transparency and broadly agree with Ofcom's proposal on end-of-contract and out-of-contract notifications.

Section 4 explains that customer engagement in these markets is strong and compares well with other industries referenced in the super-complaint.

Section 5 explains that strong competition leads to pricing differentials as those most engaged will reap the best deals and why this is welfare enhancing. We also explain the dampening effect on competition that any intervention that limits pricing differentials will have as customers will be less incentivised to seek out the best deals.

Section 6 explains which of our customers are out of contract and why this is. We do not agree with the super-complaint that the 'loyalty penalty's' prevalence among low income and vulnerable customers is now widely accepted.²

Section 7 explains that we are proud of how we look after our vulnerable customers and provides an overview of the measures we already have in place.

Section 8 explains why retail fixed broadband and retail mobile are very different to other markets to which the super-complaint refers.

Section 9 sets out our views on the pros and cons of a market study, provisionally concluding that Ofcom remains best placed to take forward work in this area.

Annex 1 – we provide additional context to the super-complaint case studies, outlining the options that would have been available to these customers and the protections that are in place.

Annex 2 – we provide further detail of the economic case for differential pricing.

2. The market context

- 2.1. For telecommunications, the super-complaint concerns the retail mobile and retail fixed-broadband markets. These are markets the CMA is familiar with having recently approved BT Group's acquisition of EE.³ In its Final Report, the CMA noted: the dynamic and innovative nature of this complex industry; and that the industry was characterised by sophisticated competitors responding to opportunities in the market.⁴ The CMA concluded that the retail mobile market was competitive, with close competition between four mobile network operators (MNOs) and additional competition from numerous mobile virtual network operators (MVNOs).⁵ In retail fixed broadband, for example, the CMA noted strong competition in super-fast broadband with keen pricing.⁶ Ofcom's Chief Executive has also publicly stated: "*There's no*

² Super-complaint, p.4

³ Final Report BT/EE (see fn 1).

⁴ Final Report BT/EE, para 9.

⁵ Final Report BT/EE, para 16.

⁶ Final Report BT/EE, para 21.23.

doubting the strength of competition in the UK: we have the most competitive fixed and mobile markets in the EU”.⁷ The characterisation in the super-complaint that these markets ‘are near textbook definitions of markets where competition is not working well’⁸ is misplaced. These markets are unambiguously competitive.

- 2.2. In this section, we briefly explain the vibrant nature of competition in the retail mobile and retail fixed-broadband markets and the benefits that competition in those markets has delivered to consumers.

Mobile

- 2.3. There are four MNOs each of whom owns and operates a mobile network covering substantially all of the UK: Vodafone, Telefonica (under the brand O2), BT Group (under the brands EE, Plusnet and BT Mobile), and Hutchison 3G (under the brand Three). All MNOs are active in the wholesale market, enabling MVNOs to provide competitive retail mobile services. There is a wide range of MVNOs including those active in other telecommunications markets, such as Sky and Virgin Media, and a myriad of operators servicing more niche customer segments such as Lyca mobile, as well as household brands such as Tesco. Barriers to entry as an MVNO are low. Moreover, Carphone Warehouse, with its significant retail footprint, sells services of EE, O2 and Vodafone as well as its own mobile services, under the brand iD Mobile.

Fig 1. Wide range of players in the UK mobile market



- 2.4. Operators compete across a range of parameters including: price; devices, service; network quality; and brand. Strong competition results in a broad range of tariffs and services, allowing customers to choose packages and providers to suit their needs. All MNOs offer services on a pay as you go basis and SIM-only (i.e. an airtime contract for data, voice and SMS) basis. Some providers offer a separate airtime services contract alongside a consumer credit loan for the

⁷ Sharon White, article for The Times, 24 April 2015.

⁸ Super-complaint p.33.

purchase of the handset.⁹ Others (like BT and EE) offer customers an airtime services contract alongside a separate supply of a handset for an upfront (or no) cost. In this way, all MNOs serve customers with a wide range of incomes, ranging from those who spend less than £10 per month to more than £40 a month, and in a way that suits their needs for instance with a minimum term contract or on a pay as you go basis.

2.5. Furthermore, MNOs offer substantially different features within their plans. For example, EE’s handset contract customers have had access to the following additional features within their deals, many of which differ from its competitors:

Fig 2: Features which EE’s handset contract customers have had access to within their deals¹⁰

5 NON-EU ROAMING DESTINATIONS	BT SPORT	FASTEST 4G SPEEDS	ANNUAL UPGRADES
UNLIMITED DATA	SHARER PLANS (0 DATA SHARE OFF ANOTHER LINE)	200 IDD MINUTES	200 MMS
FLEXIBLE BOOSTS	FIXED PLANS	INSURANCE	200 08 MINS

2.6. Consumers benefit greatly from this competition and are engaged with the market.¹¹ Ofcom research¹² indicates that 87% of end users are either fairly satisfied or very satisfied with their mobile communications services. Levels of satisfaction in the UK about the overall service, price, ability to access the network, and reliability and speed of internet connection compare favourably to other large European countries (namely France, Germany, Italy and Spain).¹³

⁹ O2 offers the handset under a consumer credit agreement. However, the airtime contract is continued until the last payment is made under the consumer credit agreement. That can be up to 36-months or sooner if a customer settles their loan by repaying it early.

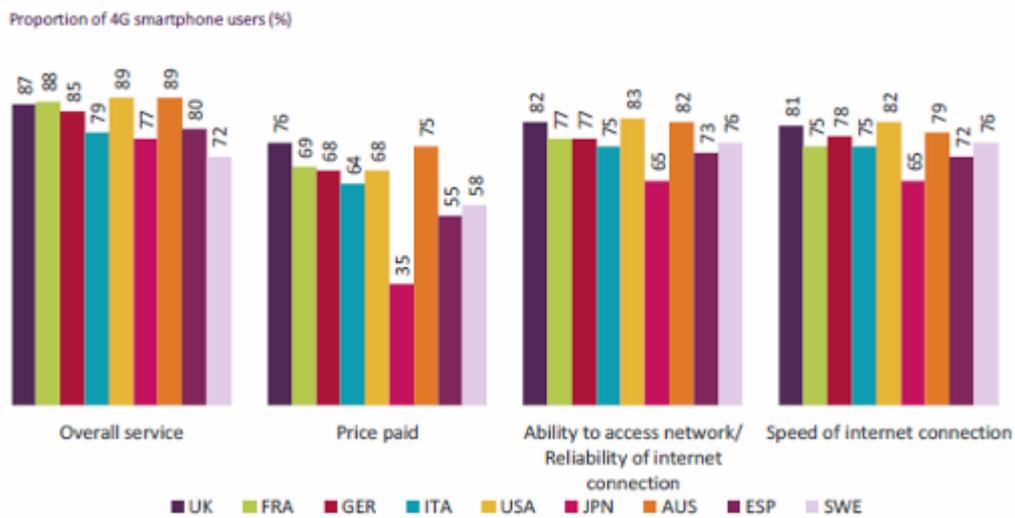
¹⁰ EE analysis.

¹¹ Final Report BT/EE, para 10.81. – the CMA found that customers appear engaged, with levels of switching between suppliers that compare favourably with some other sectors on a ‘like for like’ basis (energy and, in particular, banking).

¹² 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.

¹³ Ofcom International Communications Market Report 2017, p.82, figure 45.

Fig 3: Satisfaction with 4G mobile phone services: 2017



- 2.7. Switching mobile provider is straightforward and the CMA has previously noted evidence that the perceived cost of switching is quite low with 90% of mobile customers who had switched at least once considering the process to be very or fairly easy.¹⁴ As noted in paragraph 3.6 below, Ofcom has, since the CMA's final report, further modified the switching process to enable customers to obtain their Porting Authorisation Code (or 'PAC') without needing to talk to their current provider.
- 2.8. The strength of competition is evidenced in pricing trends. The CMA observed that evidence suggested that mobile prices in the UK are decreasing, and that UK prices and operators' margins are lower than in most European countries.¹⁵ Ofcom's analysis indicates a similar result, as shown by the charts below.

¹⁴ Final Report BT/EE, para 10.73.

¹⁵ Final Report BT/EE, para 10.76.

Fig 4: The price of mobile services has declined across most usage profiles¹⁶

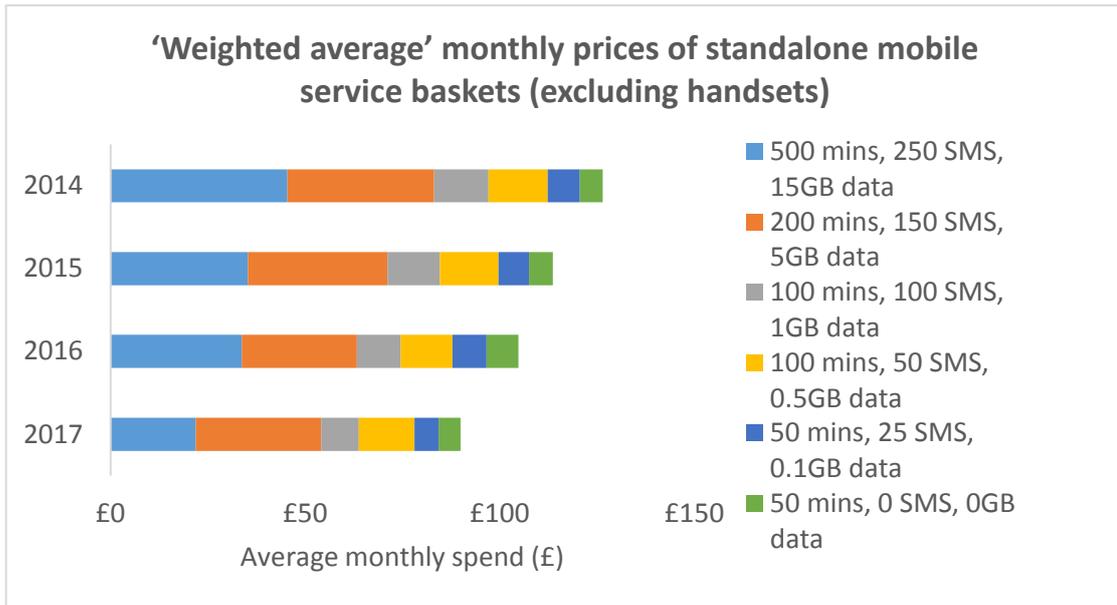
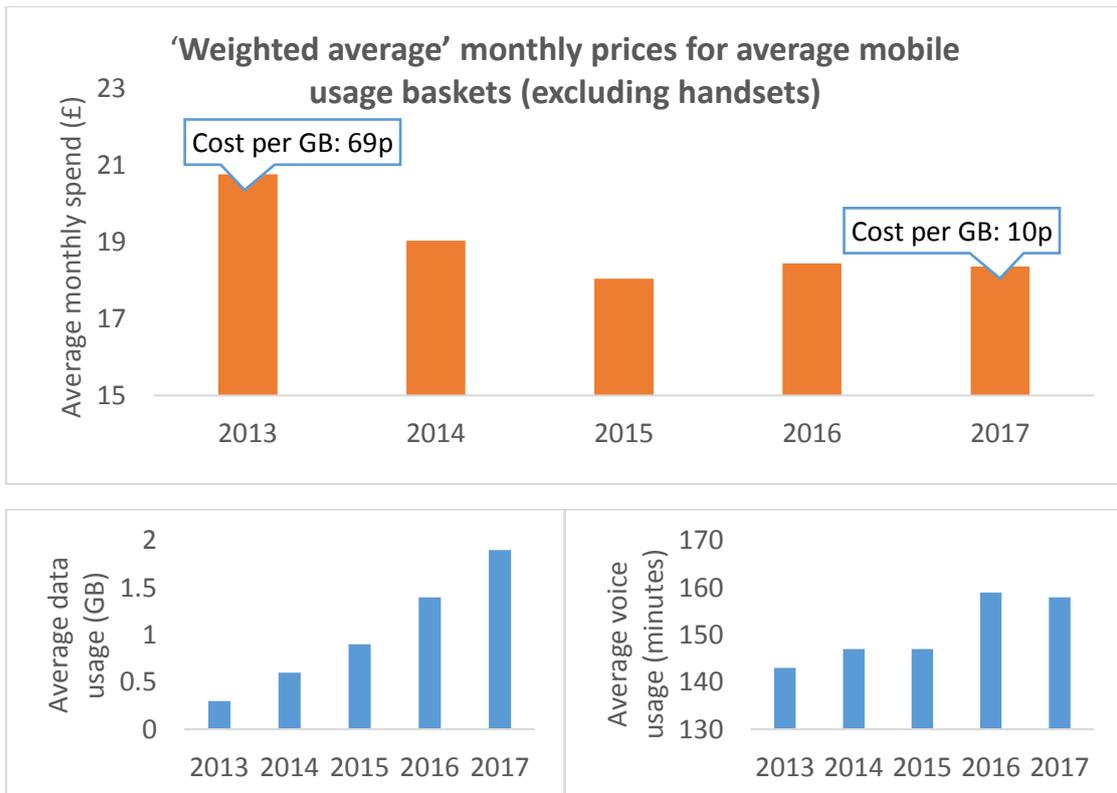


Fig 5: While mobile bills have been falling, consumers have had access to more data and minutes¹⁷



¹⁶ Ofcom, Pricing trends for communications services in the UK, May 2018.

¹⁷ Ofcom, Pricing trends for communications services in the UK, May 2018.

2.9. The MNOs have different commercial strategies. EE has focussed its efforts on network quality, service and innovation. For the last five years EE has been named the UK’s best mobile network by *Rootmetrics*, an independent third party, who conduct the UK’s most comprehensive network tests.¹⁸ EE has invested heavily in its network with highlights including:

Fig 6: EE’s network highlights

First to 4G	EE was the first UK network to introduce 4G services;
Constant improvements in network capacity	In the last year alone EE has doubled 4G capacity on more than [3<] sites across the country;
Speeds	EE offers the fastest UK speeds; ¹⁹
Improving mobile voice services	EE has revolutionised mobile phone calls, with customers now making more calls on 4G than on 3G for the first time ever – meaning they still have access to superfast 4G while making calls, and can benefit from EVS (enhanced voice services) technology for clearer voice quality;
Wi-Fi calling	Through Wi-Fi calls are possible even where there is only Wi-Fi coverage;
Apple Watch	EE was the first UK mobile network to introduce 4G connectivity in the Apple Watch.

2.10. EE has significant ambitions for 5G. In April 2018, EE invested in spectrum in the 3.4-3.6 GHz band that has been designated as a pioneer band for 5G. The 40 MHz of spectrum that EE acquired cost approximately £300 million and, as recently as October 2018, EE launched the UK’s first live 5G trial site in Canary Wharf in London which is already providing speeds to consumers and businesses up to 1.3 Gbps over combined 4G and 5G technologies. EE will also be launching more extensive trials in the near future.

2.11. EE has also invested heavily in service, through expansion of its retail footprint and by onshoring its customers service centres. With more than 620 retail stores across the UK, over 92% of the UK population live within a 20 minute drive of a retail store. Since 2017 we have been answering 100% of EE’s customer calls in the UK and Ireland, as we already do for Plusnet’s customers, and we are committed to extending this to BT by 2020. Customers who buy a mobile handset plan from EE have access to service and advice from nearly 12,000 customer facing staff in EE’s retail stores and call centres across the UK and Ireland. Our advisors offer customers help, advice and technical support with their handset, including settings and applications, as well as handset repair services. We have support teams who are specially trained to support customers according to their handset choice, for example teams who are trained to support customers with their Samsung or Apple handsets respectively.

¹⁸ EE Newsroom, Five years in a row: EE named UK’s best network in Rootmetrics’ 2018 nationwide testing, <https://newsroom.ee.co.uk/five-years-in-a-row-ee-named-uks-best-network-in-rootmetrics-2018-nationwide-testing/>.

¹⁹ Rootmetrics UK RootScore Report 1st Half 2018 shows that EE’s performance score is 91.8% compared with Vodafone 86.9%, Three 82.9% and O2 73.1%. Available at <http://www.rootmetrics.com/en-GB/rootscore/map/uk/united-kingdom/2018/1H>.

Fixed-broadband

2.12. The largest retail providers of fixed-broadband retail services are Sky, BT, Virgin Media, and TalkTalk; however new entrant fibre-to-the-premises (FTTP) providers are investing heavily whilst numerous providers have taken advantage of wholesale broadband access to enter the market at low cost.

Fig 7: Wide range of players in the UK broadband market



- 2.13. Openreach provides communications providers with access to its extensive fixed network. Following the Commitments of BT plc and Openreach Limited given to Ofcom, Openreach operates as a legally separate company with its own employees and greater strategic and operational independence from BT Group. It aims to serve the interests of all communications providers and treat them equally.
- 2.14. Virgin Media owns and operates a cable network which covers over half of all households in the UK; as of 30 June 2018, it had passed approximately 15 million premises. It is the second largest fixed communications provider in the UK. Other network providers include: Cityfibre, Hyperoptic, Zayo, Colt and Gigaclear.
- 2.15. There is therefore highly effective retail competition based on two elements:
- Access regulation to Openreach’s network;
 - Competition from other fixed networks.
- 2.16. The fixed retail market has differentiated offerings on parameters including speeds, service, price, broadband equipment (including routers), other broadband features including parental controls and internet security and brand. It is also common for fixed services to be bundled with television services.
- 2.17. BT’s retail market share as the incumbent is comparatively low compared to other countries, as shown by the following chart by Ofcom.

Fig 8: Incumbent's share of fixed broadband lines (%) as of the end of 2016²⁰

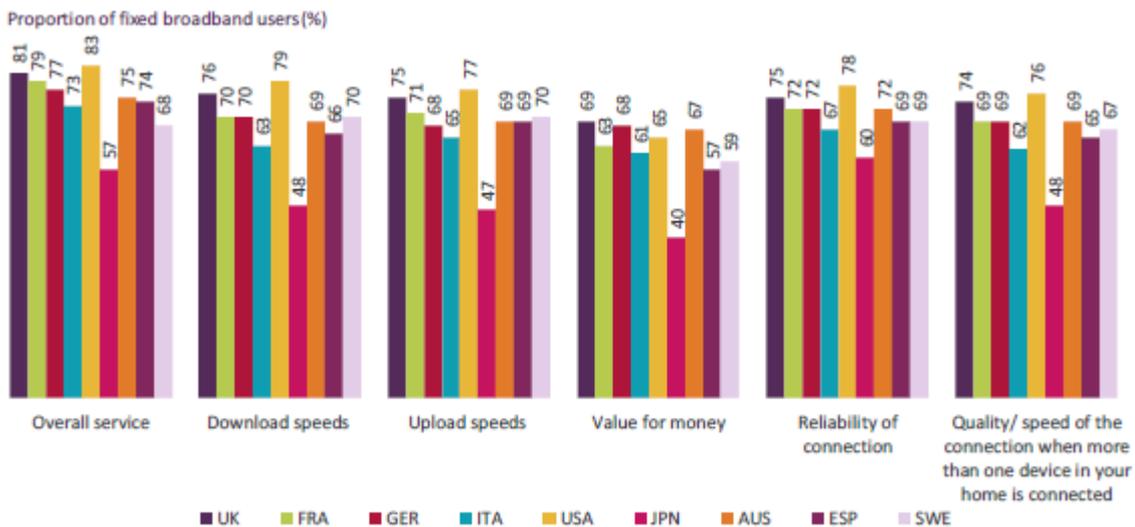


Source: IHS Markit / operator data / Ofcom

Note: Data for Nigeria are not included in the comparison; the US, where there is typically a duopoly between a local incumbent telecoms provider and a cable provider, is excluded from this analysis; all figures have been rounded to the nearest whole percentage.

2.18. Ofcom's International Communications Market Report 2017 found that 81 percent of fixed broadband customers in the UK were 'very' or 'fairly' satisfied with their overall fixed broadband service in 2017, second only to the US among the comparator countries. Consumers in the UK also have comparatively high levels of satisfaction with fixed broadband download speeds, upload speeds, and value for money.²¹

Fig 9: Satisfaction with aspects of fixed broadband service: 2017



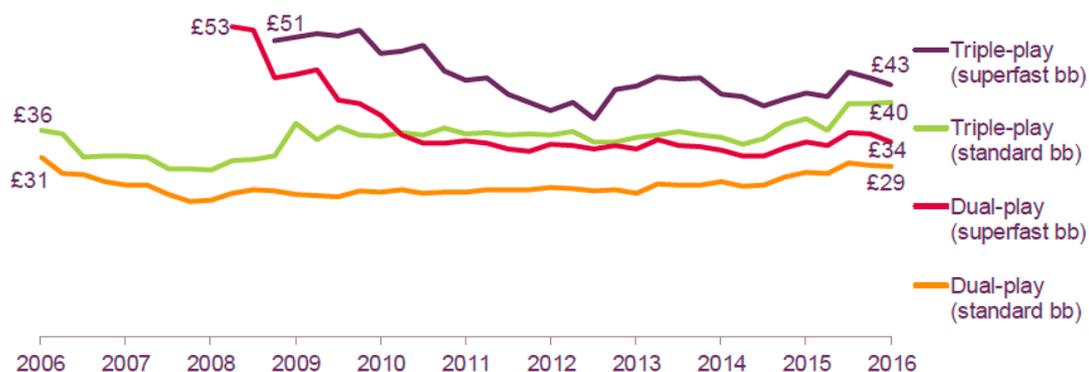
²⁰ Ofcom, International Communications Market Report 2017, 18 December 2017, page 71, https://www.ofcom.org.uk/data/assets/pdf_file/0032/108896/icmr-2017.pdf.

²¹ Ofcom, International Communications Market Report 2017, pp. 71-72.

2.19. Moreover, superfast broadband prices have been falling, closing the gap to the price level of the legacy lower standard broadband services. While prices have been falling, average speeds have been increasing, as shown by the following chart and table. In other words, consumers are getting more for their money.

Fig 10: Cheapest available dual and triple-play monthly tariffs, 2006 to 2016²²

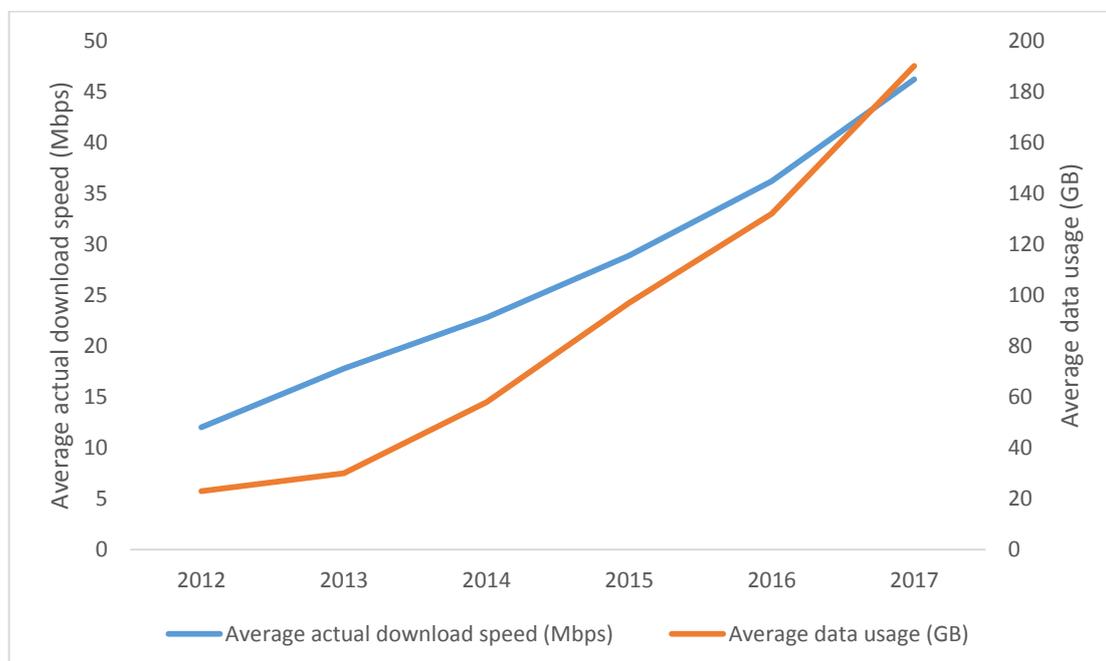
Figure 1.22 Cheapest available dual and triple-play monthly tariffs: 2006 to 2016



Source: Ofcom using data supplied by Pure Pricing

Note: Represents straight average of cheapest dual- and triple-play tariffs from BT, TalkTalk, Sky, Virgin Media, Plusnet and EE, and are not weighted by market share; data as in December of each year; adjusted for CPI (December 2016); includes VAT; where a provider did not offer its own line rental services, the cost of BT line rental has been included (as this was required by the service); the prices used in the analysis are list prices and exclude any promotional discounts; figures have been rounded to the nearest whole number.

Figure 11: Average speed and data usage per residential fixed line²³



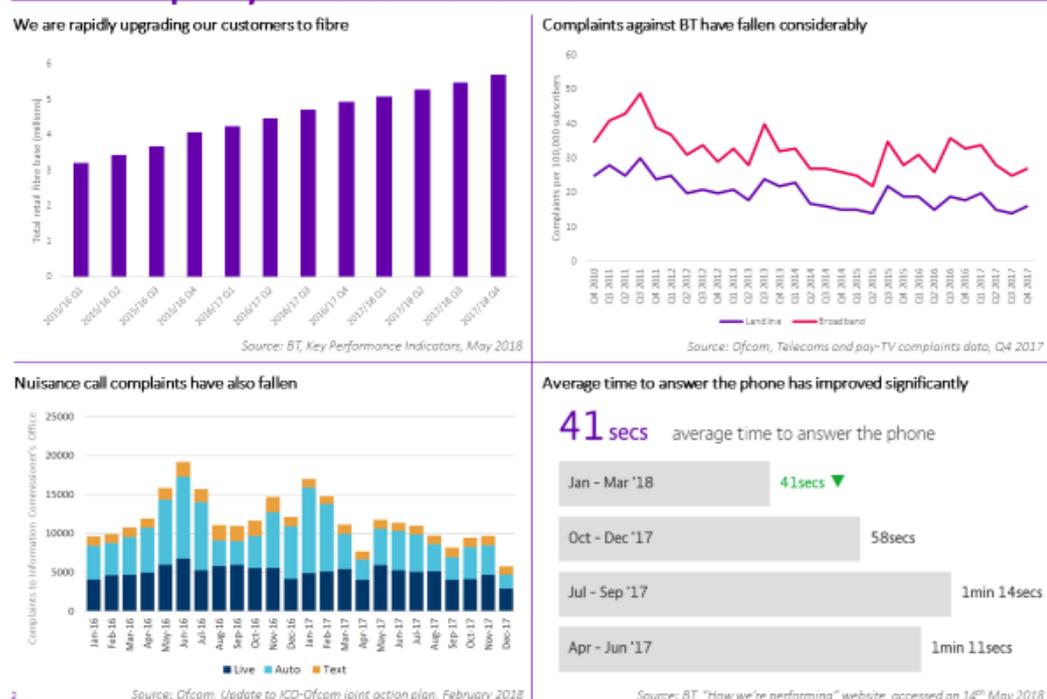
²² Ofcom, Pricing trends in communications services, 2017.

²³ Ofcom Communications Market Report 2018.

2.20. At the same time, BT has been investing in quality of service: customers have benefited from significant improvements in a number of respects, as shown in the charts below.

Fig 12: Improvements to service quality and customer service BT landline and broadband²⁴

Our landline and broadband customers are seeing rapid improvements to service quality and customer service



2.21. EE also offers personalised and easy-to-use web, app and chat experiences, and even face-to-face support for EE Home customers in their own home. EE Remote Support allows our staff to video call customers via their smartphones to help diagnose and resolve home broadband issues. It can be difficult to explain technical issues over the phone and EE Remote Support allows us to identify potential problems like the customer’s home environment, router positioning and overall set up. It means that our customers can get back online sooner and we can reduce engineer home visits.

3. Ease of switching and availability of information needed to make informed choices

3.1. In order to make informed choices, consumers need access to information on the key parameters of the service. This may include price, speeds, usage limits, contract start date, contract end date and so on. We make this information readily available to our consumers. For example, for new customers information on pricing and features is made easily available online, in store and by phone. In life, EE for example offers customers a My EE app which allows

²⁴ Sources: Ofcom and BT analysis.

customers to easily see their contract start and end dates, their monthly recurring charge, details of their usage and charges and their monthly bills.

- 3.2. We do not agree with the suggestion in the super-complaint that our pricing is charged “*solely in the hope that people won’t notice*”²⁵ or the suggestion for fixed broadband that we do not make clear what the out of contract price will be.²⁶ Looking at BT fixed-broadband, we make our Month 19 price (i.e. the price customers pay once they are out of the minimum term of their contract) clear to customers at every stage of their purchasing journey. Firstly, the Month 19 price is included in our BT Broadband advertising (along with a reference to the 18 month minimum term), so that customers are aware what price will apply after their discounted minimum term ends. When a customer then begins to purchase BT Broadband, the Month 19 price applicable to that product is clearly set out in the order journey, directly next to the price that applies during the minimum term.²⁷ Before the customer then places their order, they are referred to our terms and conditions and our Tariff Guide, which sets out the Month 19 price for each BT Broadband package (which they can access at any time). Once they have completed their order, the customer then receives an order confirmation email, which again refers to the Month 19 price.²⁸
- 3.3. Furthermore, we proactively contact customers as their contract comes to an end. For example, we contact EE customers between [REDACTED] and [REDACTED] times as their contract comes to an end, as shown by the graphics below.

Fig 13: EE’s approach to end-of-contract notifications

[REDACTED]

Fig 14: EE’s proactive end-of-contract messages

[REDACTED]

- 3.4. Similarly, we contact a significant number of BT dual and triple play customers as their contract comes to an end. For Plusnet customers, we recently launched new propositions that will include an end-of-contract notification and offer of [REDACTED] at the end of the customer’s contract. We however acknowledge that there may be more than can be done to improve in-life communications for customers and to help customers fully understand our products. In that vein, we broadly agree with Ofcom’s proposals for end-of-contract and out-of-contract notifications.
- 3.5. Switching in both mobile and fixed is relatively straightforward. Switching between mobile communications providers takes only one working day. The CMA has previously noted evidence that the perceived cost of switching is quite low, with 90% of mobile customers who had

²⁵ Super-complaint p.2.

²⁶ Super-complaint p.56.

²⁷ Please see, for example, the deals shown at <https://www.productsandservices.bt.com/broadband/deals/>.

²⁸ We also note that tariffs which do not have a temporary discount ending after the minimum term are available in the market. For example, the Virgin Media 12 month contract, which the super-complaint makes reference to, actually runs on at the same price after the minimum term.

switched at least once, considering the process to be very or fairly easy.²⁹ As noted in the following paragraph, Ofcom has, since the CMA's Final Report, further modified the switching process to enable customers to switch between providers (with or without taking their mobile number) without the need to talk to their current provider.

- 3.6. Today consumers can ask for a Porting Authorisation Code (PAC) by phone and can already port their number to another network in one working day. The new Auto-Switch process which is due to replace the existing process in July 2019, will allow customers to request and automatically receive a unique code by SMS, or through their online account, which they can give to their new provider to switch (with or without their mobile number). A PAC allows them to switch and take their number and the N-PAC allows them to switch without taking their number. Consumers can also ask for switching information specific to them by sending an SMS to a shortcode. The information they receive includes details such as relevant early termination charges. Consumers will always have the option to speak to their existing provider if they are seeking a more competitive deal.
- 3.7. Providers are making switching information on their websites clearer. Furthermore, the mobile networks, coordinated by the Operator Steering Group (OSG), have also already undertaken a number of initiatives to address loss of service that can sometimes happen as a result of failed number porting. Despite the number of unsuccessful ports being extremely low today, these initiatives will further improve the customer experience by driving down port failures.
- 3.8. Switching of fixed landline and broadband services on the Openreach and KCOM platforms has been fully gaining provider-led since June 2015, to make the process as easy and seamless as possible. This means that consumers switching landline and broadband services between providers on these platforms now only need to contact their new (gaining) provider, who coordinates the switch with the old (losing) provider on their behalf. There are also consumer protection measures to enhance the process. These include requirements for the gaining provider to provide comprehensive information to the customer about key charges and terms, to keep a record of the customer's consent to the switch and to ensure minimal loss of service. Losing providers must send a letter to the customer setting out clearly the services that will be transferred, any early termination charges applicable and any other consequences of the switch, so that the customer is fully-informed.

4. Consumer engagement in fixed-broadband and mobile markets

- 4.1. Levels of consumer engagement are high in telecommunications with low barriers to switching. High switching rates can be an indicator of high levels of engagement, but conversely low switching rates are not necessarily an indicator for low levels of engagement. Customers satisfied with their current contract may be fully aware of their options but find their best option is to remain on with their current provider. This is borne out by Ofcom's and our own survey evidence that shows that even where customers do not switch, they are actively engaged in checking what deals are available and can use the threat of switching to drive discounts or other service benefits (see paragraphs 4.4 - 4.5 below).

²⁹ Final Report BT/EE, para 10.73.

- 4.2. Looking at switching rates as one indicator of engagement, the UK is already performing better than other European markets. [8]

Fig 15: Annualised churn rates (%) for UK and other European fixed operators (different periods, 2015-17)³⁰

[8]

- 4.3. Furthermore, churn rates in communications are higher than in many other UK essential services. For example, in the mobile sector the level of churn in the industry is c. 24% per annum, according to EE estimates across both mobile PAYM and PAYG services. For fixed broadband, we see the level of churn at c. 15-20% per annum. For comparison, in banking³¹, the CMA found that over the past three years only 8% of private current account customers had switched banks. This low level of engagement leads to 37% of customers remaining with their main provider for more than 20 years and 20% for between 10-20 years.³² Similarly, in energy, a CMA survey found that 56% of respondents had never switched supplier (let alone annually), 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.³³ This demonstrates the extent of consumer engagement in communication markets.
- 4.4. The results of Ofcom's latest 2017 Switching Tracker survey suggest that there are few barriers to consumers exercising choice. For example, just 7% of standalone mobile phone users who had switched their service within the last year felt that the process had been difficult. For broadband customers, only 16% (who had switched in the last year) felt the switching process had been difficult. Just 3% of mobile customers and 4% of broadband customers who had not switched in the past year said that it was because the process would be too time-consuming.
- 4.5. Ofcom analysis³⁴ has shown there is no clear relationship between socio-economic group and the level of inactivity. Ofcom research³⁵ also shows that 74% of people taking landline, broadband and pay TV services (standalone or as multi-play) know when their current contract end date is. This share increases to 85% for mobile. 75% of all consumers know what will happen when their contract ends, with 90% knowing that they could switch to a better deal with their current provider. 75% of mobile customers are aware that they could move to a SIM-only deal at the end of their contact. 87% of dual play customers find it easy to find their usage information, rising to 94% for mobile customers.³⁶ As shown in the chart below, 90% of mobile customers considered taking action when their last contract came to an end.³⁷

³⁰ BT analysis.

³¹ CMA, Retail banking market investigation final report, 9 August 2016, pp 155.

³² CMA, Retail banking market investigation final report, 9 August 2016, pp 154.

³³ CMA, Energy market investigation, 24 June 2016, p 22

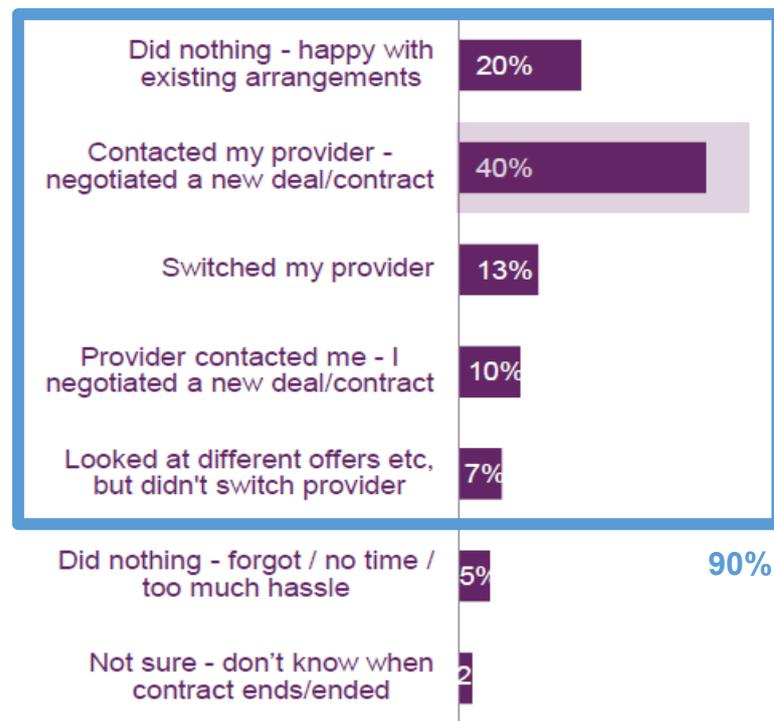
³⁴ Ofcom, Call for Inputs on Helping consumers engage in communications markets, p 4.

³⁵ Ofcom, Helping consumers to engage in communications markets: Consultation on end-of-contract and out-of-contract notifications, p 4, section 1.5.

³⁶ Consumer Engagement 2018, produced by Critical Research, July 2018.

³⁷ Ofcom, End of contract notification presentation of research results, 2015.

Fig 16: Action taken by mobile consumers when contract last ended³⁸



- 4.6. Our own survey showed that our engagement figures for mobile services are even higher than those found by Ofcom. A survey³⁹ of EE's post-pay customers found that [8] said they were aware of when they were eligible to upgrade.

Fig 17: EE post-pay mobile customer awareness of contract stage⁴⁰

[8]

- 4.7. In addition, [8] of EE customers sought information about EE's plans and services before deciding to upgrade. Customers sought information from a wide range of sources including EE's website, stores and call centres, as well as price comparison websites. This evidence clearly suggests that EE's post-pay mobile customers, are fully aware of when they can upgrade (or switch). Even when they decide not to switch they do shop around for information from a wide range of sources.

³⁸ Ofcom, End of contract notification presentation of research results, 2015.

³⁹ EE Insight survey data, July 2017 (3 month rolling), [8].

⁴⁰ [8]

Fig 18: Information sources EE post-pay customers view before making a decision to upgrade their mobile plan⁴¹

[REDACTED]

- 4.8. Further evidence of active engagement by consumers in the mobile market includes:
- In 2017/18, [REDACTED] pay monthly customers carried out a transaction with EE;
 - In the market, more than 20 million customers transacted, with almost 9 million changing provider; and
 - [REDACTED] of all EE customers upgrade before the end of the contract, and only [REDACTED] are out of contract for longer than 3 months.
- 4.9. Furthermore, we contact all of our standard broadband customers. Sending up to [REDACTED] communications when they become eligible for superfast (fibre-based) broadband—irrespective of contract/tenure status. This results in [REDACTED] of our standard broadband customers (who re-contract with us) moving to superfast. This figure is increasing, and has grown by [REDACTED] between April 2017 and May 2018. BT upgrades between [REDACTED] and [REDACTED] standard broadband customers to superfast (fibre-based) broadband each week. But, as with other services, there are a group of customers who choose to remain on standard broadband for entirely rational reasons for example, because they feel their current speeds are adequate.

Fig 19: BT fixed broadband customer base split by copper and fibre (FY quarters)⁴²

[REDACTED]

5. Differential pricing is a key feature of competitive markets

- 5.1. The super-complaint acknowledges that competition in markets works well for active, new customers where margins are often “low or non-existent”, however it raises the concern that these aggressive offers are subsidised by the less actively engaged customers who pay higher prices.⁴³ This is characterised as a “scam” because ‘*companies charge these prices **solely** in the hope people won’t notice*’ (emphasis in source document).⁴⁴ Moreover it is stated that ‘*significant price differentials for loyal customers are unfair no matter who they affect...*’
- 5.2. The super-complaint insinuates that companies exploit the inertia of some consumer groups to gain excessive profits from them that they would not gain in a well-functioning market. It implies further that in a well-functioning market price differentials between prices paid by engaged and unengaged consumers are necessarily low. Both allegations are wrong and ignore basic economic theory about price setting in competitive markets with differentiated demand. The allegations also ignore the potential longer term effect that an artificially imposed cap on price

⁴¹ [REDACTED]

⁴² BT analysis.

⁴³ Super-complaint, p.2.

⁴⁴ Super-complaint, p.2.

differentials may have on competitive dynamics and consequently levels of consumer engagement and consumer welfare.

- 5.3. Differentiated pricing does not occur because customers 'don't notice'. Differentiated pricing is a feature of many markets and occurs due to the price sensitivities of different groups of customers. For example it is well known that prices for airlines tickets vary depending on factors such as how close to the date of departure the ticket is purchased. The fact that ticket holders will be paying very different prices for the same flight and same service is not a scam, and the airline sector has never been characterised by high levels of profitability. Rather it is notorious for aggressive price competition.
- 5.4. The complaint over simplifies the effect of price differentiation and focuses solely on its impact on what they call "loyal and unengaged" consumers. However, differential pricing can be welfare-enhancing, and restrictions on the level of price differentials can lead to welfare losses for engaged consumers that can more than offset any gains in welfare for less engaged consumers. This is recognised in basic economic theory on how prices are set in competitive markets with consumer groups with different price sensitivities which we set out in Annex 2. It should also be recognised that competition for engaged consumers also benefits disengaged consumers where competition drives quality improvements and innovations across the whole network (e.g. measures to enhance network resilience).
- 5.5. First, high price differentials do not suggest excessive profits, in particular in markets with high fixed costs: if the market is highly competitive for engaged consumers (i.e. for the acquisition of new customers) prices for these customers will be close to incremental costs, and most, or all, of the fixed costs need to be recovered from consumers who tolerate higher prices. Any "excess" profits gained from unengaged consumers would be competed away at the acquisition of new customers.
- 5.6. Second, high price differentials are not an indicator of competition failing consumers paying higher prices. Should the price differential rise too high, too many consumers will switch to a new provider, and the losing provider would struggle to cover its costs, providing a natural cap on the level of price differentiation that competitive markets can bear. Very few consumers would remain disengaged for any level of price differential. To the extent that these constitute genuinely vulnerable consumers unable to engage meaningfully with the market they deserve protection. But as we explain in Section 6 of this response, the share of vulnerable consumers is lower than suggested by the super-complaint, and they are not disproportionately represented among out of contract consumers in telecommunications markets.
- 5.7. Third, an artificially imposed reduction of price differentials would inevitably increase prices for engaged consumers to compensate for lower prices for unengaged consumers. The super-complaint suggests that because prices for unengaged consumers are "unfair", correcting these justifies any welfare losses incurred by engaged consumers. Quite apart from the possibility that the correction in itself may be overall consumer welfare reducing, this narrow and static approach misses one critical point: consumers engage with markets for welfare gains (an "engagement premium"). The lower the gains to be had from engaging with a market the lower the drive to engage. As Ofcom notes "*Perceptions of low potential gains from switching or costs of the switching process may deter consumers from beginning the process of engaging in these*

markets.”⁴⁵ In other words, an artificial reduction of price differentials means there are less engaged consumers in the market, reducing the competitive pressure on providers and thereby distorting dynamic competitive market outcomes over time. Furthermore, if operators are unable to rebalance their tariffs to obtain the same revenues and margins, they may invest less in new technologies and services.

- 5.8. Finally, and perhaps most pertinently, the super-complaint’s demand for intervention may well end up harming, not protecting, the majority of vulnerable consumers. Their complaint ignores the fact that engaged consumers also include vulnerable consumers (e.g. consumers with low financial means) that would inevitably be made worse off by any intervention. The super-complaint makes a misleading simplifying assumption that disengaged consumers equate with consumers requiring protection and engaged consumers with consumers not requiring any protection. However, as we show in Section 6 there can be no suggestion that in telecoms vulnerable consumers are overrepresented among out of contract (so called “disengaged”) consumers. As most consumers are in contract, it means that any adverse impact on engaged consumers from intervention will also affect the majority of vulnerable customers.

6. Which customers are out of contract and why?

- 6.1. A core theme of the super-complaint is that certain customer groups, specifically older people, people with mental health problems, people of low income and those with lower levels of education are less able to engage and so are more likely to pay higher prices. Moreover, consumer inertia is said to be baked in “*through long lasting, automatically renewing contracts...*”.⁴⁶
- 6.2. In fact, under the General Conditions of Entitlement, automatically renewable contracts for telecommunications services are prohibited, and customers must always give their active consent before a contract is renewed.
- 6.3. To provide some data on this issue we have looked at our out of contract customers on fixed and mobile.⁴⁷ By ‘out of contract’ we mean that the minimum term of their contract (12, 18, 24 months etc) has expired but their service continues with us until they choose to re-contract or leave. Out of contract customers appear to be the same, in demographic terms, compared to those in contract, for both broadband and mobile services.
- 6.4. For BT’s broadband customers, as shown in the table below, there are no meaningful socio-economic differences based on contract status: it does not appear that out-of-contract customers are more likely to be vulnerable than in-contract customers based on their demographics. In addition, although fibre eligible customers are [redacted] and [redacted], they also [redacted].

Table 1: demographics of BT’s broadband customers⁴⁸

⁴⁶ Super-complaint, p.3.

⁴⁷ The super-complaint (p.4) specifically calls out end of contract prices for customers taking mobile handset contracts.

⁴⁸ [redacted]

[REDACTED]

- 6.5. Moreover, the number of customers out of contract drops rapidly with length of time out of contract, as shown below for BT’s copper broadband customers. Furthermore, average revenue per user (ARPU) declines across groups with time out of contract, supporting the point that tenure is not positively correlated with price: it may not always be rational for customers to re-contract [REDACTED]. There are also no material differences in socio-economic characteristics overall based on length of time out of contract.

Table 2: length of time out of contract BT’s copper broadband customers⁴⁹

[REDACTED]

- 6.6. For Plusnet’s broadband customers, as shown in the table below, it appears that out-of-contract customers are on average even less likely to be vulnerable than in-contract customers based on demographics.

Table 3: demographics of Plusnet’s broadband customers⁵⁰

[REDACTED]

- 6.7. With regards to mobile, there is nothing unique about mobile handset contract customers who go out of contract except that they pay *less* on average than in-contract customers, as shown in the graphic below. EE currently has around [REDACTED] out-of-contract handset customers and broadly they have the same demographic mix as those in contract, but slightly older and paying much less, as shown by the graphic below.

Figure 20: current out-of-contract profile for mobile handset customers⁵¹

[REDACTED]

- 6.8. On average, customers out of contract on EE wait for [REDACTED] before acting, however this number is hugely skewed by customers significantly out of contract [REDACTED]. Importantly there are a number of very good reasons why customers choose to go out of contract. Out of contract customers may:
- a) not save any money if they switched to the deals currently on offer [REDACTED];

⁴⁹ [REDACTED]

⁵⁰ [REDACTED]

⁵¹ EE analysis, June 2018.

- b) not save enough to consider switching – Ofcom’s research has shown that out-of-contract customers would want savings of between £10 and £23 per month for them to consider it worth switching provider or signing up to a new deal with their current provider⁵²;
- c) be benefiting from legacy features which they will lose if they move to current deals;
- d) be waiting for the next handset, and may not want to switch to a SIM-only contract with fewer features for the sake of a few months; or
- e) not have got around to changing their deal but are perfectly able to engage with the market when they want to.

6.9. [REDACTED]

Fig 21 - Breakdown of EE’s out-of-contract customer base⁵³

[REDACTED]

6.10. This contrasts starkly with the super-complaint’s claim that the average “penalty” for being out-of-contract in mobile is £22 a month.⁵⁴ Our own analysis shows that the average amount that EE’s out-of-contract customers (excluding indirect customers⁵⁵) would “save” for EE’s top 40 plans is less than [REDACTED] compared to EE’s 30 day SIM Only plans, with this “saving” falling to only [REDACTED] after benefits (such as more generous allowances and features) are taken into account, as shown in the graphic below.

Figure 22: Saving for EE’s out-of-contract consumers (excluding indirect consumers⁵⁶) on top 40 plans compared to current 30-day SIM plans⁵⁷

[REDACTED]

6.11. Moreover, the super-complaint’s estimate of £264 for a year⁵⁸ overlooks the fact that those customers who can save the most, in general, stay out of contract the shortest time. As shown below, almost [REDACTED] of customers who have stayed longest out of contract would “save” no money from a “like-for-like” SIM plan, based on an analysis of EE’s top 40 plans. Taking this into account, the average OOC customer could “save” [REDACTED] in total, not £264 for a year, as the super-complaint states in Table 2.

⁵² Ofcom, Consumer Engagement 2018, produced by: Critical Research, July 2018.

⁵³ [REDACTED]

⁵⁴ Super-complaint, table A6.

⁵⁵ [REDACTED]

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ Super-complaint, table 2.

Figure 23: Out-of-contract mix by “saving”, for the full customer base and for those who are >6m out of contract, for EE’s top 40 plans⁵⁹

[REDACTED]

- 6.12. Similarly, for fixed-broadband⁶⁰, the super-complaint’s estimate of £113 for a year overlooks the fact that those customers who can save the most, in general, stay out of contract the shortest time. A more representative assessment would take into account that those customers who could “save” more are likely to sign up for a new contract sooner.
- 6.13. Furthermore, the super-complaint focuses on the cheapest broadband packages, rather than all broadband packages, and overlooks the fact that some broadband packages have a far lower difference between in-contract and out-of-contract prices. For example, BT’s Superfast Fibre Plus package currently has an in-contract price of £54.99 and an out-of-contract price of £58.99, a difference of only £4.
- 6.14. Finally, the super-complaint’s estimate of the share of affected consumers set out in Table 1 also appears overstated for both mobile and broadband customers.
- 6.15. The super-complaint bases its estimate of the share of affected customers on a survey which asked customers how long they have been in a contract. The super-complaint counted all mobile customers in contract for more than 2 years and all broadband customers in contract for more than 3 years as out of contract and therefore subject to the so-called “loyalty penalty”. The super-complaint estimates that 34% of mobile customers and 43% of broadband customers. It argues that this is a conservative estimate since mobile and broadband contracts can be shorter than 2 and 3 years respectively.
- 6.16. BT’s and EE’s figures suggest lower affected customer shares for both customer groups:
- At most [REDACTED] of BT’s fixed broadband customers are currently out of contract.
 - c. [REDACTED] of EE’s mobile handset customers are out of contract, and around half of these are unlikely to be better off by switching to an equivalent SIM Only contract.
- 6.17. Without any further insight into the details of the super-complaint’s survey it is difficult to speculate why it may have overestimated the share of affected customers. One possibility is that customers responding indicated the length of time they have remained with the same provider rather than when they last re-contracted.
- 6.18. In the time available and due to lack of sight of all the necessary data we have not attempted a full critique of the super-complaint’s calculation of the total size of the so-called “loyalty penalty” for mobile and broadband as set out in Table 3 of their super-complaint. However, as all critical inputs into that calculation (number of affected consumers, average monthly saving potential, and average length of time consumers remain out of contract) appear to be significantly overstated in comparison to our own figures it appears highly likely to us that the total potential savings for mobile and broadband are significantly lower than those suggested by the super-complaint.

⁵⁹ EE analysis.

⁶⁰ Super-complaint, table 2.

7. Vulnerable customers

7.1. We agree that vulnerable customers should be supported by industry and their interests taken into account across all products and services. Across our brands we offer a range of products and services to support vulnerable customers, developed with insights from customers, carers and third party organisations such as Alzheimer’s Society, BDF, MIND and Money Advice Trust amongst others. These products include:

- *Affordability schemes* - BT Basic is a subsidised social-telephony scheme that provides low cost line rental and an inclusive call allowance for just £5.10 per month, or a package which includes broadband for just £9.95 in total. A customer can cancel their plan without being held to term. BT works with the Department for Work and Pensions (DWP) to check eligibility and the scheme is usually available to customer’s claiming one of the following benefits: Income Support, Income-based Jobseeker’s Allowance, Pensions Credit (Guaranteed Credit), Employment and Support Allowance (income related), Universal Credit (and on zero earnings). Currently BT has [8] customers on these contracts. EE and Plusnet also have a variety of lower value plans and products to support those with lower credit ratings.
- *Priority Fault Repair* –Provides free priority repair, 365 days of the year, for someone in the household who has a chronic long-term illness or disability and is unable to leave the house without the assistance of another person.
- *Network Controlled Calling (NCC)* - People with certain conditions (like memory loss, learning difficulties, dementia or obsessive compulsive disorder (OCD)) sometimes make a lot of calls to the same number. NCC provides call control and helps avoid call charges, particular to premium rate numbers.
- *Protected Services Scheme* – Provides account protection if the bill goes unpaid, for example, if the account holder were to be hospitalised. This allows us to contact a nominated third party on an account holder’s behalf.
- *Power of Attorney* - BT helped develop best practice guidance for acting on behalf of a person with dementia.⁶¹
- *Blocking nuisance call* - Nuisance and malicious calls are a problem for many people, particularly older people, who are vulnerable to being scammed.
- *Trained customer teams* - All of our customer facing staff receive training on vulnerability and BT also has a dedicated support team for vulnerable customers.
- *BT.com/inclusion* - Customers or their carers can access our Including You website to see what help we can provide. The site is also signposted on BT’s website and on customer bills.

⁶¹ We have been a proud supporter of the Prime Minister’s Champion Group on Dementia since its inception and in May 2017 we were one of only ten UK companies to be recognised in the Alzheimer’s Society Business Guide as ‘Dementia Friendly’.

- *Customer identification* - To best support customers when they contact us, if made aware of them we flag impairments on the account, so the customer does not need to tell us each time they call.
- *Natural language interactive voice recognition (IVR)* – BT's Nature Language IVR replaced 16 options to choose from and has overcome confusion where customers perhaps could not recall option 1 or 2. It also allows BT to recognise potential impairments and direct customers to the right person to assist.
- *Amendable collections processes* – This enables us to support customers facing financial difficulties including by offering extension on payment due dates or reductions in line rental price.

7.2. Broadly speaking, we define vulnerable people as those who are:

- significantly less able to protect or represent their interests in the communications market; and/or
- significantly more likely to be at a disadvantage, or that disadvantage is likely to be more substantial.

7.3. We acknowledge characteristics of vulnerability such as age, physical or learning disability, low literacy, mental health issues and communication difficulties. We also know that personal circumstances might make some people more vulnerable on a temporary basis, such as bereavement, separation from a partner, pregnancy, loss of income, accident or injury.

7.4. One of the difficulties we face in practice is identifying those customers that might need our additional support. We are for the most part reliant on the customer or their carer to inform us of their impairment or vulnerability (although this is aided by some of market-leading tools such as Natural Language IVR, behavioural identification from products like Network Controlled Calling and our 'flagging' mechanism).

7.5. In June 2018, as part of our engagement with Ofcom on consumer engagement, we discussed EE's proposal for specific actions for vulnerable customers. Within this we detailed that work needed to be done to define and identify 'vulnerable' and we offered to work with Ofcom on this. BT, EE and Plusnet have also agreed to join a Communications Sector Vulnerability Working Group established by Ombudsman Services. Ombudsman Services, along with CPs, recognise that vulnerability is a complex, multifaceted issue and there is significant potential for providers to work together to develop aligned approaches to vulnerability in the sector. Furthermore, we have ongoing engagement with Citizens Advice as part of its work on vulnerability. For example, in July this year we participated in its workshop on "supporting vulnerable telecoms consumers: learning from other essential service markets" and are actively engaged in discussions regarding Citizens Advice's research into how the needs of vulnerable consumers can best be met by telecoms providers.

7.6. To help us best meet the needs of our vulnerable customers we host the BT Customer Inclusion Panel. This panel is made up of CEOs and senior staff from various charities, including Mind, RNIB, Hearing Link, Business Disability Forum, International Longevity Centre, amongst others. These sessions are held quarterly and focus on shared learnings, and how we can provide the best service for our vulnerable customers.

- 7.7. In 2017, Ofcom reviewed the General Conditions for communications providers, with the aim of updating the rules to enhance consumer protections. The review resulted in a number of changes, which place tougher requirements on all UK communications providers, including for nuisance calls, complaints handling and the protection of vulnerable customers. These new rules came into force in October this year and require all communications providers to have policies in place for identifying vulnerable customers – such as people with learning or communication difficulties or those suffering physical or mental illness or bereavement – and ensure they are treated fairly.

8. ‘Essential markets’

- 8.1. The super-complaint brands a number of industries as being ‘essential markets’⁶² whilst others have stated that telecommunications services are the fourth utility. Highlighting the importance of telecommunications to consumer welfare is not in itself objectionable, however there should be no presumption that because telecommunication services are as important as some utility services that issues in those sectors pervade telecoms. It is crucial that any analysis of consumer engagement, effectiveness of competition and consumer outcomes is assessed in the context of the specific market in question. Telecommunications markets are not comparable to gas, electricity, water, home insurance, fixed-rate mortgages or savings accounts: customers are genuinely engaged with the services offered (see section 3); competition takes place across a broad range of parameters and results in better services at lower prices (see section 1); and there is constant innovation that is tangible to customers. For these reasons, the risks of adverse effects from ill-conceived intervention are much greater in these dynamic markets, and the principle of bias against intervention is of paramount importance. For illustrative purposes this section very briefly compares retail mobile and fixed services with gas, electricity, water, home insurance, fixed-rate mortgages and savings accounts.
- 8.2. *Is the technology fast moving?* Mobile telecommunications services are constantly evolving. The move from each generation of technology has benefitted customers enormously. 2G allowed voice services, 3G the beginnings of viable data services, 4G widespread high-quality data services, and 5G promises a new wave of innovation with ultra-low latency services. Consumers also benefit from the constant stream of innovative devices originating from global technology players including Apple, Google, Samsung, and Huawei.⁶³ As a result of the shift towards voice and messaging services provided by Over-The-Top (OTT) competitors, mobile operators are seeing falling SMS and MMS volumes and revenues with, for example, WhatsApp and similar services’ share of messaging now estimated to be more than 75%.⁶⁴ On the fixed-broadband side, superfast broadband roll-out continues to extend beyond 95% of premises and the deployment of fibre to the premise is gathering pace. There has been increasing competition with other vertically integrated network providers – principally Virgin Media rolling out to cover 60% of UK premises, but also other ‘altnets’. This provides consumers with significant choice of providers and plans. Unlike in energy and water, communications companies make these significant investments in next generation networks largely at their own commercial risks, without being able to rely upon certain current or future regulated returns: communications

⁶² Super-complaint, p. 2.

⁶³ In home devices exist such as Nest and Hive however the range of such services is far more limited and the enable far less (for example heating controls) than a smartphone.

⁶⁴ Statista, Instant messaging app share of mobile messaging traffic and revenues worldwide in 2018.

providers have invested in superfast broadband, ultrafast broadband and mobile networks facing the full demand risk, even where wholesale access regulation applies to fixed access broadband networks. Whilst there is likely significant network and generation innovation in electricity and gas markets, the pace and immediate impact on customers is likely to be slower and less visible, providing fewer opportunities for consumers to engage with innovation in these sectors.

- 8.3. *Customers choose according to very distinct needs* - A key difference between communications and gas, electricity, water, home insurance, fixed-rate mortgages and savings accounts is the former has packages of different services, with providers offering products and services that vary by much more than price alone – for example, service levels, mobile coverage, average data speed differences, reliability promises, choice of content, router ranges and trust in the brand – and are relatively easy to understand.
- 8.4. *Customer adoption is increasing* - The vast majority of consumers actively engage with their telecoms services every day and are more regularly in contact with their provider (to monitor data usage, for example), whereas for, say, home insurance, the level of interaction is perhaps once a year at policy renewal. A typical household now has around 25 connected products, and this is expected to increase to over 50 by 2022.⁶⁵
- 8.5. *The cost of an ‘irrational’ consumer decision in communications is generally limited and more frequent engagement allows consumers to ‘learn’ over time* - While there have been reports about consumers unknowingly incurring very high and unexpected telecoms bills (e.g. unchecked data roaming), these are few and far between and in decline, and become obvious to the consumer relatively quickly. In finance, however, a bad decision may never become obvious to the consumer but have severe long-term consequences, such as the choice of fixed rate-mortgage product. The inherent complexity of many financial products may also mean effective assessment and comparison is more difficult than for communications. Furthermore, given that communications services are often used on a daily basis, consumers have a better sense of their usage patterns, and repeated and regular contract renewals/switching makes consumers more sophisticated in understanding the services on offer.
- 8.6. *Customer satisfaction is generally better* - According to Ofcom, 92% of mobile phone users said they were very or fairly satisfied with their mobile service, with 84% satisfied with their fixed broadband provision.⁶⁶ Satisfaction with energy and gas suppliers is far lower at 72% and 71% respectively.⁶⁷
- 8.7. *There is no identifiable link between consumers’ financial circumstances and their engagement in communications markets* - Ofcom analysis has shown that there is no clear relationship between socio-economic group and the level of inactivity (see Figure 24 below). In addition, consumers can, and do, vary their spend on communications services to fit their household budget more than for utilities. ONS data shows that the lowest income centile households pay 8% of their household expenditure on energy, with the highest income centile households paying only 3% (just over a third of the lowest income centile’s relative spend). For communications, the figures are 4% and 2% respectively (just over half of the lowest income

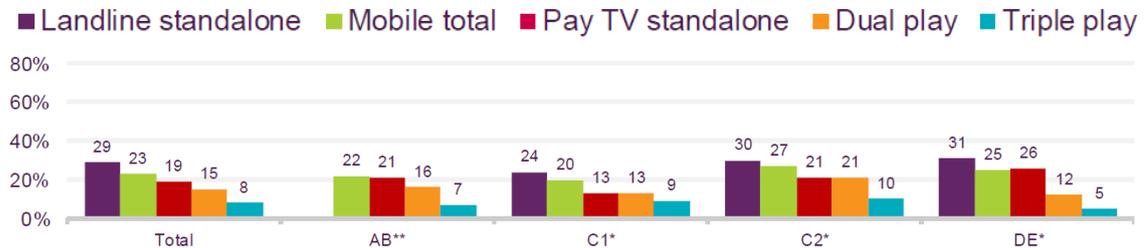
⁶⁵ GSMA, The Impact of the Internet of Things, 2015.

⁶⁶ Ofcom, Communications Market Report 2017, pages 148 and 162.

⁶⁷ Ofgem, Retail Market Indicators, 2018.

centile's relative spend). The smaller percentage difference indicates that consumers vary their spend on communications services more than for utilities to fit their household budget.⁶⁸

Figure 24: Proportion of inactive consumers, by socio-economic group⁶⁹



9. Our preliminary views on the merits of a market study

- 9.1. We consider Ofcom, as the specialist telecommunications regulator, is best positioned to consider the issues raised by the super-complaint, in so far as they concern the mobile and broadband markets. Ofcom is already engaged with these issues. For instance, on 26 September 2018, Ofcom opened a consultation into mobile handsets deals, and announced its further work on the 'loyalty penalty'.⁷⁰ To the extent therefore that there are any issues to be addressed Ofcom, the sectoral specialist, is already looking at them, including how to support vulnerable consumers.
- 9.2. Moreover, we consider a market study across five markets with different characteristics, is not an appropriate or efficient approach to address the issues raised. There are too many market specific characteristics to enable an efficient market study across all five markets, in particular given the obvious differences between telecommunications and financial services. That said, we appreciate the depth of experience in the CMA in both competition and consumer matters and believe that the CMA's participation in this debate to have significant merit. We suggest below that this could be formalised through the auspices of the UK Competition Network potentially building on its existing work on vulnerability⁷¹ and on lessons learnt from consumer facing remedies.⁷²
- 9.3. The super-complaint fairly acknowledges the weaknesses in its submissions: *"While we cannot claim with confidence that similar dynamics can be found across essential markets, similar*

⁶⁸ BT calculations based on 2016/17 ONS data taken from 'Detailed household expenditure by equivalised disposable income decile group' and 'Detailed household expenditure as a percentage of total expenditure by equivalised disposable income decile group'.

⁶⁹ Ofcom, Access and Inclusion in 2016, published 2017. We note that Ofcom's definition of 'inactive' consumers are those least likely to have had past involvement (i.e. they may have switched, considered or negotiated but not in the past two years). This group tends to state "no interest in changing provider". We would emphasise that these customers are not necessarily 'inactive', they may just be happy with their current provider. Having "no interest in changing provider" is not necessarily a concern, as we explore throughout this document.

⁷⁰ Paragraphs 2.17-2.20 of Ofcom's consultation of 26 September 2018: "Helping consumers to get better deals in communications markets: mobile handsets".

⁷¹ <https://www.gov.uk/government/publications/vulnerable-consumers>.

⁷² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744521/UKCN_consumer_remedies_project_-_lessons_learned_report.pdf.

features - incumbency, dominance, reliance on loyalty, and high levels of profitability - are present. We do not have sufficient evidence to request that the CMA conduct a market investigation into whether any features of a market are preventing, restricting or distorting competition. Nevertheless, we think that through our proposed market study the CMA should collect further evidence regarding individual markets, and conduct a market investigation if the indications we report here show that there are adverse effects."⁷³

- 9.4. A super-complaint, as defined by section 11(1) of the Enterprise Act 2002, is a complaint submitted by a designated consumer body that *'any feature, or combination of features, of a market in the United Kingdom for goods or services is or appears to be significantly harming the interests of consumers'*. The purpose of a market study by the CMA would be to consider whether the matter raised by the super-complaint has or may have effects adverse to the interests of consumers; and to assess the extent to which steps can and should be taken to remedy, mitigate or prevent such adverse effects.⁷⁴
- 9.5. The super-complaint calls for the CMA to open a market study in order to identify remedies and recommendations to end the *'loyalty penalty'*.⁷⁵ It notes that because the issues raised are complex and cannot be resolved within 90 days, a cross-sectoral market study is necessary.⁷⁶ We do not consider this to be the appropriate test for determining whether a market study should be launched. We have set out below some factors the CMA may wish to consider in exercising its discretion as to whether to open a market study:

(a) Alleged adverse effects on consumers' interests are overstated

- 9.6. As we set out in Section 5, the issues identified by Citizens Advice are overstated in the super-complaint and its proposed intervention may in fact harm vulnerable customers.

(b) There is insufficient commonality between the 5 markets to justify a cross-sectoral market study

- 9.7. A relevant factor will be whether the CMA can look more holistically at the issues raised across sectors and therefore devise solutions that deal with the issues in the round in a way that the sectoral regulators are unable to. In our view there is significantly less commonality across these sectors than Citizen's Advice portray. As we explain above, the markets referred to are very different – it certainly cannot be assumed that a *'loyalty penalty'* harmful to consumers will be found in each of these markets let alone that a tool kit of common remedies would for instance be helpful. This is in stark contrast to other market investigations such as for Payment Protection Insurance (PPI), where there was a much greater degree of commonality: PPIs were sold alongside personal loans, credit cards, overdraft facilities and mortgages but in all cases as a secondary product once the primary product was purchased – which was the common element. The issues the super-complaint has raised are much more diverse.

⁷³ Super-complaint, p.28.

⁷⁴ Section 130A of the Enterprise Act 2002.

⁷⁵ Super-complaint, p.2.

⁷⁶ Super-complaint, p.2.

9.8. It is likely that a significant part of the market study will be spent assessing the competitive dynamics of each of these markets. Given that at least five different markets are in scope, this is a very significant undertaking. Given the sectoral regulators have an in-depth knowledge of these markets, it would be more efficient for them to address the issues raised within their respective sectors.

(c) Ofcom is already engaged with these issues

9.9. Ofcom has an ongoing programme of work looking at consumer engagement within communication services. A Call for Inputs into Consumer Engagement was first published by Ofcom on 14 July 2017. More recently, Ofcom has consulted on end-of-contract and out-of-contract notifications⁷⁷ and, on 26 September 2018, it issued a consultation into mobile handset pricing.⁷⁸ In that latter consultation, Ofcom explains that it also intends to “*review the large prices differences between the discounted prices that customers pay when they sign up to a new deal and those they pay at the end of their minimum contract period.*”⁷⁹ We and other industry players are constructively engaged with those consultations.

9.10. Therefore, the potential adverse effects (if any) in the retail fixed broadband and mobile markets, are already being looked at by Ofcom. In light of that, we do not consider a market study by the CMA is necessary or appropriate.

(d) A market study by the CMA may slow existing workstreams by the sector regulators and/or BEIS or if they continue in parallel, industry will be burdened by multiple reviews of the same subject matter

9.11. A further dimension to the debate on consumer engagement is BEIS’s Smart Data Review. This cross-government review will consider how government can accelerate the development and use of new data-driven technologies and services to improve the consumer experience in regulated markets. It will also consider the extent to which a cross-sectoral approach is appropriate. To do so, Government intends that the sectoral regulators will be closely involved in that review. The review will report to the newly established Consumer Forum, chaired by the Minister for Consumer Affairs, which brings together ministers and CEOs of sector regulators. We assume that the CMA will be very actively engaged in the process; any work as part of a market review risks being duplicative of the work by BEIS and the Consumer Forum.

9.12. The government has stated that it will consult with stakeholders including developers, intermediaries, regulated companies, consumer organisations and charities throughout the review. We intend to participate actively in that review. The issues are indeed complex but we see opportunities to improve consumer outcomes which we are keen to explore.

⁷⁷ Issued 31 July 2018. Available at <https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications>.

⁷⁸ Helping consumers to get better deals in communications markets - mobile handsets. Closes on 7 November 2018. Available at <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumers-communications-markets-mobile-handsets>. Paragraphs 2.5-2.11 describe Ofcom’s work to date.

⁷⁹ Page 7.

- 9.13. One of these issues that the Smart Data Review will look at is switching. As we explain above, switching in communications markets is a topic Ofcom has looked at in detail in a number of reviews over several years. Changes to the processes have required detailed consideration because what may, at first sight, seem like beneficial changes, may come at disproportionate cost. In the case of mobile switching, Ofcom for instance reached the conclusion that moving to a gaining provider led system would not be justified on cost benefit grounds and a customer led 'auto' switch system was a proportionate compromise. Similarly, on fixed, Ofcom has not extended the same gaining provider led switching process to cable operators that applies to those operators that use Openreach's copper network, due to the costs associated with doing so.
- 9.14. Customers engaging with communications markets have a far greater range of factors to consider in exercising choice than when they engage with other services such as energy. We describe the kinds of features in section 2 above, such as speeds, network quality and coverage, handset choice, price and service. One issue we believe BEIS's review should assess in detail is how those more complex parameters could be reflected in comparison tools. Currently, there is too much emphasis on price, which may be appropriate for other services, but is too simplistic for telecommunications. Customers should be able to assess both price and quality - not just price.

(e) Existing remedies have been effective, although more can be done

- 9.15. A theme of the super-complaint is that existing remedies have failed and /or that less intrusive remedies such as providing customers with greater information are unlikely to be effective. Whilst this may hold true for other sectors, telecommunications markets are very different. In telecommunications, the starting position is that the markets are competitive (highly so) and consumers are significantly more engaged. It is not just customer churn that shows success; the *threat* of switching is also important as this constrains prices. Information type remedies may be more effective in these types of dynamic market and the risks to effective competition from intrusive remedies is well understood, as is the potential for this to bring customer harm rather than benefit.
- 9.16. Ofcom has kept these markets under very active review. For example, in 2016 Ofcom consulted on various proposals to reform switching of mobile communications services⁸⁰ and on switching landline, broadband and/or pay TV between different platforms.⁸¹ Switching reforms on mobile will for instance enable customers to obtain the PAC code that they need to switch without having to call their provider. These come into force in July 2019. These will need time to bed in to see their affect. In terms of reforms to switching, it should not be assumed that these have failed (or will fail) if switching does not increase as customers often use the threat of switching to drive a better deal. For standalone landline services, we voluntarily entered into undertakings

⁸⁰ Consumer Switching: Proposals to reform switching of mobile communications services. Issued 23 March 2016, <https://www.ofcom.org.uk/consultations-and-statements/category-1/consumer-switching-mobile>.

Consumer switching: Further proposals to reform switching of mobile services, Issued 29 July 2016, <https://www.ofcom.org.uk/consultations-and-statements/category-2/mobile-switching-jul16>

⁸¹ Making switching easier and more reliable for consumers: Proposals to reform landline, broadband and pay TV switching between different platforms, Issued 29 July 2016, https://www.ofcom.org.uk/_data/assets/pdf_file/0030/58845/making-switching-easier.pdf.

with Ofcom to reduce the prices of these services.⁸² As noted above, Ofcom has a programme considering consumer engagement which we are very actively engaged with.

(f) The super-complaint complain raises a number of issues outside of the scope of the 'loyalty penalty' however there are strong consumer protection measures in this area which are actively enforced by Ofcom

- 9.17. We believe that consumers engaging with the mobile and broadband markets are well protected by existing law and regulation. The Consumer Rights Act 2015, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Protection from Unfair Trading Regulations 2008 all apply to new and existing customers of telecommunications products. It is acknowledged that the UK affords its consumers one of the highest standards of protection in Europe, which the European Union is (in essence) seeking to extend to the rest of its members through its proposed "A New Deal for Consumers". The UK has committed (whatever happens with Brexit) to improving the position for mobile and broadband consumers yet further through the implementation of the European Electronic Communications Code.
- 9.18. This means our customers are already provided with a wealth of clear and relevant information before and during their contracts with us. The main subject matter of the contract is of course the price, whether paid during a minimum term or once it has expired, and whether it remains the same or is stated to vary over time. In the case of mobile or broadband contracts, this is the regular monthly (or quarterly) charge for the services. The Consumer Rights Act provides that this key term(s) around price must be transparent (expressed in clear and intelligible language) and prominent (brought to the consumer's attention in such a way that an average consumer would be aware of the term).
- 9.19. BT has the Plain English Crystal Mark for the content of its terms and conditions and we are planning to do the same for our EE terms and conditions. On prominence, we make sure that BT and EE customers understand what they will pay and for how long in both brands' order journeys and post-contract confirmations.
- 9.20. In addition to general consumer law, telecommunications has its own significant body of regulation primarily the General Conditions of Entitlement. How these and general consumer law apply to the case studies in the super-complaint is set out in Annex 1.

10. Suggestions of how the CMA could add value to these issues outside a formal market study

- 10.1. We recognise the CMA's expertise in consumer and competition issues. The CMA has already conducted work on vulnerability⁸³ and on lessons learnt from consumer facing remedies.⁸⁴ This work and further work related to these issues, including the impact on competition of pricing

⁸² <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/charges-cut-million-bt-customers>

⁸³ <https://www.gov.uk/government/publications/vulnerable-consumers>.

⁸⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744521/UKCN_consumer_remedies_project_-_lessons_learned_report.pdf.

interventions, could potentially be expanded through the auspices of the UK Competition Network (UKCN). The UKCN has already been engaged with some of these issues through the UKCN consumer remedies project which has held workshops on issues including: lessons learnt to date; remedies that work for vulnerable customers; testing of behavioural remedies; and linkages between customer behaviour and remedies.

- 10.2. The BEIS Smart Data Review will no doubt benefit from the CMA's deep knowledge however as we explain above we consider that it would be beneficial to have a single review run by BEIS rather than separate, parallel reviews of the same subject matter.

Annex 1

The super-complaint raises a number of issues beyond the 'Loyalty Penalty' through the customer case studies. We understand and appreciate the stress that customers, particularly those that are vulnerable, can face in these circumstances. All of these telecommunications case studies exemplify something gone wrong in the sales or service processes and are presented with very little context. In the following studies we comment on what might have been available if they were BT, EE or Plusnet customers as well as the layers of regulatory and legal protection available to those individuals today.

Case studies in the super-complaint:

Case study:

Nour, 72, came to Citizens Advice after struggling to use online comparison sites without an email address. Our adviser was able to contact providers using the telephone, but those with the greatest savings refused to go any further unless the client had an email address. The provider they ultimately chose was linked to their current provider, and therefore already had their account details. They were also willing to deal with a client who didn't use an email or have access to the internet. Our local adviser pointed out to the other companies that they are discriminating against people, often older adults, who don't have an email account, and preventing them from accessing better deals.

Whilst price comparison sites can prove valuable to customers they are certainly not a pre-requisite to getting a good deal in either mobile or fixed-broadband. We don't know all the circumstances that Nour was facing, but we can sympathise with the frustration. We offer customers many different ways to contact us to get a great deal. Our extensive retail footprint offers face to face services: we have over 620 EE shops in local high streets with ninety two percent of the UK population living within a 20 minute drive of an EE store. EE stores sell EE mobile and fixed broadband as well as BT fixed broadband. In addition, Carphone Warehouse sells services of EE, Vodafone and O2 through their retail stores. New and existing customers can alternatively use our telephone, online or web chat services to get in contact.

Case study:

Gregoire came to Citizens Advice when he started struggling financially. He has a contract for TV, broadband and internet with his provider, but is now outside of the initial 12 month contract. He can't afford the new monthly contract costs, however, and has fallen into arrears. Gregoire has tried to cancel or reduce his monthly package but was told by his supplier that he can't make changes whilst he is in arrears. His debt is continuing to increase because he can't afford to catch up sufficiently to cancel his contract, and find a better deal.

We would not prevent a customer from cancelling their contract because they are in arrears – the customer would be free to give notice at any point. If Gregoire was a BT, EE or Plusnet customer, depending on the circumstances we may also be able to offer Gregoire an alternative, more affordable contract. Where customers are facing financial difficulty, our collections processes are designed to support the customer to make repayments. Systems of support are offered on a case by case basis according to the circumstances of that individual but they may include repayment plans

which allow customers to spread what they owe over an agreed period, restricted service options which might range from call barring for international and premium-rate calls to a customer agreeing to have their plan limited to incoming calls for a period (with no charge to reconnect the service at the end of that period).

Case study:

Emem came to Citizens advice after he'd switched to a new provider for his internet and phone service. This had seemed like a good deal, and he had believed that he would be paying just over £20 per month. When he made this decision, his providers had not explained that he would be charged quarterly, and a larger direct debit of £80 was drawn from his account a few weeks later. This payment plan didn't work for Emem, and he therefore had to cancel his contract. Due to the inflexibility of the provider, Emem hasn't been able to benefit from a good deal with his preferred payment plan. He's missing out on savings because he needs a deal which he can pay for monthly, which might not work out as the cheapest available.

BT offers billing frequency and payment methods to suit our customers. The majority of our customers receive monthly bills but we also offer quarterly bills including the option to sign up to a Monthly Payment Plan, i.e. a set amount paid monthly towards the quarterly bill. BT offers extensive methods for payment which include direct debit, online payment through the website or My BT, using the My BT App, over the phone, by bank transfer, by post using a cheque or postal order, or by cash using a BT payment card at any PayPoint outlet (found in supermarkets, newsagents, local shops and petrol stations). There is no difference in price depending on the frequency of payment.

Case study:

Youssef, 65, has health issues which mean it's vital that he has a working phone. He switched to a new landline provider at the end of May, and was assured that it would be up and running in the first week of June. Despite multiple calls to his new provider, it still wasn't working by the end of June. Youssef decided to switch back to his old provider as the new one had failed to deliver its promised service, and he hadn't signed any contracts. His new provider got in touch and told him that he owed £230 for cancelling the contract. Youssef is not interested in modern technology and feels vulnerable and annoyed that the new provider broke their promises and are now demanding a payment he wasn't aware of.

In the event of persistent service faults, BT will allow a customer to end their contract during the minimum term period without having to pay an early termination charge (ETC). Ofcom provides guidance on the method of calculation for ETCs. Under BT's Customer Service Guarantee, customers can claim a rental rebate for the number of days they are out of service if BT fails to repair or provide a service on time and from Spring 2019, automatic compensation will be available for delayed repair following loss of service, missed engineer appointments or delays starting a new service. This is a voluntary agreement industry made with Ofcom in November 2017. The agreement includes BT, Sky, TalkTalk, Virgin Media and Zen Internet (who collectively service around 90% of landline and broadband customers in the UK).

Case study:

Georgia was phoned by her broadband and TV provider, offering her free movies as a loyal customer. She took the initial offer but was surprised seven months later that her monthly bill had gone up by £17 a month. It turned out that the movies were only free for a six month period and she was now being charged. Georgia found it difficult to remove the movies and eventually decided to leave her provider, who she had with for seven years. When she asked to leave she was told that she would be charged an

exit fee of £240, because in accepting the movies she had entered into a new 18 month contract.

In our experience, many customers appreciate the opportunity to try new services and to take advantage of promotional services. BT, EE and Plusnet offer a number of different offers and discounts for our customers but the conditions of our offers are always made clear in our advertising, in our order journeys (whether online, in person or over the telephone) and in the confirmation we send to customers after they agree.

In EE, for example, we have made offers of three or six month trials for BT Sport and Apple Music on our pay monthly mobile plans. Once the free period ends, the product works as a 30 day rolling contract so it can be cancelled month by month and no new minimum term for the underlying PAYM plan is entered into. We explain this in our advertising and when the customer is signing up to the trial. On top of that, we contact customers by SMS towards the end of the free period to tell them they will be charged going forward.

An alternative offer we sometimes make in BT is a discount for a certain amount of time (such as three months free for the first three months of a 24 month handset plan). The conditions of an offer like this (such as the minimum term of the contract, and the price after the discount period) is made explicit to customers in their order journey and in the confirmation we send to them after they agree.

In Georgia's case it appears that the offer of free movies was used to encourage her to re-contract her TV and broadband. If this was not made explicit to her, and she was unable to resolve the dispute directly with her provider, she would have the opportunity to resolve the matter using an independent alternative dispute resolution scheme such as Ombudsman Services or the Communication and Internet Services Adjudication Scheme (CISAS).

Case study:

Sameera is elderly and disabled, as well as being a carer for her husband who has cancer. They are on a low income and receive pension credit and a carer's allowance. Sameera wanted to switch her landline provider in order to save some money. She phoned up to sign up to a new deal, and during the phone call felt pressured into agreeing to get a bundled contract including broadband and a mobile sim-only contract, in spite of not owning a mobile or computer. Sameera now faces increased costs, but is too worried about the process of switching to try again. She therefore sought advice from Citizens Advice.

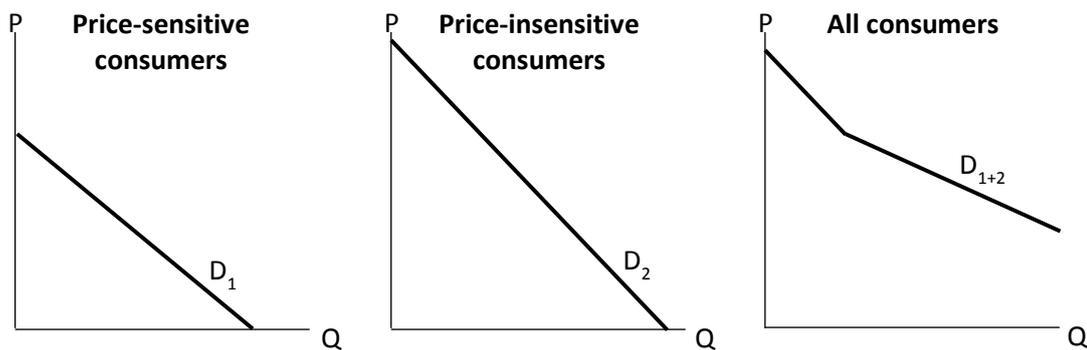
Sameera was led into purchasing services she clearly did not require. She appears to have been a victim of aggressive selling practices and perhaps "mis-selling". Ofcom's General Conditions and current UK consumer protection law address the potential for mis-selling by imposing obligations on Regulated Providers (in this context) to ensure that the information they provide to customers is accurate and not misleading.

A good sales conversation starts with assessing the customer need and affordability. Our personal sales method involves first establishing what is important to a customer (what they use, how much they use, what other products or services interest them) so that we can make offers that are tailored to them. We actively discourage our agents using 'hard sell' techniques because we prioritise customer satisfaction and agent calls are monitored for compliance with our policies and procedures. Each circumstance is assessed on a case by case basis and if we felt that a customer had been mis-sold we would put it right. In Sameera's case that might involve cancelling the broadband and SIM-only contracts that she does not require and crediting any associated charges she incurred.

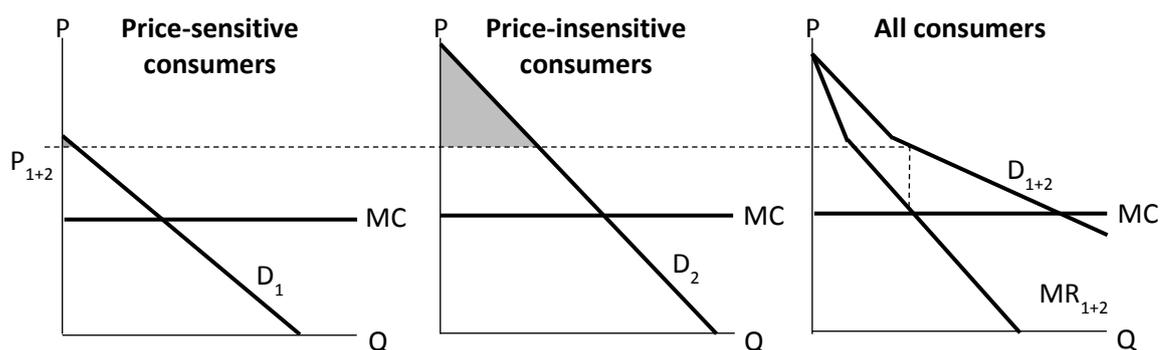
Annex 2 – simple illustration of differentiated pricing increasing consumer welfare

To illustrate how differentiated pricing can increase consumer welfare, consider a scenario in which consumers who do not take out a new deal when the fixed term of their contract ends are assumed to be less price sensitive, on average, than consumers who do. This assumption is not unreasonable because, with the exception of some vulnerable consumers, all consumers are able to engage with the market.

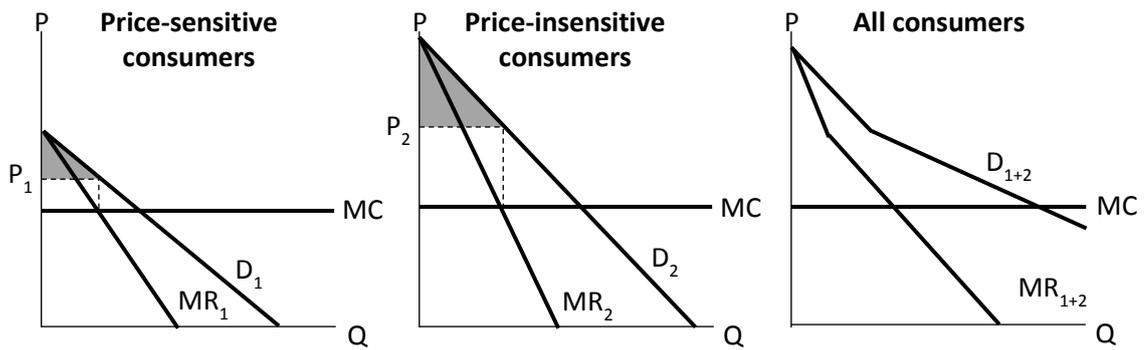
In this scenario, the diagrams below illustrate the way in which price (P) affects quantity demanded for a hypothetical unit of telecommunication services (Q), for price-sensitive consumers, price-insensitive consumers and all consumers combined.



If a profit-maximising firm was constrained to set the same price for both types of consumers, it would set a price of P_{1+2} as shown in the diagram below, as this is where the additional cost of selling one more unit (the marginal cost, MC) is equal to the marginal revenue from selling one more unit to the market as a whole (MR_{1+2}). In this scenario, the net welfare gain for consumers from participating in the market (measured by consumer surplus) would be as indicated by the shaded areas below.



However, if a profit-maximising firm was instead able to set differentiated prices in each market, then it would set a price of P_1 for price-sensitive consumers and P_2 for price-insensitive consumers as shown in the diagram below, corresponding to where marginal cost is equal to the marginal revenue for each group of consumers taken separately. In this scenario, the net welfare gain for consumers from participating in the market (measured by consumer surplus) would be as indicated by the shaded areas below.



As the diagrams above show, it is not necessarily the case that consumer welfare is increased by setting the same price for both groups of consumers. Price-insensitive consumers could benefit, but price-sensitive consumers could suffer, when firms are forced to set the same price for all groups of consumers, with the exact size of the impact dependent on the precise nature of consumers' preferences.

We note the suggestion in the super-complaint that average prices may nonetheless be above competitive levels⁸⁵; however on that issue see section 1 above on the competitive nature of the markets and section 5 on the relationship between price differentiation and competition.

⁸⁵ Super-complaint, p.28.