



Facebook's response to Ofcom's Consultation

"Strategic Review of Digital Communications: Discussion document"

8 October 2015

Ofcom's Strategic Review of Digital Communications – Discussion Document

Facebook welcomes the opportunity to respond to the Discussion Document launching Ofcom's Strategic Review of Digital Communications, which was published on 16 July 2015.

1. Introduction

This is the second strategic review of the sector that has been undertaken by Ofcom since its inception as a regulatory body at the end of 2003. In the decade following the conclusion of Ofcom's first strategic assessment of the telecommunications sector in 2005, the digital ecosystem has developed in ways that could not have been imagined at the time. The growth of Facebook from its launch in 2004 has played a major role in this remarkable evolution, which has seen data connectivity and Internet-enabled services become essential to people's lives around the globe.

Ofcom's Discussion Document addresses a wide range of issues that are important to the future development and success of the UK communications sector. It also sets out a thoughtful framework for consideration of the role played by so-called 'over the top' (OTT) services.

These comments focus on the OTT-related issues addressed in Section 14 of the Discussion Document. In particular, Facebook wishes to highlight:

- the symbiotic relationship that exists between OTT Providers (OTTPs) and Communications Providers (CPs), with new and evolving OTT services creating growing consumer and business demand for data communications and therefore driving demand and revenue growth for CPs in the provision of these services;
- the importance of ensuring that the future evolution of the UK regulatory framework takes into account, and does not impede, the pace and scope of innovation resulting from OTTP creativity and investment over the past decade, which have delivered a watershed of benefits to consumers and society; and

- the significant differences that distinguish network-independent OTT services from electronic communications services provided by telecommunications network operators, including the major commercial and competitive advantages enjoyed by firms that control the telecommunications infrastructure.

2. *About Facebook*

Founded in February 2004, Facebook's mission is to give people the power to share and make the world more open and connected. Since its launch, Facebook has been one of the leading innovators in the highly dynamic marketplace of online applications, messaging and targeted advertising. Facebook is used in 80 different languages by 1.49 billion people a month to stay connected with friends and family, discover what is happening around the globe, and share and express what matters to them. This includes some 37 million people in the UK.

Facebook owns and operates a group of online services most commonly used as mobile applications, including Instagram, Messenger, WhatsApp and of course the Facebook service itself. Facebook is continually in the process of testing and developing new and inventive online services and applications.

Today, Facebook has offices in 25 countries around the world and employs more than 10,000 people. This includes over 500 employees in the UK. Facebook's operations in London include teams of highly skilled people responsible for engineering, analytics, partnerships and design, amongst other functions. These teams help Facebook connect users, engage with mobile and web applications developers and work with marketers in the UK's vibrant advertising sector. Facebook expects its UK operations to continue to grow over the coming years.

3. *The rise of OTT services has played a major role in creating demand for data services provided by Communications Providers.*

Facebook agrees with Ofcom's assessment (at pages 5-6) that competition is a key enabler of investment and innovation in the telecommunications sector - in particular, investments in new infrastructure (fibre access, LTE, 4G, etc.) and efficiency-enhancing network technologies. However, another important ingredient that is necessary to spur investment is improved telecommunications network infrastructure and consumer demand for higher quality and groundbreaking new applications and online services.

The growth of Internet take-up and the host of OTT content and applications that are carried over the Internet have contributed to a major shift in focus for CPs in the UK and around the world. The origins of these providers, in both fixed and mobile communications, are rooted in traditional voice telephony. The transition to a data-centric telecommunications system has required major changes in the operating cultures and commercial mindsets of incumbent and alternative CPs alike. This transformation has come a long way but is still a work in progress.

To date, the most exciting and innovative developments in the online space have resulted from the ingenuity of network-independent OTTPs and the risks their investors have been willing to take. These OTT services have created steadily increasing demand for advanced data services and more capacious digital networks across a broad and growing range of consumer, business and government users.

As the demand-generating effects of social networking and messaging combine with those expected to arise from new computing technologies and service paradigms that are on the horizon, CPs will continue to play an important role in the eco-system and will continue to be able to deliver attractive returns for their investors. CPs therefore derive direct and substantial benefits from increased demand from OTT services of all kinds. This symbiotic relationship between CPs and OTTPs should be encouraged by policies that are focused on stimulating investment in the underlying network infrastructure whilst promoting competition and further innovation in the provision of OTT services.

4. *The UK regulatory framework for electronic communications should continue to encourage experimentation and innovation in the marketplace for OTT services.*

Despite the intensity and pace of innovation in the supply of OTT services of all types over the past decade, many commentators believe that the development of online applications and content is still only at the beginning of the innovation curve. New services and service models are springing up all the time, and the unpredictability of consumer take-up reflects the relative immaturity of the internet eco-system.

At the same time, a large number of consumers are in the early stages of the learning curve when it comes to making full use of their device functionality and keeping up with new applications and content services that are coming online. As their experience deepens and expands, and as even smarter devices and new business models emerge, new waves of innovation are expected. We are likely to see further developments in social networking and messaging applications in combination with advancements in distributed cloud computing, data analytics, the internet of things, drone technology, robotics and artificial intelligence.

There is thus vibrant competition in the provision of OTT services. This vigorous and constant contention for users amongst a broad array of providers creates strong incentives to ensure that consumers are happy with the services provided. This market dynamic makes heavy-handed consumer protection regulation unnecessary. Forward-looking regulatory policies should allow these innovative services to continue to flourish, evolve and advance. It would be unhelpful for policy makers or regulators to stifle further development by attempting to impose regulations intended for traditional telecommunications services on network-independent OTT services.

Policy makers and regulators should, as a threshold matter, consider consumers' actual requirements and expectations in regard to OTT services as compared to traditional telephony and messaging. OTT services typically are provided free of charge and require users to download to their personal devices the applications necessary for their use. By and large, the conditions that apply to network-dependent electronic communications services (e.g. pricing transparency, uninterrupted access to emergency services, number portability, etc.) simply are not relevant or concern to users of network-independent OTT services, nor are they expected by consumers under the circumstances of their provision.

It would be counterproductive and disproportionate for regulators to extend old rules to new applications and services where users do not want, expect or need these requirements to apply. The imposition of regulations developed to protect users of traditional telecommunications

services on OTT services would put a damper on innovation in an otherwise burgeoning area of development whilst providing little in the way of real benefit to consumers. In fact, it may be an opportune time for Ofcom to consider whether all of the consumer protection conditions contained in the Conditions of Entitlement remain necessary and proportionate for the protection of subscribers to traditional electronic communications services, or whether general consumer protection legislation may be sufficient in some cases going forward.

5. *Regulatory policy should recognise that there are significant differences between network-independent OTT services and electronic communications services that are provided by telecommunications network operators.*

CPs and OTTPs each benefit from the others' growth, and the services they offer are complementary. Ofcom has correctly recognised (at page 163) that unmanaged Voice over Internet Protocol services and video-calling services do not constrain the pricing of traditional fixed and mobile voice calls and therefore are not substitutes. Furthermore, as Ofcom has observed (at page 164), the majority of fixed providers bundle voice with their broadband offerings, which impacts on user demand for OTT services.

Consumers do not view OTT services in the same way as they do traditional communications services. As already noted, OTT services are usually provided free to the end-user. Furthermore, users must download specific application software onto their devices in order to use OTT services. OTT services are often used in combination with other online services by a defined set of users that is decided by the users themselves, rather than on an any-to-any basis.

For these reasons, users do not expect OTT services to provide the same feature-functionality as traditional voice and data services. They understand that many of these services are still under development and being offered on a best-efforts basis. In evaluating demand side factors, the substitutability analysis must take into account the fact that customer perceptions and expectations differ markedly as between OTT services and traditional communications offerings.

6. *Conclusion*

Facebook welcomes the thoughtful approach that Ofcom's Discussion Document has taken in considering the range of issues affecting OTT services. Facebook believes that OTT services

should be encouraged to continue to develop and evolve in a market-driven environment. Any move to impose sector-specific regulation on OTT services would be disproportionate and counterproductive, and should be avoided.