BT, Plusnet and EE's response to the ASA's consultation document:

"Consultation on speed claims in broadband advertising"

13/07/2017

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1 Executive Summary

1.1 Overview

This paper sets out BT, Plusnet and EE's comments on the ASA's consultation on broadband speeds in business-to-consumer advertising, and summarises the points made to the ASA during the pre-consultation meetings and working groups with other ISPs.

We welcome the opportunity to provide comments, and would underline the importance of ensuring that the ASA's revised approach takes account of Ofcom's ongoing review of the current Voluntary Code of Practice for Residential Broadband Speeds.

1.2 Key issues

BT, Plusnet and EE consider that speeds quoted in advertising should be available to at least half of all customers and should be available at the busiest time (referred to as "peak time" in the fixed-line Ofcom Broadband Speed Report).

Our preferred approach to advertising broadband speeds (outlined in our comments on **Option B**):

- allows consistency with the work Ofcom are doing on personalised speed estimates provided as part of the order journey;

- means that quoted speeds will be lower than they currently appear in advertising and consequently more representative;

- is more robust than using a 24 hour average because it takes account of the speeds available when most people use the internet, and

- does not leave the industry open to accusations that we have inflated our speed claims by measuring speed when relatively few people are online.

As set out in the document in our comments on **Options C** and **D,** we think that quoting a "typical" speed range will be confusing for consumers. Consumers will interpret a range as an indication of the speeds they are likely to get, not an indication of the speed they are likely to get *if* they fall within the range. (That is, the speed available to 60% of customers).

2.1 Answers to ASA's questions

This section provides BT, EE and Plusnet's response to the questions raised in the ASA consultation, setting out our preferred option for describing speeds, our rationale for this, and our reasons for rejecting the alternatives.

Option A: Advertised speeds are based on the median download speed for users (the speed available to at least 50% of users over 24 hours)

Qualification: Average speeds should state "average" alongside them. The headline speed claim should be further qualified (for example, in the smallprint) setting out how the average is calculated.

We do not agree that this option will provide consumers with sufficient clarity about the speeds available to them, and consider it could lead some consumers to be misled about the speed of the service at the busiest time.

A 24 hour average speed does not give a true reflection of the performance of the internet at the busiest (or "peak") time, defined by Ofcom as between 8 and 10pm, 7 days a week for residential broadband customers. This is the period when most users access the service, see attached graph in Appendix 1, showing peak time internet use for BT customers. The resulting contention causes a reduction in speed across all technologies. This has a significantly greater impact on cable services because of the way that network is engineered. (Unlike FTTC/VDSL products, where the final customer connection is a dedicated point to point link, cable systems are point to multipoint with all customers on the co-axial cable sharing the bandwidth).

The most recent fixed-line Ofcom Broadband Speed Report sets out the average speed by ISP at peak time and over 24 hours (page 28, see Appendix 2). As you will see from the table, a cable service of up-to 200 Mbps delivers average speeds of 173.1 Mbps over 24 hours, but only 149.5 Mbps at the busiest times. (A reduction of over 25% from the current advertised speed of up-to 200 Mbps.)

The same is true (although to a lesser degree) of all copper and fibre-to-the-cabinet services. If a 24 hour average is used, the lower speeds experienced at peak time will not be made clear to the consumer. Instead, the 24 hour average merges the higher speeds when relatively few people are using the internet (for example in the early hours of the morning), with slower speeds available at peak time, creating a skewed and potentially misleading impression of the speed that will be available to the consumer when they need it most.

Concerns about the slow-down in speed at peak time were raised by the more "tech savvy" participants who took part in your research into consumer understanding of broadband speeds, and summarised in your report as follows:

"Does the average figure take into account both peak and off-peak times? More tech savvy participants suggested that any average figures should do this."

(Source: ASA Qualitative research for broadband speed 25 October 2016, page 36)

It is clear that those consumers who are aware of the difference in speed want to see a figure in advertising that will explain the difference between peak time speed and 24 hour average speed. Using a 24 hour average will not achieve this, because it does not accurately represent the performance of the internet when customers use it most. The slow down at peak time is effectively "ironed out" by the higher speeds available when relatively few people are using the internet.

We do not think that small print is sufficient to explain that the advertised speed is not available to users at the busiest time.

In our view, this would be a contradiction rather than a clarification of the headline claim, in breach of CAP Code rule 3.9 and BCAP Code rule 3.10:

CAP Code rule 3.9: Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims they qualify.

BCAP Code rule 3.10: Advertisements must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims they qualify.

Option B: Advertised speeds are based on the peak time median download speed (the speed available to at least 50% of peak time users)

Qualification: Average speeds should state "average" alongside them. The headline speed claim should be further qualified (for example, in the smallprint) setting out how the average is calculated.

We are in favour of this option.

Speeds quoted in advertising should be the median sync speed minus a measured peak time overhead, and described in advertising as "Average XMbps". Ofcom have defined peak time as 8 - 10pm, Monday to Sunday, in the Fixed Broadband Speed Report and in their ongoing work on the Residential Broadband Speeds Code of Practice – we agree with this definition.

This approach will allow ISPs to advertise a speed claim that is more meaningful for more customers than a 24 hour average, as it takes account of traffic on the network at the busiest times. It allows consistency with the work Ofcom are doing on personalised speed range estimates, given as part of the order journey.

As a result, quoted speeds will of course be lower than they currently appear in advertising for "up-to" speeds, and will provide an assurance that the advertised speed is available to over 50% of all customers at the busiest time of the day.

To calculate this speed, a provider could:

i. start with the "sync" speed (the maximum speed the line is capable of);

ii. take the median point of all the sync speeds of customers on each product; and

iii. apply a percentage reduction caused by internet traffic at peak time to the median sync speed – the percentage reduction is the difference between the average maximum through-put speed and the peak time through-put speed. These speeds are measured by Ofcom in conjunction with its research partner Sam Knows.

Where there is no existing customer base, or a very small customer base (for example at the launch of a new product), the ISP should be able to demonstrate the likely average speed through lab tests, mathematical modelling and trial data.

In this case, we consider that a legal is sufficient to clarify the claim, and should explain that the speed is based on peak time speeds available to at least 50% of users.

For example:

Average X Mbps – based on speed available to at least 50% of customers at the busiest times.

Option C: Advertised speeds are based on the range of download speeds for the 20th to 80th percentile of users over 24 hours

Option D: Advertised speeds are based on the median download speed for users (the speed available to at least 50% of users over 24 hours)

Qualification: Speed claim should make clear that some consumers might achieve speeds that are lower or higher than the range, for example by using wording like "typical speed" alongside the advertised range.

Options C and D

We do not agree that either of these options provides sufficient clarity to consumers about the likely speeds available to them.

A speed range estimate is currently provided at point of sale, and will continue to be provided under Ofcom's proposed changes to the Residential Broadband Speed Code of Practice. At present the range provided at point-of-sale is a personalised estimate based on the performance of similar lines.

We agree that a personalised speed estimate provided as a range is useful to the consumer at this stage of the order journey, but do not think that the type of general speed range proposed by the ASA in Options C and D gives the same level of certainty as using the median.

As you found in your research, concerns were raised about speed ranges by those with more knowledge about broadband. They felt that a range would be too broad to provide useful information, particularly to those who did not think they were "typical" customers, and could fall outside the range.

Your research also noted that "*Most participants felt optimistic that they would fall within the typical range*," with one of them commenting that "*the range information is good because it manages your expectations*."

(Source: ASA Qualitative research for broadband speed 25 October 2016, page 39)

This appears to show that most consumers will interpret a range as an indication of the speeds they are likely to get, not an indication of the speed they are likely to get if they fall within the range. (That is, the speed available to 60% of customers). As such, we do not agree that quoting "typical" speed ranges will provide consumers with sufficient clarity about the speed of the service

Even if it could be explained clearly, by quoting the speed at the 20th and 80th percentile, you provide 60% of customers with less certainty about their potential speed than if you use the median. This would be an unsatisfactory compromise. It will also be confusing for consumers to move from a "*typical*" speed range in advertising to the personalised speed range estimate provided at point of sale.

Finally, for cable services, a speed range is unlikely to show any significant difference between the 20th and the 80th percentile, so would not provide meaningful information for the consumer.

2.2 Do respondents agree that the scope of the guidance should be confined to business-to-consumer advertising of residential broadband services?

Yes, we agree that the guidance should be confined to business-to-consumer advertising.

We would stress that, before deciding whether to review the relevance of the guidance to business-to-business advertising the ASA (as an evidence-based regulator) should first:

i. demonstrate that there is a need for change in this area due to widespread lack of understanding about "up-to" speeds amongst business customers. To date, we have not seen evidence of business customers being misled in this area. We would expect you to carry out robust research on a representative sample of business customers before consulting separately on this issue. We would suggest that business customers are likely to be more conscious of the type of speeds they will need to carry out online tasks, as in many cases these will be critical to their business. They are therefore more likely to understand the different speeds offered by copper and fibre business broadband services and the different service level agreements that accompany these products. We are not aware of any ASA complaints from business customers about the speed of their business broadband service.

ii. We would expect you to engage with business broadband providers ahead of any consultation in the same way as you did with the main ISPs offering consumer products, and allow sufficient time for implementation of any recommendation.

3. Appendix 2

Ofcom Broadband Speed Report, November 2017, summary of download speeds by ISP

ISP Package	Maximum speed	24-hour average	8pm-10pm average	Minimum speed
BT ADSL2+	9.4Mbit/s-11.1Mbit/s	9.1Mbit/s-10.8Mbit/s	9.0Mbit/s-10.6Mbit/s	8.1Mbit/s-9.7Mbit/s
EE ADSL2+	9.7Mbit/s-12Mbit/s	9.4Mbit/s-11.7Mbit/s	9.2Mbit/s-11.4Mbit/s	8.1Mbit/s-10.2Mbit/s
KCOM ADSL2+	9.1Mbit/s-10.9Mbit/s	8.1Mbit/s-9.9Mbit/s	7.3Mbit/s-9.3Mbit/s	6.4Mbit/s-8.3Mbit/s
Plusnet ADSL2+	9.9Mbit/s-11.7Mbit/s	9.6Mbit/s-11.4Mbit/s	9.5Mbit/s-11.3Mbit/s	8.7Mbit/s-10.4Mbit/s
Sky ADSL2+	10.4Mbit/s-11.9Mbit/s	10.1Mbit/s-11.5Mbit/s	9.9Mbit/s-11.4Mbit/s	8.6Mbit/s-10Mbit/s
TalkTalk ADSL2+	8.9Mbit/s-10.3Mbit/s	8.6Mbit/s-10Mbit/s	8.6Mbit/s-9.9Mbit/s	7.7Mbit/s-9Mbit/s
EE 'up to' 38Mbit/s	34.5Mbit/s-35.9Mbit/s	33.6Mbit/s-35.2Mbit/s	32.4Mbit/s-34.5Mbit/s	29.7Mbit/s-32Mbit/s
Plusnet 'up to' 38Mbit/s	32.3Mbit/s-34.8Mbit/s	31Mbit/s-33.5Mbit/s	30.1Mbit/s-32.7Mbit/s	27.6Mbit/s-30.1Mbit/s
Sky 'up to' 38Mbit/s	33.5Mbit/s-35.1Mbit/s	33Mbit/s-34.6Mbit/s	32.8Mbit/s-34.3Mbit/s	30.5Mbit/s-32.1Mbit/s
TalkTalk 'up to' 38Mbit/s	31.7Mbit/s-33.7Mbit/s	30.8Mbit/s-32.8Mbit/s	30.6Mbit/s-32.6Mbit/s	27.8Mbit/s-29.9Mbit/s
Virgin Media 'up to' 50Mbit/s	52.7Mbit/s-53.1Mbit/s	46.1Mbit/s-49.6Mbit/s	38.2Mbit/s-45.4Mbit/s	32.9Mbit/s-40.5Mbit/s
BT 'up to' 52Mbit/s	48.5Mbit/s-49.4Mbit/s	47.7Mbit/s-48.6Mbit/s	46.9Mbit/s-47.9Mbit/s	44.1Mbit/s-45.3Mbit/s
BT 'up to' 76Mbit/s	58.7Mbit/s-61.5Mbit/s	57.9Mbit/s-60.7Mbit/s	57.0Mbit/s-59.8Mbit/s	53.7Mbit/s-56.6Mbit/s
EE 'up to' 76Mbit/s	57.5Mbit/s-62Mbit/s	56.3Mbit/s-60.8Mbit/s	55.3Mbit/s-59.9Mbit/s	51.4Mbit/s-56.3Mbit/s
Plusnet 'up to' 76Mbit/s	56.1Mbit/s-59.2Mbit/s	54.6Mbit/s-57.7Mbit/s	53.9Mbit/s-57Mbit/s	50.4Mbit/s-53.5Mbit/s
Sky 'up to' 76Mbit/s	55.6Mbit/s-61.2Mbit/s	54.3Mbit/s-59.9Mbit/s	53.6Mbit/s-59.1Mbit/s	49.1Mbit/s-54.6Mbit/s
TalkTalk 'up to' 76Mbit/s	52.6Mbit/s-57.8Mbit/s	51.6Mbit/s-56.7Mbit/s	51.2Mbit/s-56.3Mbit/s	47.5Mbit/s-52.6Mbit/s
Virgin Media 'up to' 100Mbit/s	101.9Mbit/s-104.5Mbit/s	87.7Mbit/s-95.2Mbit/s	72.6Mbit/s-86.1Mbit/s	64.0Mbit/s-77.6Mbit/s
Virgin Media 'up to' 200Mbit/s	201.5Mbit/s-204.8Mbit/s	169.0Mbit/s-177.2Mbit/s	143.7Mbit/s-155.4Mbit/s	114.7Mbit/s-126.5Mbit/s

Source: Ofcom, using data provided by SamKnows

COMMUNICATIONS CONSUMER PANEL

Communications Consumer Panel and ACOD response to CAP and BCAP's consultation on speed claims in broadband advertising

The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to comment on CAP and BCAP's consultation on speed claims in broadband advertising.

The Panel works to protect and promote people's interests in the communications sector, including the postal sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Response

The Panel welcomes CAP and BCAP's research and its proposal to make the wording used in broadband advertising more meaningful and less likely to mislead consumers.

We have long called for the replacement of the term *"up to"* with an indicative estimate labelled *"at least"*, so that consumers are given more certainty that the service they are buying will provide them with an assured minimum speed rather than a notional possible maximum speed that in reality they are unlikely to ever receive. We also believe that it should be made clear that advertised speeds are to the premises.

We very strongly object to and disagree with the current situation that allows headline speeds such as *"up to xMbits per second"* to be advertised if they are achievable for only a minimum of 10% of customers. Such a threshold is absurdly low in our view and customers have no way of knowing in advance if they will get that level of service. What this effectively means is that an advertised level of service is a de facto premium level of service - yet up to nine in ten consumers are paying the same charge for a worse service than they require. That cannot be right.

At the point of sale, the consumer will not know whether he or she will be in that lucky few that get the advertised "up to" speed. By the time up to nine out of ten consumers in

that situation realise they are not able to achieve the headline speeds advertised, they will have been tied into a contract that they may have to pay to get out of, or at least not without having to navigate their broadband provider's customer services and complaints processes. This is not transparent and it is - we believe - an example of an unfair practice that should be stopped. The impact will be worse for consumers in rural areas, where the likelihood is that they will receive significantly lower speeds than those advertised.

The foremost concern of the Panel is naturally with consumers, however we would also argue that the current situation creates a series of costs for providers. There is not only the reputational cost associated with causing consumers to feel misled, but there is also the operational cost of creating, and having to deal with, an area of contention and customer complaint.

Reducing the potential for customer complaints would clearly create an operational benefit for suppliers but it is also beneficial for consumers, not just because of the emotional stress and time required in seeing through a complaint but also because suppliers complaint services are not always fit for purpose.

Our studies 'Going round in Circles'[1]and 'We're not all the Same'[2] indicate that consumers do not find it easy to negotiate with their providers and that the situation is worse for people who are already in vulnerable circumstances in terms of navigating the market; they may be disadvantaged by the inflexibility of their providers' customer service processes due to their circumstances (for example, complaints not being allowed through certain communication channels or barriers to escalation).

We therefore believe that it is vital that the advertising of broadband speeds is honest and transparent from the outset. And if advertised speeds are not achieved we believe that providers should bill proportionately less to reflect the level of service that they are delivering to consumers - and that consumers should know what that service is, so that if they need to challenge their provider they are armed with all the facts. In the years that have passed since the guidelines on advertising broadband speeds were last reviewed, it has become easier for providers to calculate broadband speeds; some provide speed checkers on their websites and Ofcom has produced a mobile coverage app. These tools should be clearly signposted for consumers to use and not hidden in the small print under a claim of "up to" a certain speed.

Consumers should be able to compare the deal they are offered by their current provider with those of other providers so that they are able to switch where and when appropriate. This can only be made possible if consumers are able to understand what is the lowest speed they may get is and are able to compare this with consistent metrics from other providers. This is perhaps even more important to micro business owners, who may not specialise in IT and may not have the income to hire an IT specialist to set up their broadband connection as their larger counterparts would, but whose business may depend on their being able to access certain speeds.

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[1] http://www.communicationsconsumerpanel.org.uk/going-round-in-circles/going-round-in-circles
[2] http://www.communicationsconsumerpanel.org.uk/research-and-reports/we-re-not-all-the-same-inclusive-communications

The Panel and ACOD commissioned research on the importance of communications to micro businesses ('Realising the potential'[3]), which also highlighted the needs of micro business owners with a disability. The research highlights that communications services play a critical role in the success of micro businesses. However, they face a wide range of challenges in using and fully exploiting the opportunities offered by these services and technology for the benefit of business. Misleading speed information is harmful in this context.

We would also recommend that broadband providers are obliged to give real-life examples of broadband speeds and use in their advertising, so that consumers are able to understand what a certain speed measurement actually means. We note that some broadband providers already proactively provide this information. This provides a useful gauge to consumers, in understanding what speeds they actually require to meet their needs and/or and grow their business - instead of their paying extra to secure a higher speed bracket than they may need, just in case.

We are also contributing to Ofcom's work with broadband providers on their voluntary Codes of Practice regarding broadband speeds in order to ensure that consumers are protected from unfair practices and confusing or misleading claims.

Summary

- We fully support the removal of the term "up to" from broadband advertising and would suggest it is replaced with a calculation of "at least" a certain speed to the premise;
- We believe that more realistic advertising should pave the way to fairer, proportionate billing;
- We recommend that the improvement in advertising language and terminology should be supported with a meaningful illustration of the types of activities that can be achieved with that level of speed, so that consumers do not feel that they need to pay extra for more speed than they need, "just in case".

[3] http://www.communicationsconsumerpanel.org.uk/research-and-reports/realising-the-potential-micro-businesses--experiences-of-communications-services

FOUNDATION
FOR
INFORMATION SOCIETY
POLICY

RESPONSE TO:

Consultation on speed claims in broadband advertising

12th July 2017

The Foundation for Information Society Policy (FISP) is pleased to respond to the Advertising Standards Authority's consultation on Speed Claims in Broadband Advertising.

Nothing in the response is confidential and the authors welcome the ASA's willingness to place responses in the public domain.

About FISP:

The Foundation (formed in 2012) is a think tank that is entirely independent of political parties, communications & network providers and any other commercial interests in technologies, products and services.

FISP exists to formulate inputs for policy and regulatory development with the over-riding objective of encouraging maturity in the digitalised economy – our 'Information Society'.

FISP speaks with an authority derived from the guidance of experienced independent voices and is driven by a realisation of the UK's economic dependence on the functionality and performance of digital networks. http://www.fisp.org.uk

General Observations on the Consultation Document

FISP has long believed that the advertising of digital connectivity has been grossly misleading both in terms of performance claims and in descriptions of the technologies being deployed.

The marketing of products that are difficult to describe accurately will always be a challenge in mass markets. It is, however, the FISP view that terms such as Fibre Broadband have been misapplied.

Clearly marketeers believe the word 'fibre' is recognised positively by consumers but, in reality, *any* form of digital connectivity is carried at some stage via fibre - even via mobile and other wireless services.

To describe delivery via copper connections (that were originally designed for analogue voice telephony) as 'Fibre' when the 'fibre' component is merely a short extension from a digital hub (or telephone exchange) is, from a consumer viewpoint, dangerously deceptive. By the same token, cellular mobile services with fibre backhaul to a base station could be marketed as **Fibre Mobile** !

This point is highly relevant for the future design and performance of 5G mobile services, given the necessary proliferation of small (low power) cell sites at high frequencies. The success of 5G Mobile will be entirely dependent on massive availability of FTTP (Full Fibre) connectivity.

These small 5G cells will deliver services (at >26Ghz) only within a limited range - typically 200metres radius or less depending on the built environment and terrain. Spare capacity on millions of consumer lines will be needed to support 'backhaul' and one can envisage a market mechanism akin to Airbnb's accommodation sharing platform.

At these higher frequencies massive capacity will be readily available and 'speed claims' will become largely irrelevant. Because of short-term investment attitudes over the past 3 decades, the true value of future mobile technologies will not be realised without wholesale replacement of current FTTC connectivity.

Detailed Observations

FISP appreciates that the ASA is primarily concerned with advertising in mass markets that are predominantly directed at household (i.e. non-commercial) consumers.

Our first observation is that OFCOM's use of the word consumer embraces public sector, business and domestic/household consumers. In reality these markets are not distinct in terms of location, whilst being different in terms of usage profile. Many organisations (including the public sector) operate partly or fully from residential settings and their requirements are correspondingly more challenging.

The 'catch-all' descriptor 'Broadband' embraces a wide range of services deployed using very different technologies - most of which are not equal to the demands placed upon them and are becoming less so as application services develop. Further definition or qualifications of the service may be required, such as "bidirectional", "low latency" or "low contention".

Whist it is true that some technologies may deliver a service that is, at present, considered sufficient, many user demands and expectations are constantly evolving.

At the present time there is only one form of connectivity technology that is 'future-proofed' - i.e. able to be easily adapted to future capacity needs. That is why FTTP (Full Fibre or FTTH) remains an important national goal. As noted earlier, consumers may be misled by the use of 'Fibre Broadband' to describe services delivered via copper wires or coaxial cables designed for earlier pre-digital applications such as analogue telephony or CableTV. The design deficiencies of lesser-performing (and particularly heavily distance-related) technologies are not, in FISP's opinion, adequately explained to purchasers. Moreover, the impact on the UK economy of investment in short-term palliatives is not, we believe, in the UK's interest.

Secondly, Digital Services are diverse - some requiring rapid download capacity whilst others require a more-balanced 2-way flow of information. This response, for example, is being composed via an online 'cloud' service where processing takes place remotely to allow multiple authors to edit and amend the final production. This mode of production requires greater symmetry (i.e. a more balanced rate of upload and download data transmission), which is rarely available via copper connectivity. The use of such (cloud-based) 'platforms' is becoming commonplace - as indeed are examples of multiple concurrent users of any single connection.

Thirdly, Speed Claims are only truly relevant for connectivity technologies that fall short of Full Fibre. FTTP connectivity may be sold in packages with restricted capacity, but they are very easily expanded (at marginal cost to the provider) to cope with higher rates when required. Typically, a consumer with a Full Fibre connection could request a capacity upgrade for just an afternoon to cover a specific event. This notion was described by OFCOM in 2004 as 'liquid bandwidth'.

It is our view, therefore that advertisers should place greater emphasis on *'fitness for purpose'* when selling connectivity.

The reduction of product descriptions to 'download speed' ignores user needs for low latency, low packet loss, low congestion, upload speeds, upgrade-ability etc. (see comment above re further qualification).

FISP believes that a general policy of Technology Neutrality has been a long-standing dereliction of duty by UK Government(s) and Regulators, whom one might presume have the best interests of the economy and its local communities at heart. This position has, in recent months, been partly corrected by, for example, the National Infrastructure Commission's report, HM Treasury's Infrastructure Projects Authority 'fibre investment fund', and policy statements from DCMS.

FISP understands that the ASA is not an arbiter of design choices, but should be keen to avoid misleading marketing by providers wishing to sell sub-standard connectivity.

Responses to Consultation Questions

The four policy options offered in the consultation are in three parts:

Part 1: basis of speed claims likely to be acceptable in ads.
Part 2: description of speed claims in ads.
Part 3: the substantiation likely to be required by the ASA to support speed claims.

In response to the primary consultation question, FISP has a preference for Option D. *Advertised speeds are based on the range of download speeds for the 20th to 80th percentile of users at peak time.*

FISP considers that 'median' measures are preferable to 'averages', as they exclude disproportional impacts from a relatively few intensive users.

FISP further recommends that *mandatory* qualifications be presented in advertising to prospective purchasers. Society at large is well aware, for example, that 'Smoking Endangers Health' and users should be made aware of service inadequacies before they invest. Examples could perhaps include:

- This service is distance-related
- This Service is not 'Future-Proofed'
- This Service uses copper wire or cables for all or part of its delivery
- This service is not suitable for business users
- Low Upload Speeds make this service inappropriate for some applications

ASA cannot be criticised for poor design choices or failures of government policy but, in the next few years, many complainants will be moved to argue that they should and could have been protected against the inadequacies of inappropriate services by the ASA.

In response to the final question in the consultation document, FISP believes that the principle of consumer protection should not be limited to Business-to-Consumer advertising but to all aspects of the Digital Infrastructure market(s).

Providers typically provide different 'contention' rates to Business and 'Residential' users, but the distinctions are rarely, if ever, adequately disclosed in advertising, or during procurement. FISP suggest that providers offering markedly different service options should state these clearly.

ISPA Response to CAP/BCAP Consultation on speed claims in broadband advertising

Introduction

ISPA welcomes the opportunity to submit feedback on CAP/BCAP's consultation on speed claims in broadband advertising. In preparing this response, we have consulted with our membership of over 200 members, 90% of which are SMEs, who play a fundamental role in delivering broadband and internet services across the UK to consumers and business.

While the UK has a highly competitive broadband market, concerns have been raised about whether consumers are fully aware of the speeds that they can receive when buying a broadband product. The current guidance for broadband advertising has played a significant role in creating this situation and has failed to deliver a satisfactory outcome for consumers and providers. Accordingly, we support the proposal to move away from the current "up to" speed advertising with a 10% threshold.

In one-to-many advertising in particular, the advertising of broadband products poses a number of challenges which need to be taken into account when devising policy on advertising and consumer information. We welcome the recognition in the consultation document that "a number of factors affect broadband speed, and the impact of these factors varies between technologies, service providers and between users of the same provider; the variations in speed can be negligible or significant. This means that no single figure can accurately describe the actual speeds likely to be received by all potential users of a service who might see a particular ad."

The consultation comes at a time where, together with the relevant regulators, ISPs are actively developing and improving broadband speed and pricing information. We particularly support CAP's suggestions that adverts should prompt consumers to ask providers for a more personalised speed estimate. Our members already provide this kind of information as part of their sales journey and alerting consumers to the availability of this type of information will help to overcome the limits that providers face in providing information that applies across their customer base in advertising, while giving prospective customers a better idea of the speeds they are likely to receive. We would also urge consumers to consider other factors such as brand, service quality, speed and the availability of bundled services when choosing their providers.

We have previously submitted a set of principles for the reform of broadband speed advertising guidance, including:

- Advertising guidance should be principles-based and mindful of the role of advertising in the customer journey – advertising is only one part of the customer journey and the guidance should be mindful that ISPs, under both self-regulatory and regulatory requirements, provide consumers with additional information about expected speeds etc.

- Advertised speeds should be available to most customers
- Advertising guidance should complement existing and upcoming rules and regulatory changes on broadband speeds
- Advertising guidance should allow providers flexibility in their approach to advertising
- Advertising guidance should build on established principles rather than completely replace them
- Advertising guidance should provide a level playing field for different types of broadband technology

We believe that either option A or B would meet these principles but there will be a need to ensure that the actual implementation of either approach does not negatively affect a particular type of connectivity technology or a particular part of the market.

Response to consultation questions

Respondents are invited to indicate which option they favour and their rationale for this. CAP and BCAP also invite respondents to provide reasons for rejecting options and alternative options / wording of their own.

ISPA strongly supports the adoption of option A or B and we do not regard the introduction of a speed range approach as a viable alternative:

- The provision of speed ranges in broadband advertising is highly likely to confuse consumers who would be required to process at least two or – in the case of multiple products being advertised in a single advert – even more speed figures in the often short time that they have available when viewing on advert.
- A speed range would further fail to achieve the stated consultation criteria that "[i]f an ad includes a numerical speed claim, that speed should be achievable by many or most customers". This issue was also raised in the GFK Qualitative Research for Broadband Speed report which was conducted on behalf of the Advertising Standards Authority and which indicated that speed ranges were not particularly well favoured by consumers.
- Option A and B would preserve the use of a single speed figure in advertising as established by the current advertising guidance, and significantly increase the threshold in line with suggestions from ISPA but also various other interest groups, including Which?.

We note and support that there is no intention to change the current guidance's general approach to substantiation, however, there are few areas where further clarification would be welcome:

- Some clarification or advice on transitioning away from the current approach would be useful, particularly for smaller providers.

- The adoption of option A or B would make it more likely that advertised speeds would change over time, e.g. because a provider makes an upgrade in a certain part of their network or because of higher degree of churn in one service area than another – how frequently would providers be expected to update the speed estimates that they use in an advert?
- The current guidance is almost exclusively written with ADSL services in mind and an update might be necessary to ensure that it adequality reflects the mix of connectivity products that is currently available in the UK.

Do respondents agree that the scope of the guidance should be confined to business-to-consumer advertising of residential broadband services?

ISPA strongly agrees that the guidance should be confined to business-to-consumer advertising:

- For consumers, speed is only one among many factors when choosing a broadband product but. However, for businesses looking to purchase business grade connectivity products, this is even more pronounced with numerous other criteria coming into play, e.g. guaranteed uptime, service level agreements or complementary products.
- Particularly for larger businesses, or those smaller businesses who are intending to purchase more complex and higher value connectivity products, advertising will play a smaller role in their purchasing decision (which also tends to involve multiple actors and decision-making phases).
- Some small and micro businesses tend to purchase consumer grade products and these types of businesses would still benefit from the exclusive focus on consumer grade products.

LGA submission to the Committee of Advertising Practice and Broadcast Committee of Advertising Practice's consultation on speed claims in broadband advertising

July 2016

Local Government Association

Submission

About the Local Government Association

1. The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government. We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government.

2. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

Introduction

3. The broadband market has seen a rapid evolution in both the speeds and technology available to consumers since the Committee of Advertising Practice (CAP), Broadcast Committee of Advertising Practice (BCAP) and Advertising Standards Authority (ASA) last produced guidance on the advertising of download speeds in April 2012.

4. It is now widely accepted that access to fast and reliable digital connectivity is no longer a luxury, but a necessity. Local government recognises the status of broadband as the fourth utility and since 2013 has been a key player in the roll-out of improved digital connectivity across the country, via the Superfast Broadband Programme.

5. Whilst progress has been made in improving the infrastructure and speed supplied to premises, it is widely accepted that the way broadband is advertised has failed to adapt to the new market. At present, providers fail to accurately reflect the diverse range of performance many of their products deliver to consumers.

6. Councillors across the country, especially in rural areas, are increasingly approached by residents and businesses frustrated by the poor download and upload speeds they face. Many complain of the vast differences between the speeds advertised to them by providers and those they receive in their own home. Residents and businesses are reliant upon advertising of speeds to compare broadband services and are entitled to clear, accurate, comparable information about busy period performance measurements and service limitations.

7. Councils want to ensure everyone has good quality internet access. As part of our Up to Speed campaign, we have called for a change to the way broadband providers advertise speeds. The LGA welcomes this consultation on reforming advertising download speed guidance and will continue to push the industry, Government and Ofcom to create a fair, transparent and competitive broadband market place for local residents and businesses.

New guidance on the advertising of download speed

Options set out by CAP, BCAP and ASA
Option A Advertised speeds are based on the median download speed for users (the speed available to at least 50% of users) over 24 hours.
Option B Advertised speeds are based on the peak-time median download speed (the download speed available to at least 50% of peak-time users).
Option C Advertised speeds are based on the range of download speeds for the 20th to 80th percentile of users over 24 hours.
Option D Advertised speeds are based on the range of download speeds for the 20th to 80th percentile of users at peak time.

8. **The LGA believes that advertising a peak-time median download speed (Option B) will provide the most easily comparable way to more accurately describe the potential speeds of a broadband package.**

The CAP should commit to a review of speed claim guidance within two years

9. Whilst this consultation on speed claims in broadband advertising is welcomed, it is unfortunate that it has taken over five years to review current guidance. In future, to ensure that guidance keeps pace with an ever evolving market, we recommend the CAP/BCAP/ASA commit to review their guidance 24 months after its implementation. This review should take a view on the new guidelines in light of any changes to the broadband market as well as customer perceptions of the new advertising practices in question, with a particular focus on rural consumers.

Advertising a peak median download speed will be most useful for consumers

10. Unlike most products on the market, the performance of a broadband connection can be influenced by a range of complex factors. Any initial advertised connection speed has the potential to drastically diminish by the time it reaches a consumer's premises. Whilst it cannot be expected for providers to supply consumer-specific information on an advertising billboard, there is an obligation for suppliers to give an accurate-as-possible description of their product which best captures the average user experience for a wide range of consumers rather than the top 10 per cent

11. The LGA works in partnership with ThinkBroadband to run a speed test on its Up to Speed campaign website.[1] Thinkbroadband's own April 2017 speed test data reveals the vast range of performance that users connected either by Fibre to the Cabinet (FTTC) or solely a standard copper line (ADSL) face. Table 1 outlines the impact two of the above options would have on the way speeds are advertised. It sets out what consumers would see if either Option B (a median measurement at peak time) or Option D (those received by the 20th and 80th percentile of consumers at peak time) were implemented across a range of anonymised products on the market today.

[1] www.lgauptospeed.org

Table 1 – Median vs range of speeds of three FTTC and ASDL packages[2]

Anonymised provider	Top 10 per cent "up to" speed	Option B Peak median download speed (Mbps)	Option D Peak download speed for 20th to 80th percentile (Mbps)
Provider A (FTTC)	Up to 38 Mbps	22.2 Mbps	15.5 to 28 Mbps
Provider B (FTTC)	Up to 38 Mbps	25.2 Mbps	19.1 to 33 Mbps
Provider C (ADSL2+)	Up to 17 Mbps	4.9 Mbps	2.1 to 9.2 Mbps
Provider D (FTTP)	100 Mbps	47.9 Mbps	28.9 to 64.4 Mbps

12. It is clear both options are a better representation of the likely speed a user will experience from each of the packages. They show the stark difference in speeds faced by the majority of consumers compared to the "up to" speed measurement. This is particularly highlighted by Provider C where users on average will receive only 29 per cent of the advertised download speed.

13. When comparing Options B and D, it is apparent that median download speed is a more easily comparable form of measurement. In the context of a billboard advertisement or television advert, both offering only a short opportunity for a consumer to understand a product offer, there is a higher chance that a typical speed range would be confusing and could mislead. Some consumers might incorrectly understand a speed range as the maximum and minimum speed their connection might experience. Comprehending where you might fit into a range is equally fraught with difficulty.

14. It is also worth noting that Ofcom already recommends that ISPs share a user's access line speed (the speed that is likely to be supplied to their property) within a broadband supplier's sales process, provided in the form of a range equivalent to the speeds achieved by the 20th to 80th percentiles of the ISP's similar customers.

15. This is important as at this stage in a sale a user will be more inclined to spend the time to understand what a given speed range might mean. That said, at present there is no way to find out this access line speed range other than deep into the sales process. The LGA has called on providers to open up their data so the actual speed range people are likely to receive at home can be compared more easily on comparison websites, in a similar manner to gas and electricity costs.[3]

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[2] https://www.thinkbroadband.com/news/7698-cap-to-attempt-to-cap-the-madness-that-is-broadband-speed-advertising

[3] http://www.ispreview.co.uk/index.php/2016/09/uk-councils-residents-need-access-local-data-broadband-speed.html

16. Ofcom must demand providers open up their premises-level data on broadband so that residents can more easily compare who will provide the best service to their home.

Peak time speed measurements best capture likely consumer experience

17. The consultation proposes a choice between peak time (Options B and D) and 24 hour measurement of speeds (Options A and C). It is important that consumers have access to information about peak time performance as they are most likely to rely on their broadband during these times, and experience reductions in speed caused by contention and traffic management policies.

Anonymised provider and package	Option A Peak median download speed	Option B 24 hour median download speed
Provider A (Package 1) FTTC "up to 52 Mbps"	27.5 Mbps	29.3 Mbps
Provider B FTTP "100 Mbps"	47.9 Mbps	56.3 Mbps
Provider C FTTC "up to 38 Mbps"	22.2 Mbps	24.1 Mbps
Provider A (Package 1) ADSL2+ "up to 17 Mbps"	4.9 Mbps	5.2 Mbps

Table 2 – Peak time median speed vs 24 hour median speed[4]

18. Table 2 shows that amongst some products including Fibre to the Premises (FTTP), performance can drop at peak time (6pm to midnight), some by more than 10 per cent. This is backed up by Ofcom's most recent Broadband Performance Report which monitors the level of performance consumers receive from their broadband service. It recorded that the lowest average download speeds were experienced between 9pm and 10pm across all technologies.[5]

19. In this context, it would be most transparent to display a median download speed which shows peak time performance for users (Option B).

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[4] https://www.thinkbroadband.com/news/7698-cap-to-attempt-to-cap-the-madness-that-is-broadband-speed-advertising

5 https://www.ofcom.org.uk/__data/assets/pdf_file/0015/100761/UK-home-broadband-performance,-November-2016-Technical-report.pdf

The need for CAP/BCAP/ASA guidance to be supplemented by Ofcom regulation

20. Whichever option is chosen, there remains a strong possibility that any new guidance could indirectly incentivise providers to manipulate speed ranges or average speeds by dropping customers with poor performing connections, especially those in rural areas. There has been evidence of this as recently as January 2017.[6]

21. The LGA recognises that the CAP/BCAP/ASA cannot advise providers on their operational practices. Therefore we support regulatory intervention by Ofcom to monitor any rise in the withdrawal of rural services by providers and consider regulation to prevent the manipulation of speed measurements. Any regulations should be set out in a reformed Residential and Business Broadband Codes[7] which Ofcom should change from voluntary to compulsory.

Do respondents agree that the scope of the guidance should be confined to business-to-consumer advertising of residential broadband services?

22. Fast and reliable connectivity is fundamental to our local businesses. If they are to be supported to drive the country's growth agenda, they must also be able to access transparent speed information upon which to choose the best broadband service for their needs.

23. The Federation of Small Businesses has highlighted that small or medium sized enterprises (SMEs) do not have access to enough information to make informed choices on their broadband connection.[8] Separate Ofcom research found that some SMEs were confused about how the 'actual' speed of their broadband service compared to the 'headline' maximum speed used in advertising while a fifth (20%) were not satisfied they were getting the speeds they had paid for.[9]

24. We do not agree CAP/BCAP/ASA's guidance should be confined only to business-to-consumer advertising but should also oversee business-to-business advertising.

Additional Comments - Upload speeds

25. Fast and reliable upload speed is a growing requirement for businesses which utilise cloud services, video conferencing and send large data files and an important consideration for consumers when choosing a broadband package.

26. It is important that consumers are able to consider other sets of performance measurements to understand the overall performance of individual ISP package. CAP/BCAP/ASA should advise providers to advertise peak time median upload speeds their customers receive with equal prominence to the information displayed on download speeds. At present residents and businesses cannot rely on download speeds alone to inform them how good their upload speeds will be. This is because there is not always a correlation

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[6] http://www.thisismoney.co.uk/money/bills/article-4117906/Sky-refuses-sell-broadband-contracts-250k-households-poor-connections.html

[7] Current voluntary codes are available here - https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/codes-of-practice

[8] Federation of Small Businesses - Reassured, Optimised, Transformed: Driving Digital Demand Among Small Businesses

[9] https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2016/clarity-for-businesses-baffled-by-broadband-speeds

between those providers that supply the fastest download speeds and those that deliver the best performance on upload speed.

27. One example of this discrepancy is with Fibre to the Premises (FTTP) connections. Fibre infrastructure allows for a symmetrical connection i.e. one that supplies equal download and upload speed at a 1:1 ratio. However, providers choose to prioritise one type of speed over another.

Table 3 - Download to upload ratios for a set of FTTP broadband packages[10]

Anonymised provider	Rounded Median Download	Rounded Median Upload	Download Upload Ratio
Provider A (Package 1)	85 Mbps	15 Mbps	6:1
Provider B (Package 1)	73 Mbps	21 Mbps	7:2
Provider A (Package 2)	57 Mbps	6 Mbps	10:1
Provider C	52 Mbps	9 Mbps	6:1
Provider B (Package 2)	50 Mbps	11 Mbps	5:1
Provider D	46 Mbps	37 Mbps	5:4
Provider E	45 Mbps	41 Mbps	11:10

28. This table shows that faster download speeds do not guarantee an equally faster upload speed. Some providers (Providers D and E) provide almost equally fast speeds whilst other providers (Provider A) only provide upload speed at a 10:1 ratio. Arguably a consumer could buy a package at a faster download speed and receive a worse upload performance than with other slower download packages. There are also big differences in upload speeds between packages that provide the same download speeds – as highlighted by (Provider A (Package 2), Provider D and Provider E).

29. CAP/BCAP/ASA must advise providers to display upload speed with equal prominence when download speeds are advertised.

[10] Median Upload and median download speed taken from Thinkbroadband data. Ratio calculated by LGA

Ofcom

making communications work
for everyone

Speed claims in broadband advertising

Ofcom response to Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) Consultation

13 July 2017

Ofcom response to consultation on speed claims in broadband advertising

We support a change to the way broadband speeds are advertised

1.1 Ofcom is the regulator of the UK's communication sector. We regulate telecoms markets as well as broadband, broadcasting, radio spectrum and postal markets. This is Ofcom's formal response to CAP/BCAP's consultation and is without prejudice to Ofcom's formal powers under the Communications Act 2003.

1.2 Ofcom has a number of initiatives aimed at helping consumers make informed choices about their broadband services. Notably, we have put in place two Voluntary Broadband Speeds Codes of Practice, one for residential services and one for business services ('the Broadband Speeds Codes'). Companies signed up to the codes must provide accurate and transparent speed information on broadband services at point of sale, manage customers' speed-related problems, and allow customers to exit the contract without penalty if speeds fall below a minimum threshold.[1]

1.3 We are currently revising the Broadband Speeds Codes with industry to ensure that consumers are given more realistic and targeted speed information. As part of our work with industry to revise the Broadband Speeds Codes, we are considering moving to estimates of peak-time speeds[2] at point of sale. We will consult on our proposals in the autumn. We think it is likely that consumers will find it easier to understand their potential speed if the basis for the advertised speed and the point of sale speed estimates are consistent. This is especially relevant for the minority of consumers who will receive considerably slower than headline speeds.[3]

1.4 However, while in principle we think that a consistent approach to speed claims would help consumers, we recognise that consumers use information from advertising, where they are often seeking to compare different services, differently to information at point of sale, where they need to know the speeds that they can expect to receive if they take a specific service. Therefore, we support alignment between the guidance and the Broadband Speed Codes where this works best for consumers, but recognise that there may be some metrics for which different approaches are needed.

1.5 We welcome the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice's (BCAP's) review of its guidance on the use of speed claims in broadband advertising. We agree that changes to the way broadband speeds are advertised are needed; it is vital that consumers have clear and accurate information on broadband performance to help them make informed choices about their communications services.

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[1] https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/codes-of-practice
[2] i.e. speeds experienced at the time of day when network usage is highest.
[3] Our UK Home Broadband Performance Report shows that while many consumers receive actual speeds that are similar to their service's advertised speed, a minority of consumers receive speeds that are considerably below it.

Peak-time speeds better reflect consumer experience of broadband

1.6 Peak-time speeds are likely to be the most meaningful and relevant speed measure for most consumers, as peak-time is when consumers are most likely to be using their service. It is also when consumers are most likely to experience a slowdown in their service.

1.7 The speeds delivered by fixed broadband connections vary by time of day, with speeds slowing down during busy periods when traffic volumes on ISPs' networks are highest.[4] As peak-time is when traffic volumes are highest, and consumers are most likely to be using their service, it provides a better indication of the actual speeds consumers are likely to experience. In addition, as peak-time speeds tend to be the lowest ones that a consumer will get, this would help manage a consumer's expectation of the service they would receive.

1.8 When recommending the use of peak-time speeds, we recognised that:

- Some technologies suffer from peak-time slowdown more than others, for instance cable networks. However, the impact of a change to peak-time speed information in adverts for those technologies is mitigated by the fact that the speeds they achieve throughout the day are still consistently higher than those of other widely available technologies.

- Using peak-time speeds will mean that the full potential of some packages, such as maximum speeds or speeds during other hours in the day, will not be displayed. In turn this would not reflect the experience of consumers who would use their service in quieter times. However, on balance, we believe that consumers are less likely to be disappointed by the actual performance of their service if they under-estimate rather than over-estimate the speeds they are likely to get.

Our preference is for median point rather than range for advertising

In the context of advertising, median speeds are the most accessible measure for consumers.

1.9 We note from the ASA research that speed is an important factor for a significant proportion of consumers who are making decisions between providers.[5] We recognise that some consumers find comparing different service offerings confusing,[6] and that most are unaware of the actual speeds that they receive.[7] Greater simplicity is therefore likely to help consumers when comparing speed claims.

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[4] See our analysis of SamKnows speed data in the *UK Home Broadband Performance Report*: https://www.ofcom.org.uk/__data/assets/pdf_file/0015/100761/UK-home-broadband-performance,-November-2016-Technical-report.pdf

[5] CAP and BCAP's *Consultation on speed claims in broadband advertising*, page 18, https://www.asa.org.uk/resource/consultation-on-speed-claims-in-broadband-advertising.html

[6] Our 2016 switching tracker research found that 5% of consumers said they were not interested in changing their fixed broadband provider because it was difficult to make comparisons between providers (QI9d) and 20% of consumers found it difficult to make broadband speeds comparisons between providers (QI25).

[7] Our H1 2016 technology tracker research found that 73% of those with fixed broadband in the home did not know their advertised speed (QE23) and 76% of those with fixed broadband did not know their actual speed

1.10 For most consumers, we believe a median point will be an easier measure to compare than an 20th to 80th percentile range, offering, as it does, a single number rather than two figures. It may be unclear to consumers which figures to compare in a range, especially if the ranges in different speed claims overlap or if the ranges are large.

1.11 We recognise that a range would have the advantage of highlighting to consumers that providers do not know for certain what speeds an individual consumer would receive. However, on balance, we think that the simplicity of a median speed measure is more helpful to consumers who want to compare broadband services.

Relationship with the Broadband Speeds Codes

1.12 Speed estimates provided under the Broadband Speeds Codes are given in the form of a 20th to 80th percentile range. A range is useful in this context because the Broadband Speeds Codes require individual speed estimates for specific lines and these estimates will vary depending on the characteristics of the line. These estimates are based the speeds received by consumers with similar lines and, as the range covers 60% of these consumers, it gives the speeds that a majority of consumers with similar lines receive.[8] A range at point of sale can therefore give consumers more targeted information on what performance they can expect from a particular service at their own address.

1.13 We recognise that using a point estimate in advertising and a range at point of sale means that consumers will not receive the same information across these formats. Advertisers may also want to notify consumers that they will receive an estimated speed range at point of sale (in accordance with the Broadband Speeds Codes).

1.14 We note that advertising and point of sale information serve two different purposes for consumers. Consumers use speed claims in advertising as a comparison measure and as an expectation of what the product can deliver.[9] In contrast, the aim of point of sale information is to ensure that consumers have sufficient information about the performance that they can accept to receive from a specific package to enable them to make an informed choice prior to entering into a contract.

1.15 Considering these different purposes, we do not think that the use of a median point in advertising claims and a range at point of sale will inhibit consumer understanding, as:

- Advertised speeds are claims that must apply to consumers as a whole, whereas the Broadband Speeds Codes information is for an individual consumer based on estimated speeds.

- Point of sale is a better time for providers to give tailored advice to consumers, and allows them to explain in more detail what each measure represents.

(QE24). Of those who used any type of broadband to connect to the internet at home (mobile or fixed), 52% said they did not know how to find out their speed and 13% were unsure how to do this (QE25). http://stakeholders.ofcom.org.uk/binaries/research/statistics/2016April/Ofcom_Technology_Tracker_H1_2016.pdf

[8] In our response to CAP/BCAP's review of broadband advertising guidelines in 2011, we recommended the use of a typical speeds range in broadband advertising. We continue to believe that speed range information is useful consumers, and note that the guidance would not prohibit the inclusion of information.

[9] This is also considered alongside other measures of 'quality' such as capacity or coverage, and alongside the price of a product. See February 2016 *Quality of service in telecoms* report, page 4, https://www.ofcom.org.uk/__data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf

- If a range were adopted for advertising claims, consumers would still receive a different range measure at point of sale (i.e. one for their own service rather than a national figure). We believe that a median speed in advertising will lead to less confusion that using two different ranges, one in advertising and one at point of sale.

Qualifying information on speed claims is needed in adverts

1.16 We support recommendations that qualifying information on speed claims be included in adverts, and that speed-checking facilities be promoted in adverts wherever possible.

1.17 We agree with CAP/BCAP that any terms used to qualify a quoted speed, for instance "average", would need to be explained in the advert to reduce confusion and aid consumer understanding and transparency.[10]

1.18 We further note that any claims around service speeds used in advertising will always be limited in their relevance to an individual consumer, due to the wide number of factors that can affect connection performance. As CAP/BCAP's consultation states, individual consumers will only receive the most accurate indication on their likely speeds by checking directly with providers or third party websites, for instance Ofcom's own broadband speed checker.[11] We therefore support statements urging consumers to check their speeds independently or with providers.

Consumers should be aware of other measures affecting broadband performance

1.19 We would support recommendations in the guidance seeking to make clear that speed is not the only measure affecting broadband quality of service. It is important to encourage consumers to consider other sets of performance measurements to understand the overall performance of individual ISP packages.

1.20 Other metrics can be used to evaluate the performance of fixed broadband services are summarised in pages 29 to 50 of the UK Home Broadband Performance Report.[12] The report includes information on how these measures impact on different broadband packages.

Scope of CAP/BCAP guidance

1.21 We note that CAP/BCAP's consultation applies to guidance for business-to-consumer adverts, and asks whether the scope of the guidance should be extended.

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[10] We note that the ASA's consumer research suggests there is the potential for consumer confusion about what the term 'average' might mean (page 16-17 of CAP/BCAP's consultation).
[11] Information on Ofcom's broadband and mobile checker apps can be found here on our website https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/ofcom-checker
[12] https://www.ofcom.org.uk/__data/assets/pdf_file/0015/100761/UK-home-broadband-performance,-November-2016-Technical-report.pdf

1.22 Many businesses consider their broadband service an essential,[13] and small businesses often purchase residential broadband services. It may be more difficult for them to understand and compare residential and business services if they are advertised on the basis of different speeds (i.e. peak-time speeds for residential and maximum speeds for business).[14] Businesses would therefore also be likely to benefit from better advertised information on broadband speeds.

1.23 The extension of this guidance to standard business-to-business/non-residential broadband services would also bring the guidance in line with the Broadband Speeds Codes, which cover residential services and most business services.[15]

1.24 However, the business market is different to the residential market, being more fragmented and with a greater number of small providers offering more specific services.[16] In addition, the choices that businesses make about their broadband service can be driven by different factors to residential consumers, for instance reliability or upload speeds. These differences may have implications for how business-to-business services are advertised, and guidance in this area may require more flexibility.

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[13] 81% of SMEs said that fixed internet services were vital or very important to their business. See *SME experience of communications services: research report,* figure 31, page 28: https://www.ofcom.org.uk/__data/assets/pdf_file/0016/100771/comparing-service-quality-smes.pdf

[14] See page 90 of the *SME experience of communications services: research report.* Only 67% of SME internet-users said they had a business-specific contract: https://www.ofcom.org.uk/__data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

[15] The Business Code does not cover more specialised or bespoke business services, for instance leased lines.

[16] See Ofcom's report on broadband services for SMEs for further information: https://www.ofcom.org.uk/__data/assets/pdf_file/0027/37755/bb-for-smes.pdf

Annex

Speed claims by underlying technologies

A1.1 The below table contains estimated speed claims for common broadband packages for each of the four CAP / BCAP options:

- Option A: Advertised speeds based on the median download speed for users (the speed available to at least 50% of users) over 24 hours.
- Option B: Advertised speeds based on the peak-time median download speed (the download speed available to at least 50% of peak-time users).
- Option C: Advertised speeds based on the range of download speeds for the 20th to 80th percentile of users over 24 hours.
- Option D: Advertised speeds based on the range of download speeds for the 20th to 80th percentile of users at peak-time.

A1.2 The information in Figure 1 is based on data from SamKnows. 'Peak-time' refers to speeds between 8pm and 10pm.

Figure 1: CAP/BCAP options speed claims by broadband package (speeds measures in Mbit/s)

Broadband package	Option A *Median point over 24 hrs*	Option B *Median point at peak-time*	Option C *Range over 24 hours*	Option D *Range at peak-time*
All ADSL	9	9	4 – 15	4 – 15
38Mbit/s FTTC	37	36	29 – 38	28 – 38
52Mbit/s FTTC	50	49	44 – 51	43 – 51
76Mbit/s FTTC	64	63	48 – 74	47 – 73
50Mbit/s cable	51	50	44 – 53	30 – 53
100Mbit/s cable	99	96	74 – 105	47 – 104
200Mbit/s cable	186	168	148 – 204	98 – 199

RADIOCENTRE

By email

Broadband Speeds Consultation
Regulatory Policy Team
Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

21 June 2017

Dear Sirs,

B/CAP Consultation on speed claims in broadband advertising

Radiocentre is the industry body for commercial radio and works on behalf of more than 40 companies, representing 90% of commercial radio in terms of listening and revenue. Our clearance department pre-vets in excess of 30,000 radio advertising scripts each year.

This is Radiocentre's response to the B/CAP "Consultation on speed claims in broadband advertising" and is written from the viewpoint of commercial radio listeners.

Our comments are based on the following assumptions: a) that the average listener has no firm grasp on the meaning of stated speeds beyond their use as a comparison, either within a single advertiser's range of services, or between services provided by different advertisers; b) the understanding of what a user can expect from a 52Mbps service that they cannot get from a 30Mbps is limited only to the broad comparative notions that they will experience faster downloads, less buffering, etc. and c) the de facto function of speed claims is not to determine whether a specific speed meets the requirements of a particular user, but how a particular provider's speeds compare with its competitors – therefore, the most important requirement is consistency between different providers' commercials.

Proposals A & B

A. *Advertised speeds are based on the median download speed for users (the speed available to at least 50% of users) over 24 hours.*

Advertised speeds should state "average" alongside them. The headline speed claim should be further qualified (for example, in the small print) setting out how the average is calculated.

B. *Advertised speeds are based on the peak-time median download speed (the download speed available to at least 50% of peak-time users).*

Radiocentre Ltd
55 New Oxford Street
London, WC1A 1BS
+44 (0) 20 7010 0600
radiocentre.org

Registered office: As above.
Registered in England & Wales
No 2669040

Advertised speeds should state "average" alongside them. The headline speed claim should be further qualified (for example, in the small print) setting out how the average is calculated.

Both of these proposals are sensible in our view, but proposal B seems the stronger candidate. We would expect by focusing on peak-time download speeds that issues such as contention would be automatically represented in the figure. In short, this suggests most users' experience at times when they are most likely to be using the service.

However, we feel that the inclusion of how the average is calculated would be unwieldy; most listeners will lose focus on the information, making it at best redundant, and at worst detrimental to the advertiser.

Proposals C & D

C. *Advertised speeds are based on the range of download speeds for the 20th to 80th percentile of users over 24 hours.*

Speed claims should make clear that some consumers might achieve speeds that are lower or higher than the range, for example by using wording like "typical speed" alongside the advertised range.

D. *Advertised speeds are based on the range of download speeds for the 20th to 80th percentile of users at peak time.*

Speed claims should make clear that some consumers might achieve speeds that are lower or higher than the range, for example by using wording like "typical speed" alongside the advertised range.

Our view on giving ranges is twofold:

Firstly, by bringing in two numbers for each speed claim, any ad would double the level of attention required by the listener, reducing their immediate retention of the information they require.

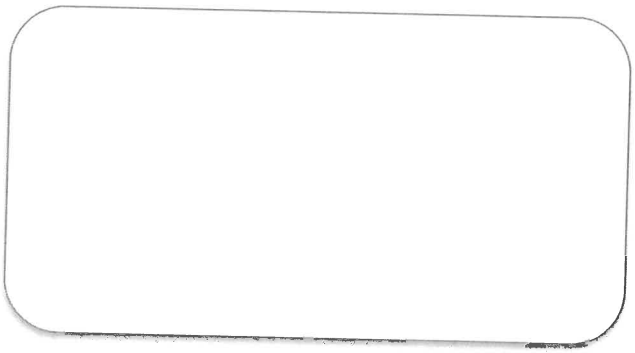
Secondly, it will not necessarily be clear to listeners that the range represents percentiles of users, rather than a range of speeds each individual user can expect to receive over time. This confusion will be detrimental both to the marketing efforts of the company, and the prospective customer. This could be rectified by the use of a clarification in the ad itself, but again this would add to the cognitive load for the listener – we feel strongly that understanding would likely be reduced further rather than increased.

Do respondents agree that the scope of the guidance should be confined to business-to-consumer advertising of residential broadband services?

Yes. We would expect the process of selecting an ISP for a business to vary from the consumer experience, and involve more expertise on the side of the business seeking internet access.

Further Comments

There is a potential concern that smaller operators may be disadvantaged unfairly by campaigns for national providers. Clarity from BCAP, therefore, would be welcome on regional requirements for speed claims – if an ad is going out for a national provider, quoting national speeds that are unattainable in the region the ad is being broadcast, there is a risk of the ad being misleading, potentially inviting an unfair comparison with regional providers who may outperform the speeds of national providers.



23 November 2017

Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

Dear Sir or Madam,

We welcome the opportunity to respond to CAP & BCAP's consultation on speed claims in broadband advertising.

Responding using the headings set out in the consultation:

Respondents are invited to indicate which option they favour and their rationale for this.

We favour peak time median average downloads speeds (Option B) because only that option enables consumers to take informed transactional decisions based on how services perform when they are most likely to be used.

Below we recommend that peak time *mean* average speeds, enable consumers even further because that measure is consistent with the wider regulatory environment.

CAP and BCAP invite respondents to provide reasons for rejecting options

We reject median download speeds measured over 24 hours (Option A), because 24hr average speeds can mask the impact of network congestion at peak times.

Case Study

Every cable subscriber can receive the maximum advertised speed.

In July 2017, BBC Watchdog found cable customers with up to 200Mb connections receiving just 3% of the promised speeds at peak time. [1]

The network congestion causing this impact was within the internet service provider's control. An average speed measured over 24 hours would allow peak time congestion to be hidden and to be averaged out over times that a network may be wholly unused and that are unrepresentative of actual use (e.g. when people are sleeping and when many residential subscribers are at away from home at work for most of the day).

Advertised speeds should have regard to consumers' actual experience when a network is under normal strain.

We understand that it has been said that some homeworkers, who use the internet during the day, could be misled by peak time average download speeds. We consider that finding that a service is faster than expected is unlikely to cause the average consumer to make a transactional decision that they would not otherwise make, whereas the reverse may do.

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[1] See BBC News item, "Virgin Media 'falling short' on broadband speeds" published on 5 July 2017 at http://www.bbc.co.uk/news/technology-40504354

We reject the range of download speeds available to the 20th to 80th percentile of users over 24 hours (Option C) for the reasons expressed in relation average speed measured over 24 hours.

We do not reject, but do not favour, the range of download speeds available to the 20th to 80th percentile of users at peak time (Option D) because we consider that the sheer number of figures being presented to consumers is likely to cause confusion or information overload in in real world advertising. Consumers could realistically be presented with more than seven numbers within very little time or space:

1. Price
2. Set up costs;
3. Minimum term;
4. Typical minimum speed;
5. Typical maximum speed;
6. Monthly usage limit;
7. Details of any mobile minutes, mobile data or television channels included in an offer to the market.

Consumers receive a personal and more accurate range estimate before making at point of sale and we believe that is the appropriate place for more detailed information.

CAP and BCAP invite alternative options / wording of their own

We recommend that speed estimates are based on peak time *mean* (and not median) average speeds because:

- Consumers receive mean 'averages' during their sales process - median average is out of line with other regulation, raises potential for confusion in the message that consumers receive and increases complexity by requiring ISPs to maintain two 'average' measures of speed.

Case Study – basis of consumer information under guidance based on median speeds

Advertising	Point of sale	Welcome letter
Median average speeds	Mean average speeds (at peak)	Mean average speeds (at peak)
B/CAP Guidance	Regulation (EU) 2015/2120 / Ofcom 2017 Speeds Code	Regulation (EU) 2015/2120 / Ofcom 2017 Speeds Code

- mean averages allow consumers and the ASA to better hold advertisers to account using Ofcom's broadband speeds report, which is extremely robust and based on *mean* average speeds reporting. Without an authoritative independent report, consumers and the ASA will have no central place to compare the speeds advertised with those reported by Ofcom's panel; consumer complaints may fall and ASA complaint investigation times may increase, both to consumer and advertiser detriment.
- the mean average is the 'average' understood by consumers in natural language and therefore requires the least explanation and qualification, which is more transparent.

We request that CAP and BCAP clarify in its guidance that:

- "UK average" download speeds is sufficient to describe the basis on which an average is calculated with no further qualification (there was some confusion as to whether the figure was local or national and this is a simple solution that both informs and preserves footnote text for other key qualifications, which is important in broadcast advertising where time and space are limited);
- superfast VDSL(FTTC) services require no or fewer qualifications based on signal attenuation than ADSL services because signal attenuation is unlikely to significantly affect the average consumer's experience of a VDSL (FTTC) service[2] - we distinguish provider controlled congestion above; and
- advertised speeds are properly calculated to the router and not to the end user device - CAP and BCAP's existing guidance takes this view, however, the ASA Council has ruled[3] that speeds calculated from the router should be heavily qualified and that consumers expect speeds to be calculated to the device; this is out of keeping with CAP and BCAP's guidance and with telecoms regulators at both national level (Ofcom) and at European supranational level (BEREC – see below)

Extract – BEREC proposed Net Neutrality Regulatory Assessment Methodology (2017)

"If the measurements are not carried out through a wired connection (via the model/router's Ethernet port) but through another link type that might add extra delay or bandwidth reduction (e.g. Wi-Fi, powerline or wireless repeater), the measured performance may not correspond to the [ISP's] performance."

We agree that the scope of the guidance should be confined to business-to-consumer advertising of residential broadband services.

We welcome your comments on the above.

Yours sincerely,

[2] Ofcom research shows that "access speed, although necessary, is not sufficient to guarantee a high quality Internet service. In fact, with access above around 8-10Mbps, speed generally ceases to become the dominant factor in determining digital experience quality" (Measurement of Internet Quality of Service for Ofcom (2015)). Geographic variation is not as significant a factor for services with UK average speeds of over 30Mb because the UK average speed is well in excess of the level that affects typical performance.

[3] The ASA Ruling on Sky UK Ltd (2016) (A15-303139) is one of a number of similar rulings https://www.asa.org.uk/rulings/sky-uk-ltd-a15-303139.html

CAP & BCAP: Consultation on Speed Claims in Advertising Practice

13 July 2017

www.gigaclear.com

CAP & BCAP: Consultation on Speed Claims in Advertising Practice

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Introduction

Gigaclear welcomes the decision of the Committee of Advertising Practice (CAP) and the Broadband Committee of Advertising Practice (BCAP) to consult on new guidance concerning advertised broadband speed claims.

Since the last review of broadband speed claims, broadband services have become increasingly important to the UK's population and economy. As detailed in Ofcom's Connected Nations Report 2016, superfast broadband is now available to 89% of the population[1]. As faster speeds have become more readily available, more data is being consumed; average monthly data volumes per household have increased by 36% over the past year alone[2].

For consumers, this has opened the door to new forms of Ultra High Definition (UHD) entertainment content, social media and multi-room household services, many of which increasingly demand faster download and upload speeds[3].

For businesses, digital connectivity has facilitated growth and expansion; take up of faster broadband speeds is estimated to add £17 billion to the UK's annual Gross Value Added by 2024[4]. Rather than being a luxury, reliable broadband connectivity is now widely accepted as a lever for economic growth[5].

Given this enabling nature of broadband, it is vital that the advertisement of such services offers an accurate reflection of the quality of service to be provided. Without this, consumers and businesses risk being misled into entering contracts for services that do not meet their needs, thereby restricting effective competition, harming customers and inhibiting economic growth.

With that said, this requirement must be balanced against technical reality. Broadband services are provided over a complex range of technologies and the quality of service provided has multiple dependencies. Internet Service Providers (ISPs) have little control over the throughput speeds customers experience within their properties; for example, if WiFi connectivity is used within the home, as this is impacted by the size and material make-up of the building, along with the location of the router.

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[1] Connected Nations Report, Ofcom. August 2016: https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research/connected-nations-2016

[2] ibid

[3] Making Communications Work for Everyone, Ofcom. February 2016: https://www.ofcom.org.uk/__data/assets/pdf_file/0016/50416/dcr-statement.pdf

[4] UK Broadband Impact Study, SQW. November 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257006/UK_Broadband_Impact_Study_-_Impact_Report_-_Nov_2013_-_Final.pdf

[5] ibid

Mass market advertising of the speed of the service cannot then offer an exact reflection of the speed and consistency thereof to an individual end-user or line. Flexibility to advertise an aggregated estimate of speeds up to the customer premises equipment (CPE) must then be permitted.

To strike a balance between the factors detailed above, Gigaclear proposes that the principle of 'maximum relevance to the end-user' be taken when considering how broadband speeds are advertised. In short, this principle prioritises the delivery of information that best informs the end-user as to the quality of service they can expect to experience. This principle then reflects the policy prioritisation conveyed within the BCAP Code[6].

Gigaclear proposes that if this position is adopted, **advertised speeds should be based on the range of download speeds for the 20th to 80th percentile of users at peak time**. Supported by the GfK research commissioned by the Advertising Standards Authority (ASA), it is Gigaclear's view that this proposal best informs the customer as to the quality of service they can expect at times when they are most likely to be using the service, whilst keeping marketing messaging relevant to a mass market audience.

In the below, Gigaclear sets out the reasons for adopting the 'maximum relevance' principle and why this supports the option of advertised speeds reflecting the 20th to 80th percentile of users at peak time. In doing so, we reflect on the potential criticisms that may be brought against this approach and offer counter considerations.

'Maximum Relevance' Principle

The current advertised speed claim regime was developed in response to the use of 'up to' claims in early 2012. The perception at the time was that these claims were too often based upon a technical hypothetical basis that was too far removed from the reality that consumers experienced. In response, rather than prohibit the use of 'up to' speed claims, CAP guidance established an acceptable threshold for the use of 'up to'[7], thereby accepting the use of the phrase as a viable means of justifying speeds.

Whilst unforeseeable at the time, this has resulted in 'up to' claims becoming the norm in establishing maximum advertised speed claims. Whilst this has delivered clear benefits that should be commended, most notably bringing advertised speed claims down to levels that are meaningful to some customers, challenges remain. Most significantly, where Internet Service Providers (ISPs) are utilising the 'up to' claim, in most cases 90% of customers that purchase broadband services are being sold a product speed that they will never receive.

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[6] Consultation on Speed Claims in Broadband Advertising, BCAP & CAP. June 2017: https://www.asa.org.uk/resource/consultation-on-speed-claims-in-broadband-advertising.html

[7] The current CPA guidance recommends only using maximum speed claims that are achievable by at least 10% of customers and that are preceded with the words 'up to'.

This then not only misleads the clear majority of customers at the point of purchase, but also delivers a poor customer experience as expectation is almost always above the technical reality of the service.

As this issue has persisted, it has tarnished the industry as a whole; the Broadband Investment Group (BIG) recently expressed dismay that broadband industry advertising practice was inherently misleading[8]. The ASA commissioned GfK analysis reinforces this view; concluding that consumers do not trust speed claims, with many feeling poorly equipped to select a provider once they are informed that advertised speeds are based on such a small percentage of the evidence base[9].

Further, the reinforcement of the 'up to' claim has inadvertently created a 'one-size-fits-all' regime, whereby all advertised speed claims are compelled to use the 'up to' caveat to substantiate the claim.

The negative perception associated with this measure is then spread broadly across all broadband technologies, yet the reality is that consistency of speed dramatically varies across each. Most notably, fibre-to-the-premises (FTTP) technology does not suffer from signal attenuation to the extent associated with ADSL and FTTC providers.

Whilst there is some variation between 'point to point' and 'passive optical networks' (PON), FTTP advertised speed claims are applicable to the vast majority of the relevant customer base rather than just 10%. Yet under the current regime the 'up to' caveat must still be applied here.

The use of the 'up to' caveat on FTTP speeds then unfairly attributes the view that only a small proportion of customers will achieve the advertised speed, thereby limiting an FTTP providers capability to compete on speed claims.

The weaknesses of the current regime can then be summarised as below:

A. Where an ISP is using an 'up to' speed claim, the claim itself will be unachievable to 90% of customers who receive that service.
B. This results in customer expectations concerning speed often being beyond that of the technical capability of their line. This leads to customer dissatisfaction and potentially the failure of the service to meet the needs of the customer.
C. As this issue has persisted within the industry, it has tarnished speed claims more generally.
D. This has then constrained the ability of technologies that do not suffer from signal attenuation from competing on the consistency of high speeds.

With these weaknesses identified, it is clear to see that they proceed from point A. Should A then be rectified, it follows that B through to D can be meaningfully resolved. Whilst it should be noted that Gigaclear's preferred rectification of A may produce its own associated weaknesses, these are considered in our response.

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[8] The Great British Broadband Rip-Off, British Infrastructure Group. April 2016: http://www.britishinfrastructuregroup.uk/wp-content/uploads/2016/10/The-Great-British-Broadband-Rip-Off.pdf

[9] Qualitative Research for Broadband Speed, GfK. Nov 2016: https://www.asa.org.uk/resource/qualitative-research-for-broadband-speed.html

To then resolve point A, advertised speed claims **must be as relevant to the end-user experience as possible**, whilst balanced against the technical reality of variation of speed due to signal attenuation, contention and protocol overheads. Through prioritising the relevance of the speed claim to the end-user, the potential of the service to not meet the standards expected by the customer is mitigated.

Further, through this prioritisation of relevance to customer experience, Gigaclear proposes that this principle best meets the Transaction Decision Test as set out in the Consumer Protection from Unfair Trading Regulations 2008 (CPRs)[10] and the principle of 'informed choice' as detailed in both CAP and BCAP codes.

With the principle of 'Maximum Relevance' selected, we now consider the options presented within the consultation.

Median or Range

As an alternative to the 'up to' regime, the consultation sets out two means by which advertised speed figures may be conveyed; a median single point figure or a range (20th to 80th percentile range). Gigaclear proposes that the percentile range option best meets the principle of maximum relevance as it conveys;

A. A measure that will convey a speed point that the clear majority (80%) of customers will be able to achieve;
B. A means to capture both speed and consistency of the product;
C. The flexibility to still advertise the higher end of speeds technically achievable.

Given the principle of maximum relevance, speed claims should be substantiated in a way that enables informed choice, whilst ensuring the claims are not so vague as to diminish an ISPs ability to compete on such claims. On this simple metric, the median methodology will allow advertised speed claims that c50% of customers will never achieve.

Whereas through the percentile range proposed, 80% of customers would be able to achieve the bottom end of the advertised range. The range method is then relevant to the clear majority of customers, yet still allows the advertisement of the upper speed and avoids the illogical extreme of only conveying speeds that all customers achieve.

Further, the range itself informs customers of the likelihood of a comparable service being achieved by the individual customer. A narrow 20th to 80th speed range would convey that that the network offers relatively consistent speeds across different lines, whereas a broad range would inform the customer of the relative inconsistency of speeds.

This may then compel the end-user to seek further information through a line speed checker. Put simply, this methodology puts the higher end (80th percentile) of the range into a more meaningful context, thereby equipping the customer to make an informed choice when selecting their provider.

[10] The CPRs transpose elements of Directive 2005/29/EC that concern unfair commercial practices.

The median point solution does not capture any of this nuance. As a single average point, the customer is unaware of the range either side of the 50th percentile point, **so cannot gauge the likelihood of their service achieving a comparable speed.**

To emphasise this point, consider a scenario whereby 5 download sync speeds are established at 9, 12, 55, 58 and 60 Mbps. The median is 55, yet the mean is 39. The median point fails to convey the variance of achievable speeds, failing in this simple example to show that 40% of customers fail to achieve a speed above 12 Mbps. Whilst on first glance this may suggest that the mean would be a more suitable average, it still suffers from the above criticism.

Through the range option providing a contextualised view of advertised speeds, this method enables competition on **the likelihood of achieving comparable speeds to that of the headline speed** as well as on headline speed alone.

As FTTP ISPs are less susceptible to signal attenuation, the speeds they will convey in the range method will be narrow in comparison to FTTC and ADSL products. This method then better meets the BCAP policy objective of ensuring that advertisers are free to promote features of their products, whilst better informing customers as to the likelihood of their service achieving comparable speeds to those advertised.

Further to this point, a range offers the customer a more relevant reflection of the nature of their broadband product than a single speed point. For reasons of contention, signal attenuation and protocol overheads, a customer's download speed can vary. Whilst the reality is that the range conveys sync speeds for different lines rather than variation on each line, the range will inform the customer about the variable nature of the product they are buying.

In comparison, the average single point figure of the median risks being interpreted as a single estimated speed. This concern is borne out in the GfK analysis and substantiates the group's preference for a range.

With that said, the CAP may wish to consider if particularly narrow ranges (within 10% of the upper end of the range), be permitted to offer a single point measurement. Gigaclear would support this position as long as providers could choose whether to utilise this option.

Peak Time or Over 24 Hours

In order to guide how ISPs establish the speed claims described above, the consultation sets out two alternative timeframes that will govern how speeds are captured. These are that speeds are based on measurements taken across a 24-hour period, or at peak time. **Gigaclear proposes that the peak time metric ensures that speeds conveyed offer the most relevant information to the end-user**. This is because on an aggregate level, this reflects speeds at the time when the customer is most likely to utilise the service.

If the principle of advertised speed being based on speeds over 24 hours is adopted, the CAP ultimately takes the view that speeds achievable at 3am are equally as relevant to the customer as speeds achieved at 8pm. Whilst this could be the case on an individual basis, the reality of mass market advertisement demands an aggregate view. When this view is taken, it is difficult to deny that speeds at peak times of usage will be of greater utility to the customer over speeds at off-peak times.

Further, if the CAP were to adopt the 24-hour methodology and the same weight were given to peak and off-peak download speeds, the advertised speeds would be designed to overstate performance as it would (in part) reflect speeds at times when there is minimal contention on the network. This would then 'lock in' customer expectations being above the technical capability of the service for a sizable group of customers. For these reasons, reflecting speeds at peak time would better inform the consumer regarding speeds they can realistically expect to achieve at the time they are most likely to utilise the service.

However, Gigaclear acknowledges that the introduction of peak time does raise complexities of its own; most notably how to accommodate for peak time variation across ISPs and how to reflect peak time contention.

In response, it is Gigaclear's view that peak times can be broadly defined at an industry level, as this is already the case in Ofcom's 'Connected Nations' report[11]. As for calculating peak time impact, the relevant methodology may need to vary dependent upon the network technology in use. This is because the most appropriate network level to capture contention will vary across different technical network designs. Further, capturing this data may require significant software investment from each ISP.

For these reasons, Gigaclear urges the CAP to consult Ofcom regarding how best to capture peak time contention, in light of Ofcom's current work concerning the Broadband Speed Voluntary Code of Practice (as discussed below).

'Average' or 'Typical' Speeds

Should the 20th – 80th percentile range be utilised, Gigaclear accepts that the copy within the advertisement should convey that customers may experience speeds higher or lower than the range. Gigaclear then supports the use of the phrase 'typical speeds', alongside the advertised range. Further, we propose that if the percentile range is adopted, the small print of associated copy should clearly explain how the range is calculated.

[11] Connected Nations Report, Ofcom. August 2016. Defines peak time as between 6pm and Midnight

B2C or B2B

The current guidance as established in 2012 applies to both to business-to-consumer and business-to-business broadband services. This consistent approach is welcomed and on implementation resulted in substantiated speeds (via the 10% mechanism) becoming the norm across both sectors.

Gigaclear then welcomes the CAPs commitment to a 'consistent approach across different telecommunications services', as this will ensure that consumers and businesses are not misled by discrepancies between the two. As the current regime applies its guidance across both business-to-consumer and business-to-business, Gigaclear urges the CAP to take the same approach in any further guidance provided.

Ofcom Broadband Speeds Voluntary Codes of Practice (VCOPs)

Gigaclear are aware that Ofcom is reviewing its current Broadband Speed VCOPs in light of the EU Telecoms Single Market Regulation. As this regulation[12] and associated BEREC guidance[13] compels providers to detail estimates of 'realistic' and 'peak time' speeds, it is likely that Ofcom will seek to include a reflection of peak time contention in any proposed changes to fixed broadband sales journeys. As the CAP's review of advertised broadband speeds also looks to reflect peak time speeds, Gigaclear urges the CAP to consult Ofcom concerning how best to capture this data.

Further, both Ofcom and the CAP will look to define peak time and off-peak periods in which providers will be instructed to gather data. For purposes of practicality and making best use of resource, we would urge the CAP and Ofcom to align on these definitions.

Summary

When reviewing how broadband speed claims are advertised, Gigaclear proposes that speed claims should be of 'maximum relevance to the end-user'. This means that the speed claim itself be substantiated on data that best enables informed end-user choice. Gigaclear proposes that option D within Part 1 and Part 2 of the consultation offers the best means of achieving this outcome.

We hope that this response assists the CAP and BCAP in evaluating their proposed guidance. We look forward to moving towards a more open and transparent means of advertising broadband speeds in the future.

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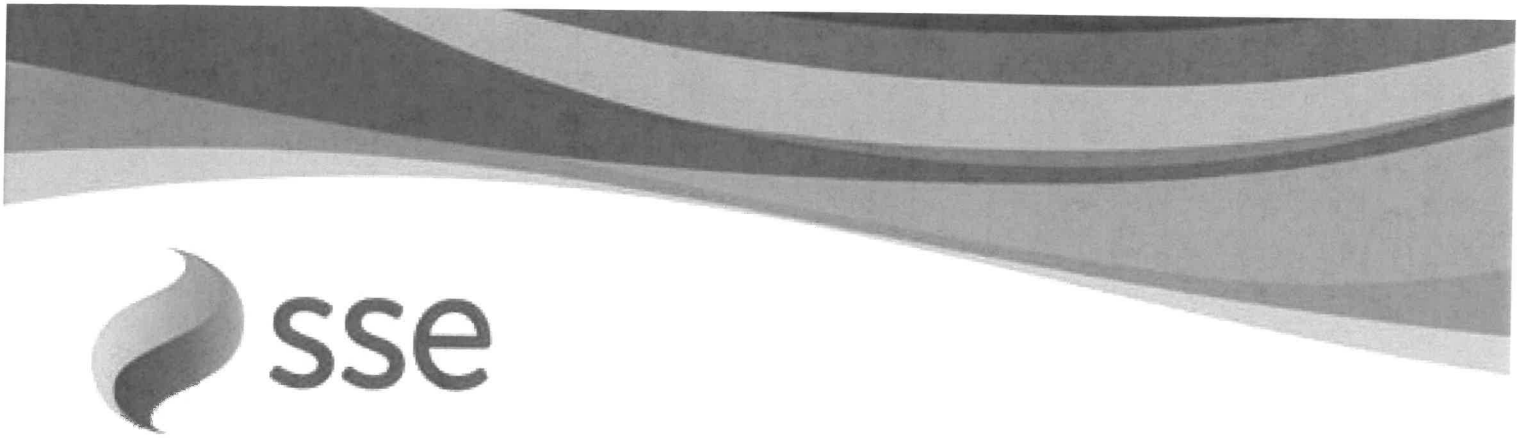
[12] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2120

[13] http://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/6160-berec-guidelines-on-the-implementation-by-national-regulators-of-european-net-neutrality-rules



CAP and BCAP consultation on speed claims in broadband advertising

SSE's primary focus is GB and Irish energy markets; however, we are also active in the telecoms market offering fixed line telephony and broadband products to residential customers in Great Britain as part of the retail business. As a large scale retailer of energy, we have considerable experience of acting as the provider of an essential service in a highly regulated market. Fundamental to both arms of our retail business is our focus on treating customers fairly.

We therefore welcome the Committee for Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP)'s consultation on proposals to introduce new guidance on speed claims in broadband advertising. We support the positive steps that have already been taken to make pricing more transparent, but with the current advertising practices regarding speed having been shown to be misleading for customers[1], we believe these too need to be addressed.

Access to broadband has become increasingly essential for the UK's population, with connections providing customers with access to a wide variety of activities. Market research recently undertaken by SSE found that speed is one of three key drivers[2] in customers' decision making when purchasing broadband. As such it is critical that customers are not misled by poor advertising practices. As providers of an essential service, broadband suppliers have a responsibility to be fair in their interactions with customers. Integral to this is producing advertising that is transparent and simple, and which enables customers to take informed decisions.

While we note that the ASA has already undertaken research and consulted with industry to guide its current proposals, we would like to put forward an alternative proposal. This proposal has been developed following research into broadband speed that we have undertaken with YouGov (as referenced above), and based on our experience of the market. We are therefore confident it will deliver advertising that best meets customers' needs and requirements.

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[1] 'Qualitative research for broadband speed', Report for the Advertising Standards Authority, prepared by GfK UK, November 2016

[2] Broadband Speed Research, Report for SSE prepared by YouGov, June 2017, 2073 respondents

SSE proposal

1. Aiding customer understanding through standardised terminology

Recent SSE consumer insight, undertaken in collaboration with YouGov, showed that nearly half of customers' stated their preferred method to understand a package's speed would be to be offered a personalised speed quote in the form of a numerical speed value. While the use of the personalised speed checker will provide the best ultimate indication of speed for the customer, it is plainly not currently possible to provide personal speed quotes in up front advertising.

It is evidently important that a method of differentiating between deals is offered to preserve competition and transparency for the customer. However, our recent research demonstrated that there is a low understanding of both speed descriptors (i.e. superfast, ultrafast) and numerical speed values, with over 40% of respondents stating they have 'no understanding' or a 'low understanding' of both of these critical speed differentiators, suggesting that the current approach is failing to deliver.

It is our view that inconsistency in the use of 'speed descriptor' across the industry is a contributory factor to customer confusion and low levels of understanding. Speed descriptors are commonly used in broadband advertising, but in reality these terms are flexible with no set parameters for each description and competing firms employing the same terminologies across a range of contrasting products. They are thus highly confusing and misleading for customers. We believe that if these terms were implemented consistently they could be a clear indicator of broadband speeds, with descriptive words communicating the reality of the service a customer would receive in a far more meaningful way than numerical values.

We therefore suggest the standardisation of these terms across industry. Standardising terms would make broadband speeds clearly categorised, enabling customers to easily compare and contrast similar packages. This recommendation has been supported by our survey, with nearly 80% respondents stating standardisation of these terminologies would be helpful, and half of these stating this would be 'very helpful'.

While categorisation of descriptors would need wider industry discussion, we would suggest that these may be appropriate bandings:

- Standard broadband - up to 30Mbps

- Superfast broadband - 31-330Mbps
- Fibre broadband- only acceptable for advertising fibre to the premises

These bandings clearly link to the underlying technology where:

- Standard = ADSL (fibre to the exchange, copper from the exchange to the home)
- Superfast = VDSL & G.Fast (both are Fibre to the cabinet, copper to the home)
- Fibre = FTTP (Fibre all the way to the home / premise)

Adopting these clear bandings linked to the underlying technology would also prevent the term 'fibre' being used to describe part-fibre services, a practice we understand both the ASA and parliamentarians have recently expressed concerns over.

2. Providing accurate numerical indicators

Current advertising practice focuses on guidance on the numerical values. While numerical values are simple to contrast for customers, with it evident that the higher the number the faster the speed, they are often misleading with the advertised number not a reflection of the speed a customer will actually receive. Although this may be mitigated by proposals for advertising to provide a range or the average speed our insight research found that nearly 40% of respondents still found these revised approaches confusing. We would therefore suggest that practices are changed to recommend the use of standardised speed descriptors to differentiate speed offerings, with numerical values removed.

Although we suggest the numerical number should be removed from advertising, numerical indication would still be available through personalised speed checkers, with active signposting to supplier's websites encouraging customers to receive a personalised quote prior to signing up to a tariff. This is in line with Ofcom's previous support for personalised speed quotes and the principles in its voluntary code of practice on broadband speed.

Pleasingly, our survey found 60% of respondents claimed to have used a speed checker in the past, however during the purchasing process they will have been shown both a numerical descriptor and a personalised figure. In our view this increases the likelihood of customer confusion over what numerical speed they can expect from their package. It is therefore our preference for customers to be shown just the personalised accurate figure.

We are hopeful that instigating a speed checker process as part of the purchasing journey could prevent customers paying for a 'superfast' package when they were only able to receive standard speeds. For example, if a customer was attempting to sign up for a superfast deal but following the personalised speed check it became clear that their actual achievable speed would not allow them to benefit from superfast speeds, the checker may prompt them to reconsider overpaying for a package that wouldn't benefit them.

In conclusion, we believe that this proposal strikes a balance between ensuring that advertisers are able to promote the speed features of their product, while ensuring that the process is transparent for customers, ultimately providing them with a more accurate understanding of the service they are purchasing.

ASA proposals

While we believe that the proposal above provides the most customer friendly and transparent practice for advertising speed, we would like to make some comments on the ASA proposals should the decision be made to implement one of these. We would like to note that both the proposed approaches, advertising either the range or average speed, received a poor response in our broadband speed survey with nearly 40% of respondents saying the approaches were confusing, and a maximum of 5% across each of the four proposed messages stating that the message was clear.

<u>24 hour or peak speed: focusing on what we can deliver accurately</u>

As the consultation notes, speed of broadband services depends on a number of factors with many of these often beyond a provider's control, as such it is difficult to describe accurately actual speeds received by users. In line with the ASA's aim of not misleading customers we believe the focus should be on providing speed figures that a supplier can accurately predict and measure. Therefore, we suggest that the advertised speed should be line or 'sync' speed. This is the maximum speed that comes out of the exchange and gets sent along the line to the router in the customer's home. It is this speed that we currently advertise using the up to 10% guidelines, for example our 24Mbps line speed is currently marketed at up to 17Mbps. As the line speed is constant and does not depend on variables it would be misleading to advertise a peak speed as the exchange's output speed should always remain unchanged.

Whilst the line speed remains constant, the throughput speed - ie the speed received within the customer's home on devices, can vary significantly depending on factors such as; performance of the website being accessed, whether internet is accessed through a wired or wireless connection, how many people are using the home area network or distance from router. In many cases this means the customer may receive less than the maximum advertised speed.

Although we are able to give advice to customers on how to improve the speed within their home, because of the impact of home environment factors and customer behaviour, we are unable to tell accurately what speed a customer will be receiving at any set time in their home. As such 'peak speed' is difficult to provide accurately and any estimate is likely to be misleading, as a number of internal and/or local factors are likely to prevent customers achieving this. In our view providing a 'peak' speed misleading customers could lead to disappointed customers and a lack of trust in the industry.

We therefore recommend that all advertising should be based on line speed as suppliers can predict this accurately and thus give a fair representation to customers. As line speed is not variable, a 24 hour measure would be appropriate.

To prevent disappointment educating customers on the distinction between line speed and throughput speed, as well as factors that can impact the speeds they will receive on their devices, would be a positive step towards aiding customers to make informed decisions and improving their user experience.

Advertising the median or a range: how to deliver clarity for customers

While both of the proposed approaches may provide a more realistic estimate of achievable speed to customers than the current 10% practice, we do not believe that either is wholly transparent as to the speed a customer will actually achieve, with a proportion of customers likely to achieve higher or lower speeds than advertised. This view is reflected in the ASA's initial research with customers already expressing concerns over both approaches, a view supported by the insight we gathered with YouGov.

Should either of these approaches be implemented, our preference would be to adopt the approach of advertising the range available to 80-20th percentile of users. Our research found this to be the fairest, easiest to understand and least misleading approach, and the respondents' overall favourite. However, with over 40% of respondents stating they had no preference between proposals, and commonly

around 30% stating that the different approaches were not clear or easy to understand, it is evident that there is a need to focus on educating consumers, regardless of the final practice adopted.

In light of this evidence, we suggest that the clarity and consistency offered by our alternative proposal is more likely to deliver on the CAP and BCAP's aims of delivering fairly and transparently for customers, with the integration of a speed checker in the purchasing process helping to ensure customers are not misled.

Speed claims in broadband advertising

Consultation by the Committee of Advertising Practice

Response by TalkTalk Group

13 July 2017

Introduction

TalkTalk welcomes the opportunity to comment on the consultation on speed claims in broadband advertising by the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP).

The regulation of the advertising of broadband speed must achieve three objectives:

1. Provides consumers with clear, transparent information. This information should enable consumers to make informed choices and protect against false or incorrect claims;

2. Retains providers' commercial freedom to advertise products in a way that meets consumer demand;

3. Provides the right incentives for providers to improve services whilst adhering to the CAP recommendations on calculating speeds.

We agree that the current guidelines that recommend that advertisers only use maximum speed claims that are achievable by at least 10% of customers (and preceded by words like "up to") require reform. They have served a useful purpose, but as the market matures and products and technologies evolve, it is appropriate that advertising guidelines are updated. A new and fresh approach is needed to maintain consumer confidence in broadband speed claims in advertising.

There is a close relationship between the broadband advertising recommendations and the broadband speed code developed by Ofcom. The documents govern two discrete parts of the customer journey for choosing and purchasing a broadband service from an individual provider. As such, it is important that the documents are consistent and seek to achieve the same outcome, i.e. a well-informed consumer of broadband services. We would recommend a close working dialogue between CAP/BCAP and Ofcom to ensure that this happens.

Our comments on the consultation are set out in the following.

Options for a new recommended approach

The consultation document outlines four options for a new recommended approach to broadband speed claims:

(a) Median download speed for users over 24 hours;

(b) Peak-time median download speed;

(c) Range of download speeds for 20^{th} to 80^{th} percentile of users over 24 hours; and

(d) Range of download speeds for 20^{th} to 80^{th} percentile of users at peak time.

Option B is the most appropriate for achieving accurate broadband advertising

Each of the above options has their individual benefits and draw-backs. By an overwhelming margin, though, we believe that Option B is the most appropriate option to achieve the overriding objective of ensuring that consumers are not being misled by false or incorrect claims on broadband speeds. There are a number of arguments in favour of this position:

(a) The broadband advertising recommendations need to be consistent with Ofcom's broadband speed code of practice. The two documents together describe the journey to create the right expectations by the consumer about the speed that they can expect to receive when they purchase a broadband service from a specific provider. The Ofcom broadband speed code is currently being revised to comply with the EU TSM Regulation. This means that the broadband speed code will require the use of the peak-time speed (expected to be 8-10pm for residential customers) by providers when they provide the relevant speed information at the point of sale.

(b) Ofcom's (and indeed TalkTalk's own research) clearly suggests that all current mainstream technologies (ADSL, FTTC and Cable) users are likely to focus their use of their broadband services between 4pm and 10pm with an even larger peak of users between 8pm and 10pm. That is why Ofcom has opted for the approach of using the peak-time speed for the revised broadband speed code.

(c) TalkTalk's own research also suggests that approximately 75% of consumers predominantly consider the speed in peak times when making a decision on a broadband package.

(d) Our own research also suggests that the most unreliable time of day for broadband use across all products is the evening. This applies across all technologies including ADSL, FTTC and Cable. It is therefore important to ensure that consumers base their purchasing decisions on the speed that they are most likely to experience in practice.

(e) In contrast to the peak-time speed, the use of a 24-hour average speed would risk misleading consumers about the broadband speed they would likely achieve in practice. It is important that advertised broadband speeds do not undermine consumer confidence in broadband technology. The requirement to advertise a speed that the customer is more likely to receive, i.e. peak-time speed, would also ensure that providers do not seek to hide the true performance of their networks. This is particularly the case when providers are making large changes to their network such as during network expansion projects, which can impact on broadband speeds during peak hours.

For the above reasons, we believe that Option B on peak-time broadband speeds has clear advantages in terms of achieving the clearest possible consumer understanding of the likely speed they would receive on their broadband service.

Option B should be the only option for broadband speed claims

It is also very important that the revised broadband advertising recommendations set out Option B as the only one from the four options presented in the consultation. It would be highly detrimental to consumer understanding and trust if the recommendations were to include more than one option. All current mainstream broadband technologies (ADSL, FTTC and Cable) display comparable effects on speeds during peak-time (8-10pm) which therefore needs to be reflected in the advertising by all providers concerned. Meanwhile the current recommendations for calculating the relevant speed should be maintained to avoid

any unfair trading practices that may result in distortions in the way speeds are presented in advertising.

Options C and D are not suitable to prevent misleading advertising

Far from giving customers simpler, more transparent information, options C and D (the use of a 20th/80th decile range) risks further confusing customers. ISPs already provide customers with an estimated range at the point of sale that is specific to the customer's line. This allows customers to make decisions based on the lower and upper speeds they are likely to receive at their specific property. A separate range, tied to provider averages rather a customer's line would be less relevant to individual customers and so would risk adding unnecessary duplication and confusion.

The broadband advertising recommendations must be flexible enough to accommodate new broadband technologies

The broadband advertising recommendations should be able to meet the demands of new and faster broadband technologies (e.g. FTTP and G-Fast) whilst not unduly hindering their effective deployment in the consumer market. The four options require providers to have a sufficiently large representative base from which to calculate median speeds (or indeed speed ranges). Until the provider has achieved a sufficiently large base, they must be able to use other reasonable means of calculating the advertised broadband speeds. In this regard, we would recommend the approach adopted by Ofcom in relation to the draft revised broadband speed code which would allow providers to use an alternative (reasonable) methodology for estimating the speed if a new broadband package has fewer than 20,000 customers. Such an approach would ensure clear consumer information in the advertising of new broadband technologies in the early stages of market development without creating unnecessary obstacles to deployment.

Implementation

TalkTalk believes that a reasonable implementation period is required to ensure that providers are able to make all the necessary system and process changes (as well as ensuring consistency with speed algorithms needed under the revised Ofcom speed code). We cannot safely say that we would be able to implement the changes within 6 months but believe that a period of 9 months would be a more reasonable timeframe.

thinkbroadband®

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12 July 2017

Response to CAP Consultation on broadband speed claims in advertising

Background

For over fifteen years, thinkbroadband has provided independent broadband information, from consumer advice and troubleshooting guides to tools that help consumers understand the speed and quality of their broadband connection. Our focus is on helping users make the most out of their broadband package by fixing any issues they may be experiencing.

We are one of the few independent sources of broadband speed and availability information gathered through extensive data analysis. Our local broadband coverage and performance[1] data is available free on our site. We publish broadband maps[2] which visualise data, and provide access to our broadband speed test[3] tool as well as our latency/packet-loss broadband quality monitoring[4] tool. Analysis of speed test results from our speed test tool is published monthly and showcase the range of speeds seen across a wide variety of technologies and packages.

We routinely provide expert commentary to the press on broadband related issues. Our data has been referenced in parliamentary answers both in Westminster and Scotland and we have given evidence on broadband rollouts to a committee of the Welsh Assembly.

Introduction

Broadband services have been available on the market since 2000, however the range of services have developed considerably during this time, with consumer download speeds increasing from 0.5 Mbps with up to 1,000 Mbps services available in some areas today.

[1] https://labs.thinkbroadband.com/local
[2] http://maps.thinkbroadband.com
[3] https://www.thinkbroadband.com/speedtest
[4] https://www.thinkbroadband.com/broadband/monitoring/quality

Services are often advertised in various mediums including but not limited to print, broadcast and online and most advertising is based in significant part on download speed claims.

The ASA/CAP's current guidance from April 2012 recommends that 'up to' speeds referenced in advertising should be available to at least 10% of customers.

For the past nine years, following an ASA Judgement[5] in relation to Virgin Media advertising claims, the term 'fibre broadband' has been misused in fibre-to-the-cabinet (FTTC) services using fibre/twisted copper and cable fibre/co-axial copper hybrid services.

Causes of broadband speed variations

Broadband speeds vary from day-to-day and from location to location due to a number of reasons:

(1) Services based on telephone lines (FTTC/VDSL and ADSL) are affected by the distance from the street cabinet or telephone exchange to the customer premises, interference from the telephone cabling inside homes and sometimes from other appliances in the home; to provide a speed estimate, a provider needs to know the location where the service is required, and sometimes the specific line to the property.

(2) Congestion at peak times; affecting all providers to a different extent depending on their contention ratios/business decisions on capacity. This congestion can take place anywhere on the network near the user, throughout the provider's core network, to anywhere on the Internet before reaching the destination.

(3) Wi-Fi is a source of many speed issues within the local network, which consumers may not be aware of; use of devices which do not support the latest standards and slow down all Wi-Fi services on a network, distance and obstacles between device and Wi-Fi access points, etc.

Each of the above broadband speed issues can cause slow-downs in user experiences, and most are outside the direct control of the provider selling the service. Many can be improved by users (e.g. removing interference caused by telephone extensions or other devices, using better Wi-Fi devices, etc.).

The fibre horse has bolted

We believe the way 'fibre broadband' has been advertised in the past few years is both unacceptable, but also a direct result of the previous ASA/CAP decisions on the subject. The fact remains that services consumers call and regard as 'fibre broadband' are essentially hybrid fibre services. However, we do not believe that at this stage, with such a socially embedded term, redefining this to refer to full end-to-end fibre services would do anything other than confuse consumers further.

[5] https://www.thinkbroadband.com/news/3391-asa-rules-on-virgin-fibre-optic-broadband-claims

We would suggest the term 'fibre to the home' (FTTH), 'full fibre' or '100% fibre' are likely to be the best options for what is currently a low single digit percentage coverage, though there are signs this will increase over the next few years. Whilst services such as cable broadband via DOCSIS 3.1 will be able to match product speeds expected to be marketed for some time (and G.fast is expected to bring 100 Mbps and faster speeds to some 10 million premises), we would caution against making the same mistake again on any use of the 'full fibre' term; this is a technology, not a speed standard.

Regulating speed claims and the 'up to' problem

The difficulty in regulating the 'up to' speed claims originates mostly from the issues relating to length-of-telephone line issues, although we would urge you to consider this issue affects congestion in cable networks just as well as recently evidenced by BBC Watchdog[6] in a recent investigation, where faster speed claims were made in specific areas where known problems existed. A peak time performance on a congested cable service may well render it completely unsuitable for many uses including streaming or working from home, despite a fast median or headline speed and this can also be the case with full fibre.

The current 10% rule is effective in providing a 'realistic maximum' speed a user is likely to receive on the service, subject to limitations of their telephone line and congestion which may depend on their location. The use of the words 'up to' is not universally understood (as made clear in your research), but the range in speeds is a simple message to deliver with the right small print and consistency across the industry. Whilst percentiles are helpful, the reality is most consumers will not understand its meaning.

The availability of services is also a key factor in advertising; Virgin Media cable services may be available to some 50% of the UK, with some of the fastest widely available headline speeds, however 'superfast' services (30Mbps and faster on EU definition; over 24Mbps on UK Government definition) are available to in excess of 90% of the UK. However, to expect FTTC providers to base their statistics speeds on a coverage base of 90% (which include less populated areas where cable services are not offered), would potentially mislead those in areas where faster FTTC speeds are available.

It is possible to make the argument that any consumer seeing cable broadband advertising is potentially mislead at the point of advertising, if they are in a non-cable area, however it is clearly not possible to prevent such confusion completely.

It is simply not fair to compare speeds of different technologies, based on different coverage levels in marketing communications which has no way of segregating the market.

Furthermore, we should be focussing less on the absolute speed, and more about what applications the service is qualified for: e-mail/web browsing, watching online videos, live HD streaming, multiplayer games, video conferencing, heavy multi-user household, etc.

[6] http://www.bbc.co.uk/news/technology-40504354

If we assume there are ten users, each able to receive an FTTC 'up to 76' Mbps service at various locations, the current situation would be as follows:

	Underlying wholesale service	Actual Download Speed	Retail Package sold to consumer
Consumer 1	80 Mbps	10 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Consumer 2	80 Mbps	20 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Consumer 3	80 Mbps	20 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Consumer 4	80 Mbps	30 Mbps[7]	Fibre 80/20 'up to 76 meg' £35/month
Consumer 5	80 Mbps	40 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Consumer 6	80 Mbps	50 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Consumer 7	80 Mbps	60 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Consumer 8	80 Mbps	70 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Consumer 9	80 Mbps	70 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Consumer 10	80 Mbps	76 Mbps	Fibre 80/20 'up to 76 meg' £35/month
Current marketing: 'up to 76 Mbps' / Mean: 44.5Mbps / Median 45 Mbps 20th - 80th percentile splits: 20 - 70 Mbps			

In the above example consumer 7 who would get a 60Mbps service on this 'up to 76 meg' package, might consider opting for a 40Mbps broadband service using an alternative technology because they are not aware they would be able to get a faster service in their area on the above package.

This highlights the need to deliver the 'personal estimate' (including references to upload speeds) and 'conditions may vary' message to consumers. Whilst consumers may today still remain somewhat confused by broadband speeds, do they expect to be able to drive a 70MPH during rush hour on the M25 motorway or be able to do full speed in a car on a residential road with a 20MPH speed limit merely because the car is advertised as being able to reach speeds of 140MPH?

[7] We do note that there are 40Mbps FTTC wholesale packages which would be sensible to offer (at slightly reduced cost) in our example, however the issue as a whole remains whilst there is no wholesale price difference between a 50Mbps and 80Mbps service, no matter which numbers you pick for the example.

The perverse incentive to refuse to sell faster services

If CAP adopts any guidance which requires the publication of statistical speeds based on mean, median or percentiles, there is a perverse incentive for providers to either refuse to sell the fastest services to customers it expects would not receive the top speeds (even if this package could deliver the fastest speed for that technology), or to separate packages by speed, even though the underlying service remains the same.

Let's consider a provider who uses the underlying wholesale "80 Mbps Download" service referred to above; if they split the "Fibre 80/20 'up to 76 meg' 35/month" package into the following Fibre A / B / C / D packages, the consumers could be allocated as follows:

	Underlying wholesale service	**Actual Capable Download Speed**	**Retail Package sold to consumer**
Consumer 1	80 Mbps	10 Mbps	Fibre A 'up to 20 meg' £35/month
Consumer 2	80 Mbps	20 Mbps	Fibre A 'up to 20 meg' £35/month
Consumer 3	80 Mbps	20 Mbps	Fibre A 'up to 20 meg' £35/month
Consumer 4	80 Mbps	30 Mbps	Fibre B 'up to 30 meg' £35/month
Consumer 5	80 Mbps	40 Mbps	Fibre B 'up to 30 meg' £35/month
Consumer 6	80 Mbps	50 Mbps	Fibre C 'up to 50 meg' £35/month
Consumer 7	80 Mbps	60 Mbps	Fibre C 'up to 50 meg' £35/month
Consumer 8	80 Mbps	70 Mbps	Fibre D 'up to 70 meg' £35/month
Consumer 9	80 Mbps	70 Mbps	Fibre D 'up to 70 meg' £35/month
Consumer 10	80 Mbps	76 Mbps	Fibre D 'up to 70 meg' £35/month

Each of the consumers would be receiving 100% of the promises speeds, paying the same price, on the same wholesale package; the only change is the provider simply markets the package differently, depending on the service area. Whether packages are under-advertised is a separate issue.

This may sound theoretical, but **we are already aware of providers who will not sell some of their fastest service packages to consumers who are not within certain tolerances of estimated service speeds**; even though this package may provide the consumer with the best possible option in that location. By doing so, they avoid reducing average (or percentile) speeds.

In this model, the Fibre A package would be available to almost everyone, Fibre B would only be available to those users capable of receiving 30 Mbps or more, and so on. This is just of course an example illustrating the various issues such regulation can cause if not carefully thought through as comparisons are not like-for-like when the availability of a service is not uniform across the population.

The advertising in the newspaper or on TV will read:

"Get our superfast 70 meg fibre broadband for only £35/month"*

** Available in areas supporting services of 70 Mbps or more; median speed 65Mbps; speed range 65 – 75 Mbps; if you are in an area not covered by the service, a suitable alternative may be offered at the same cost.*

Does this messaging help consumers, when many could end up on slower packages?

Conclusion

Broadband speed claims are a key basis on which individuals make decisions, and some regulation in advertising is helpful to ensure claims are not intentionally misleading; however, **the CAP proposals relating to statistical measurements do not improve the information available to consumers** on their relevant lines, but simply shift which consumers are potentially receiving incorrect information.

CAP's own research found that participants "reflected that even at 50%, it was difficult to gauge what speed they might expect to achieve" illustrating that even representing 'average' speeds was not in itself helpful to consumers; we have outlined above how such speeds could be even more misleading in generic advertising.

We also stress that **an advertisement that claims a speed below that a consumer is likely to receive can equally misinform a consumer** who may choose another product which in reality performs slower or is otherwise less suited for the user's requirements or which costs more.

Our recommendations

(1) Advertising should provide prominently, details of the coverage area (in whatever form is appropriate for the type of advertising) to which it relates. This might be "Available to 50% of UK households" or "Available to 80% of properties in London" depending on the advertising location/targeting. For some online uses, personalised/localised estimates may even be possible which should be appropriately flagged.

(2) The speeds claimed should be based on appropriately sourced data and wording, however the source of the data and methodology should be a matter for the advertiser.

(3) We believe that a 80/20th percentile figure is potentially just as misleading as any other statistic due to the varied nature of speeds. We are concerned users will misunderstand reasons for such variations. However, any speed range provides a benefit over an average figure as a range in itself indicates variation. Similarly an "up to" figure is a range with a top speed. A clear small print wording on those two small words would be significant to remind users what it really means.

(4) The recommendation that consumers source a personalised speed estimate based on their location cannot be underestimated irrespective of technology. Consideration may be worthwhile on whether this estimate must take into consideration local circumstances within the previous 90 days (i.e. congestion affecting speeds in that area); whilst we believe this would be ideal (and possible within cable operators), it is considerably more challenging in the FTTC market where retail operators at various levels have different levels of access to data. Such plans would need considerable consultation with key stakeholders.

(5) CAP should consider promoting 'good practice' alternatives to standardise information based on suitability for particular applications rather than merely speed (e.g. satellite broadband is often unsuitable for some first-person online gaming due to latency; no matter how fast the speed); we would be happy to work with CAP and providers to help develop such standards. This could also be furthered by a neutral website which explains the issues to users in technology and provider-neutral manner, which could be promoted through media outreach and voluntary inclusion by providers of a link on advertising through a voluntary scheme.

(6) Any measure of 'peak time' should be end-to-end measurements for a definition of the busiest period for each provider; peak for one provider may be off-peak for another with different customer profiles; further traffic engineering (also known as traffic management or traffic shaping) could be used to deliver performance for some applications, which further complicates the appropriateness of a service being much more complicated than the download speed which seems to be the primary way in which services are advertised, in a similar way to bus lanes having a different average speed or range of speeds against other running lanes on a road.

(7) Any speed references should be based on (some standard size packet of) IP throughput, after overheads.

We are acutely aware of the difficulty in providing consumers with accurate information on broadband services in an area, not least due to the intricacies of different technologies, however we do not believe this complex issue can be solved by what may at first present as statistical representations of speeds, where these bear no relevance to the individual circumstances of a consumer looking to buy a broadband service.

– end –

Virgin Media submission: CAP and BCAP Broadband Speeds Advertising Consultation

Summary

1. Virgin Media welcomes the opportunity to respond to the Committee of Advertising Practice's (CAP) consultation on revised broadband speeds advertising guidance. Virgin Media is the only Internet Service Provider (ISP) to have publically called for the '10% rule' to be changed in favour of a more consumer-friendly rule.

2. Our response to this consultation has been informed by extensive and representative consumer research that has been undertaken in this last year. We commissioned quantitative and qualitative research from ICM and BritainThinks respectively; with the purpose of understanding how broadband speeds advertising could be made clearer to the average consumer. This research, which is referred to throughout, is attached in appendices and should be considered alongside this response.

3. We also attach research by Survation which looks at the potential impact on the growing homeworker community – many of whom depend upon a reliable internet connection throughout the day.

4. To achieve the best outcome from this review of the guidance, we believe it is important to consider the role and positioning of broadband advertising in the purchasing process and to understand the variable nature of service performance. The mass-media nature of advertising and the variability of broadband speeds make it both inappropriate and impractical to go beyond the inclusion of general service performance and capability information in advertisements. Specific information about an individual customer's likely speed performance is much better suited to a point later in the purchasing process.

5. Based on the findings of our research, we consider the best outcome of the revised guidance would be a suggestion that advertisers only advertise headline speed figures when those speeds are achieved by the majority of their customer base – expressed in the consultation as 'the median'. There is existing precedent for such a rule in the regulation of the advertising of financial services products by the Financial Conduct Authority (FCA).

6. We further believe that to provide consumers with a clear and accurate representative indication of broadband speed in an advertisement, a speed measurement should be based on national network performance over a 24-hour average. This measurement would provide consumers – who use their broadband service at different points throughout the day – with the clearest picture of the general capability and performance of the service.

7. We see no consumer benefit in the advertising of a range of speeds. It is unclear how a range could be communicated in a way that would not confuse the consumer, or force the advertiser to display a significant amount of contextual information. This may have the converse effect of confusing the consumer.

8. The proposal for speeds to be quoted for peak times presents a number of challenges, not least that a significant majority of consumers are confused about what constitutes 'peak time'. During industry workshops held by the CAP Executive, we noted some support for a peak time measurement, however on the basis of our evidence we are concerned that the use of peak time measurement will confuse more consumers than it enlightens.

9. Finally, it is important that the new code encourages the use of speed figures rather than vague language intended to convey the impression of superior speed. Speed is important for consumers when choosing between providers, because speed delivers a series of benefits, e.g. the ability to run multiple simultaneous applications or to support data intensive services. Whilst we appreciate that CAP cannot mandate the use of speed figures by advertisers, it should encourage best practice and discourage advertisers from employing potentially misleading practices.

About Virgin Media's network

10. Virgin Media is the owner and operator of the UK's ultrafast cable broadband infrastructure. In 2015 we announced a private investment programme of £3 billion to expand our ultrafast broadband network to an additional four million premises. At the outset of Project Lightning, Virgin Media had connections available to 12.5 million premises – roughly 45 per cent of the UK. Project Lightning will extend Virgin Media's network coverage to approximately 65% of the UK; a total of 17 million premises.

11. Analysis conducted by Oxera estimated Virgin Media's investment in Project Lightning will deliver £8 billion of economic benefit to the UK. £5.3 billion is attributed to supply chain benefits resulting directly from the investment and increased consumer spending; £1.6bn is attributed to consumer benefits associated with faster broadband; a further £650m to consumer benefits is attributed to greater choice; and £100m is attributed to productivity benefits for consumers and workers.

12. The characteristics of Hybrid Fibre Coaxial (HFC) (the technology underpinning Virgin Media's network architecture) mean that the vast majority of consumers who take up VM's service are able to receive the advertised speed, if not a higher speed over 24 hours. Unlike BT's incumbent legacy network, our HFC network is unimpeded by attenuation related to the length of the copper line between the exchange or cabinet and the home.

13. We offer a range of different broadband products to our customers, which support a range of different usage requirements. We also routinely publish data about our network performance against each of these products, updated on a monthly basis.[1]

14. As recently reported in the media there have been some instances where Virgin Media customers have not received the advertised headline speed. In a small number of isolated cases

[1] Virgin Media Broadband Performance Panel powered by SamKnows, the broadband performance monitoring specialists. Typical speeds are recorded with a standard ethernet cable. Our most recent performance against each of our broadband products can be found at: http://www.virginmedia.com/shop/broadband/speeds.html

our network has suffered from congestion – we are investing to resolve these cases. It should however be noted that the vast majority of Virgin Media customers receive our advertised speeds or above. Indeed, based on our latest performance data, more than 80% of Virgin Media's customers are able to receive in excess of the advertised speed that they signed up to, even at peak times.

The importance of clarity in broadband speeds advertising

15. Clarity in advertising has always been a cornerstone of the ASA's codes, and the treatment of broadband speed advertising should be no different. In fact it ought to be the guiding principle for new guidance.

16. Advertising is only one of a number of factors affecting a consumer's purchasing decision. Despite this, it is vital that claims within adverts are easily and quickly recognised and understood by the average consumer, because advertising is often subject to only brief consideration.

17. Speed is a material consideration for consumers purchasing a broadband product, and therefore advertising of accurate representative speed figures matters. Speed is a key indicator of whether a broadband service will satisfy the connectivity needs of a household or business and support their desired services, applications and usage requirements. Indeed Populus research[2], commissioned by consumer group Which? in 2014, found that consumers consider speed to be the second most important factor influencing their choice of broadband deal (88%) – beaten only by price (94%).

18. Achieving clarity is a particular challenge for the advertising of a maximum speed figure, because speed can vary by household and over time. A figure given in advertising, which is a one-to-many communication medium, can never be a guarantee of service performance. This can depend on many variable factors that affect a specific household which cannot be reflected in a general communication. Advertising campaigns can only give an overall indication of a network's performance.

19. Broadband advertisements effectively constitute the "gateway" to the purchasing process via which consumers will make an initial decision about which services to explore further. Whilst it is important that they convey an accurate, representative indication of the general performance of a service, it is neither appropriate, nor practical for them to provide information on the likely performance that a specific household could experience. This is best reserved for a later point in the purchasing process, when there is direct engagement between the customer and the provider.

[2] http://press.which.co.uk/whichpressreleases/pull-the-plug-on-confusing-broadband-advertising/

Consumer views on the CAP consultation proposals

Methodology

20. The ASA has always taken an evidence-based approach to the application of the codes and the development of new guidance, but it has also balanced this with a consideration of shifts in societal attitudes. We have sought to bring the consumer voice to this discussion through extensive qualitative and quantitative research.
    - ICM was commissioned to survey a nationally representative sample of 2023 UK adults.
    - BritainThinks conducted four 90-minute focus groups with broadband customers in London and Blackburn (two in each) in January 2017.

21. Both of the Virgin Media commissioned studies were conducted with the aim of exploring attitudes to, and comprehension of, four potential speed advertising rules. This included the current '10% rule', alongside 'majority', '24 hour average', and 'peak time' average. In answer to each question on attitudes to potential advertising rules, respondents expressed a strong dislike of the 10% rule.

22. The four options tested in Virgin Media's commissioned studies, mirror the CAP consultation's proposals; the rules being either a 'median' or 'range', and measurement either over a 24 hour average, or exclusively at peak time.

Support for a majority rule

23. Of the three rules which CAP is currently consulting on, a majority rule came out as the favoured rule across all questions asked in the ICM study. A majority rule was not only the preferred measure for speed claims by a significant margin, but also out of all of the possible options it was the most easily understood amongst consumers.

24. The ICM research also found that 80% of consumers believe a majority rule should be adopted in line with financial services advertising. The FCA requires that the APR used in advertising is "representative". Their definition of representative is –

"... an APR at or below which the firm communicating or approving the financial promotion reasonably expects, at the date on which the promotion is communicated or approved, that credit would be provided under at least 51% of the credit agreements which will be entered into as a result of the promotion"

25. Following preference for a majority, there was support for a rule based on a 24 hour average.

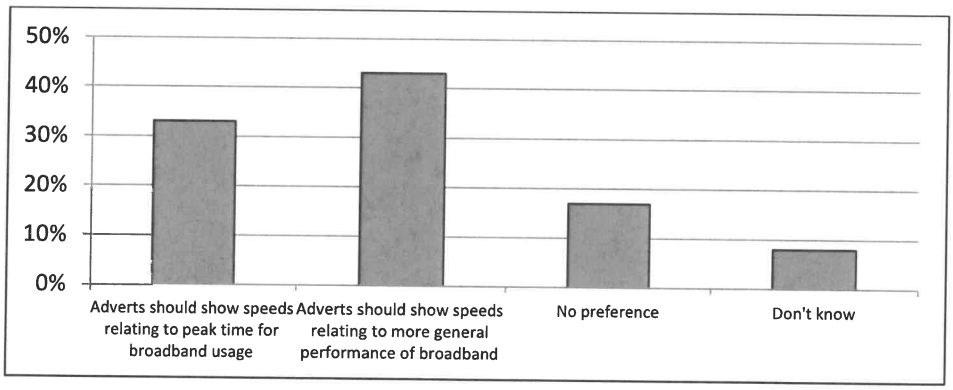
Concerns related to 'peak time' measurements

26. Within the ICM study, the concept of a peak rule was considered the hardest to understand and the least fair after the 10% rule.

27. Peak-time speeds are considered unhelpful by consumers. In focus groups, consumers expressed a preference for knowing the speed they will receive over the whole day, rather than just between 8pm and 10pm. This is particularly true of those who use their broadband throughout the day (i.e. the growing homeworker community, stay at home parents, retired people, etc).
28. Further research for Virgin Media, carried out by Survation, found that there at 8.2 million British employees now working from home for at least one day per week; up 25% in the past five years. Many homeworkers depend on reliable broadband but only 3% of homeworkers are busiest at 8-10pm. A peak time measure risks ignoring this fast growing group of the UK workforce.

29. The view that peak-time speeds are unhelpful, was supported by the ICM study, where 43% of respondents favoured an approach which would 'show speeds relating to more general performance of broadband' as opposed to 33% who would prefer adverts to show speeds related exclusively to peak time.

ICM Question: Peak times for broadband usage are between 8pm and 10pm. Would you prefer to see broadband speeds in adverts that relate to the part of the day with peak broadband usage, or a more general performance of broadband speed?



30. Whilst our research indicated some support for a rule that is based on a peak time measurement, we identified a gap in consumer comprehension of what constitutes the peak time. When five options were presented to them, only 5% of respondents to our ICM study were able to identify correctly the timing of the peak. If advertised speed claims were required to adhere to a rule based upon use of peak time speeds, there is a clear risk of confusion, given the uncertainty associated with the period during the day that constitutes 'peak time'.

31. Providing data on a time of day that means little to the consumer will not help them make informed purchasing decisions – as is clear in the *Consumer Protection Regulations (2008)*. On this basis, we would be concerned if CAP chose to implement a rule based on a concept that is not widely understood by consumers.

32. Furthermore, the actual period of peak-time usage for broadband services changes depending on the time of year, for example extending over a longer period of the day during school holidays. One-to-many national communications cannot be amended frequently enough to take into account variations of this nature.

Conclusion and further considerations

33. This is a critical moment for the ASA in its regulation of broadband advertising, and it is vital that the lessons of the 2011 broadband speeds guidance are heeded. Whilst the evidence that supported the 2011 guidance indicated that 10% was a reasonable threshold, the bar was set too low and it did not adequately keep up with market developments and consumer expectations.

34. Virgin Media stands behind the ICM and BritainThinks research. We believe that it is in the interests of consumers for the ASA to take the logical step and require speed claims in advertisements to be available to the majority of an advertiser's customer base; and that measurement of the rule should be underpinned by network performance over 24 hours. This technology neutral, one rule approach will enable consumers to make an informed assessment between options when choosing their broadband service.

35. Given speed is a material consideration for consumers when purchasing a broadband service, any exclusion of it from an advertisement is misleading in itself. The omission of this information deprives a consumer of important information that they can use to decide between options – in contravention of *the Consumer Protection Regulations (2008)* reflected in CAP Code rule 3.3. Where a non-numerical speed claim is made by an advertiser, it should be qualified with a speed figure so that the consumer can make an informed choice by understanding what the advertised service or product is likely to provide. The use of terminology, such as 'superfast', 'ultrafast' or 'lightning fast', to create the impression of high speeds without qualifying in the advert what those speeds are is too vague, and is potentially misleading for consumers. Virgin Media is concerned that this practice is becoming wide-spread in industry and calls on CAP to consider the implications of this.

36. Finally, the CAP consultation suggested that the Committee would be open to receiving further suggestions for guidance change. Virgin Media believes that it would be in no one's interests for the status quo to continue any longer than is necessary. We therefore urge the ASA to conclude the consultation as soon as possible.