SCOTTISH EXECUTIVE (ETLLD) RESPONSE TO SECOND PHASE OF OFCOM'S STRATEGIC TELECOMS REVIEW

The Scottish Executive is the devolved Government for Scotland. While telecommunications is reserved to the UK Government, a well-developed electronic infrastructure is one of the Scottish Executive's key objectives as it is vital to Scotland's economic development (which is a devolved matter). The Scottish Executive has had a broadband strategy in place since 2001 and the lead sits within its Enterprise, Transport and Lifelong Learning department (ETLLD).

A. Main Questions

It is clear that most of the questions from the second-phase of OFCOM's Strategic Telecoms Review (STR) are directed at telecoms providers. While we, of course, have an interest in the outcome of questions, such as those at 5-12 and 14-17, they are best answered by the industry themselves. We are therefore responding to the following:

1. Do you agree with OFCOM's proposed principles for regulation of telecoms markets? (sub-questions **b-e**)
8. Do you agree with OFCOM's approach to current generation broadband?
13. What should OFCOM's regulatory approach be to next generation access networks?

B. The Overall Context

We made several key points in our response to the first phase of the STR, which are still relevant to the above questions. These were:

- Effective regulation can help improve access to services across the country - and potentially remove the need for public intervention or, at least, limit its scope;
- OFCOM should recognise that remote and rural areas are inherently lacking effective competition across many parts of the value chain for telecoms services;
- Due largely to the lack of commercial drivers for serving many parts of Scotland, public intervention has been required to ensure greater access to telecoms services;
- We are concerned about our rural areas being prone to a continual process of catch-up with telecoms technology, with a consequential need arising for repeat intervention;
- A new regulatory approach may be required to address this, recognising that 'one size does not fit all'. However, this requires more analysis to identify the parts of the value chain where there is scope for competition in rural areas;
- A discussion is also required on whether, at what stage and at what part of the value chain, OFCOM envisages intervention still being required in the future.

C. OFCOM's Approach to this Context – the Need for Further Discussion

1 (b-e). A Regional Approach to Regulation

These questions essentially concern how to ascertain the nature of different geographical markets and whether to adopt a regional approach to regulation to reflect these differences.

While we appreciate that OFCOM has provided some more detail in Annex F, this is not enough to elicit a full response. This issue is very complex and perhaps **a separate OFCOM consultation will be required** in order to untangle all the issues associated with it.

We know that many stakeholders were initially keen on OFCOM's suggestion of possible regional regulation. However, subsequent discussions have largely led many to link the concept with de-averaged telecoms prices across the UK. Some have commented that removing regulation completely from highly competitive urban locations and retaining (or enhancing) it in rural areas, will eventually lead to lower wholesale prices in cities and relatively higher prices in rural areas. It is claimed that such an approach will ultimately have a (contradictory) negative impact on investment and service provision in rural areas.

While we believe this might happen - and so needs to be better understood by OFCOM through a proper impact assessment *before* deciding to 'regionally regulate' - there is also a need to appreciate recent developments and facts about the current telecoms market. This is because it appears that:

- Different wholesale prices already exist in the UK, e.g. through LLU operators offering cheaper prices in the areas in which they operate;
- De-averaging can already take place for various products under the present regulatory structure – and we note very recent announcements by an operator which suggests it intends to "reduce the wholesale cost to service providers" in *certain* areas of high demand and lower costs;
- Both the above situations are likely to accelerate through further competition i.e. as more operators undertake LLU and compete effectively with the incumbent, even greater differences in wholesale prices may materialise across the UK.

OFCOM must consider the impact of these developments anyway and then consult <u>in more detail</u> on how a potential regional approach to regulation might operate. 'Regional regulation' should only be pursued if it is shown that it could work to encourage investment across all regions of the UK (i.e. in both urban and rural areas).

In taking forward its task, OFCOM should:

- Assess the extent and impact of actual wholesale price variance across the UK - and the potential effect of a regional regulatory approach on this trend;
- If there are negative impacts, consider what can be done to offset this.

We would also encourage OFCOM to look more closely at evidence from France. Although there are different market contexts, the recent de-averaging of wholesales prices could provide a warning/lesson for the UK.

While we firmly support OFCOM's moves to encourage more LLU, it is widely considered that it will only be sustainable for half the UK population. We therefore feel OFCOM, should as a priority, consider how to facilitate investment for the remainder. Otherwise, OFCOM may be prone to the allegation that - through concentrating its efforts on LLU – it is already adopting a 'skewed' regional approach to regulation.

8. Development of "Current Generation Broadband."

Following on from the above, we believe OFCOM has correctly identified many 'network-related' questions for the development of current generation broadband (CGB) e.g. 'naked DSL', 'access to 21CN' etc. However, we would re-iterate a previous point made regarding a **'new divide' in the CGB market and ask OFCOM to spell out how it might aim to address this.**

There is now more evidence of the prospect for an increased differential on access, product offerings and price between urban and rural areas for telecoms/broadband services. Broadband offerings of up to 8 megabytes are now being offered by operators in urban locations. Furthermore, we understand there has recently been an agreement between operators, via the NICC, essentially resolving potential 'interference' issues with ADSL2+ and that a number of telcos intending to undertake LLU this year are likely to deploy this technology. All of this means that over the short-term, we have the prospect of bandwidths of up to around 20 meg being made available in areas of high density/demand.

Such developments in product offerings are good news but again, illustrate (glaringly) the future digital divide. This divide which could be bigger than the current bandwidth gap – which is progressively being eliminated - between the availability of narrowband (56 Kbps) and basic broadband services (at least 256K downstream). In addition, the difference between those who are potentially provided between say 512Kbps-2 Mbps and those who, in coming years, can receive up from 512Kbps-c.**20** Mbps, is not just about bandwidth/speed of internet access, but raises further questions about the implications of an 'application divide', where those in urban areas increasingly have a raft of different offerings from various providers e.g. triple play, whilst those primarily in rural areas do not.

13. Facilitating "Next Generation Broadband"

Beyond the next (or 'intermediate') stage of CGB access, OFCOM ask questions about facilitating access to next generation broadband (NGB) access networks.

OFCOM notes that such networks have not been deployed on any scale in the UK. However, given the STR is concerned with a longer-term timeframe, we believe it is right to consider NGB access now and to engage in more discussion on potential approaches. We would, for instance, be interested in understanding how industry and OFCOM view the policy options listed at pages 91-94, and detailed at Annex I, particularly:

a. Can OFCOM offer more guidance on whether competing NGB local access networks could eventually be deployed commercially or practically?
b. Can OFCOM say more about the feasibility of its 5 options for creating a structurally separate entity to provide next generation local access?

Similarly, we believe OFCOM should build on OFTEL's 2002 work on this issue. It should examine further the viability of several operators potentially installing competing infrastructure in a duct to new build - and if this is not found to be possible, then other options (via the incumbent or alternative models) for providing access should be fully explored. We certainly believe OFCOM could provide **more direction (or information) on what would be appropriate** from both a practical and moreover, regulatory perspective.

We note, for example, that there is a structural option (8.74) of treating new build housing differently. We would also point out in this regard that there are many major housing/regeneration developments being undertaken across the UK - both on brownfield and greenfield sites - building, in sum, a vast number of new homes over extensive timeframes (e.g. up to 20 years). It has been suggested that one way to 'future-proof' these developments and also encourage next generation local access, would be by encouraging **the provision of neutral-access telecoms ducting at 'time of build'**. **How does OFCOM view this?**

D. Conclusion

We again thank OFCOM for this opportunity to contribute to its consultation. To repeat, our main points are:

1. **OFCOM should consult in more detail (perhaps separately) on the pros and cons of a potential regional approach to regulation;**

2. **Related to this, OFCOM should consider the impact of the emerging 'divide' on the availability of higher bandwidth services between urban and rural locations and what (if anything) can be done to address this;**

3. **OFCOM should provide more direction on appropriate means for encouraging NGB local access in the longer-term, including its view on whether the provision of neutral access telecoms ducting is appropriate for new builds.**

We hope these will be considered as the regulator develops the statements that accompany its final phase to the STR. We certainly appreciate that there are many layers and factors that have been brought out so far in this exercise and that a number of them may require separate discussion - probably beyond the STR - to decide on the way forward. We notice, from OFCOM's draft annual plan, it intends to do further work on Geographic Market Analysis, an Audit of National and Regions and 'Second' Generation Broadband. We welcome this and, in advance, offer to assist OFCOM on these streams of work as it takes forward its approach to these issues.

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