

Deputy First Minister
and Cabinet Secretary for Finance, Constitution and Economy
John Swinney MSP



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26 February 2016

Dear Sharon,

STRATEGIC REVIEW & PROPOSED ANNUAL PLAN 2016/17

Following our meeting earlier this month, I was keen to provide some formal feedback on Ofcom's proposed annual plan for 2016/17; while also taking the opportunity to give an early reaction to the initial conclusions from the Strategic Review of Digital Communications.

It is self-evident that Ofcom's work in the year ahead will largely be defined by the conclusions of the Strategic Review. The emerging focus on encouraging greater competition, driving investment in fibre and ensuring quality of service; while reforming Openreach, provides an excellent basis on which world class digital connectivity can be developed. We are keen to work closely with you in the months ahead to ensure that these reforms can be applied and implemented effectively in Scotland.

As you know, addressing coverage issues in rural areas remains one of my priorities. I am pleased that Ofcom recognises the need for the proposed Universal Service Obligation (USO) for broadband to be dynamic in nature and respond to customer demand, rather than being set at a specific speed level. However, the USO on its own will not solve rural connectivity issues.

In our response to the Ofcom discussion document, the Scottish Government suggested that Ofcom should undertake more regional market analysis, with a view to introducing localised remedies where required. The viability of small-scale community projects in rural areas is often undermined by the cost of connecting to suitable backhaul. A greater understanding of these issues, and the potential to address them through local regulation, strikes me as particularly important. I would encourage Ofcom to consider this as part of its plan for the forthcoming year. I would also be keen for you, and your team, to visit Scotland to view at

first hand some of the community-led solutions being delivered via Community Broadband Scotland.

The commitment to include new obligations on operators seeking new licences for spectrum is also welcome. If designed in the right way, this could help extend mobile coverage in future. This is another area where I am keen for the Scottish Government to play a proactive role in removing barriers to investment. An early understanding of how operators will meet 4G coverage obligations would allow us to work with industry to shape an approach to extending coverage to the final 5%. I would encourage Ofcom to work with mobile operators in the year ahead to get a better understanding of future network planning and what notspots might remain after commercial roll-out is complete. This will help us design more effective public interventions and give Ofcom greater oversight of planned industry investment.

We welcome the proposals for reforming Openreach, which reflect that the current model is not working effectively. The requirement to open up its network more extensively in future and consult more widely on investment plans should encourage competition and bring greater transparency. We highlighted quality of service in our response as being a key issue and I also welcome Ofcom's robust response in this area. The key test will be whether, when put into practice, these reforms deliver genuine improvements and shatter the status quo – something that we have both identified as being necessary.

The consumer focus of the Strategic Review conclusions was also welcome. The devolution of consumer and advocacy to the Scottish Parliament will allow the Scottish Government to ensure that the interests of consumers are put first. Although we will only gain consumer advocacy powers for energy and post, we are keen to work in partnership with Ofcom to ensure that the voice of Scottish consumers is heard across all of the regulated sectors, including telecommunications. The Scottish Government will work closely with Ofcom to consider how consumer engagement can be enhanced in the regulatory process.

The devolution of competition powers to Scottish Ministers will allow the Scottish Government to focus on competition issues that are particularly prevalent in Scotland and I welcome the commitment, in the annual report, to support our work with the Competition and Markets Authority which will identify areas of competition concern in Scotland.

The annual plan describes work to improve the switching process for consumers. The Scottish Government is also keen to improve consumers' engagement with markets. We plan to conduct a survey of consumers with the aim of establishing the extent of switching and the barriers consumers face. The data we collect in our survey will be used to segment consumers into different types of switcher and to identify the characteristics of consumers in each segment with the aim of develop policy interventions targeted at specific segments or types of consumer

Broadcasting is another key area for Scotland. The Scottish Government believes that an independent regulator for the BBC should be constituted to replace the BBC Trust model, which is no longer fit for purpose. We recognise that Ofcom has the potential to fulfil this role, but that there are other options under consideration, including through the Clementi Review. Whilst we agree that the BBC needs to be independently regulated, we will finalise a view once these reviews have reported. However, were Ofcom to be identified as the most suitable external regulator for the BBC, it would need to be adequately resourced to carry out this function, and this work would need to have sufficient prominence at an operational level given the wide-ranging nature of its current responsibilities.

I also welcome the commitment that Ofcom has made to increase its visibility and presence in Scotland in the coming year. This will undoubtedly play a key role in ensuring that we can jointly advance some of the issues outlined in this letter.

As you know, I have been hugely gratified by the engagement between the Scottish Government and Ofcom over the past 18 months. The year ahead will see the agreement of a Memorandum of Understanding and the appointment of a Scottish Board Member, which will further strengthen this relationship. The fact that you have ensured that Ofcom has proceeded in the spirit of this agreement in the interim has been hugely valuable.

I am keen that our respective teams liaise closely on the detail of the Strategic Review conclusions in the weeks and months ahead, and that Ofcom maintains its engagement with wider Scottish stakeholders, to ensure that these can be implemented effectively in Scotland. And I look forward to continuing the very positive collaboration between the Scottish Government and Ofcom on the various work programmes outlined in your annual plan.

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JS

JOHN SWINNEY

