

FOUNDATION FOR INFORMATION SOCIETY POLICY

16 October 2015

Sharon White
Chief Executive
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Dear Ms White

Digital Communications Review

The Foundation for Information Society Policy (FISP)¹ was formed in 2012 with the aim of contributing independent advice to support policy and regulatory developments in the communications sector. It is entirely independent of political parties, communications network providers and any significant commercial interests in technologies, products and services.

In 2013, FISP urged DCMS to produce a digital communications infrastructure strategy². We were encouraged that DCMS and Treasury worked on a DCIS during 2013/14 and that a strategy was published by Government alongside the Budget statement in March 2015. However, we were somewhat disappointed by its substance and ambition.

Therefore, we welcomed Ofcom's current review but, rather than provide a standard response to the questions in the consultation document, we decided to write to you directly with our views.

Objectives

FISP's position has been that all UK citizens should be able to fully engage with the local, national and global economy with service levels and a quality of experience that are fit for whatever purpose they require. Universal coverage is critical for both commercial service providers, who wish to reach a wide market, and Government, that wishes to deliver 'digital by default'. In both cases, continuity of service and adequate capacities (both downstream and upstream) are essential.

This implies that the short term regulatory focus should be on finding an acceptable solution for the underserved areas (which are not just rural), particularly by establishing a 'service level floor' that will allow the all users to properly engage. In addition, if current projections of video demand (75% of all traffic by 2019³) are reasonably accurate, it is essential to look at encouraging either FTTH (or very deep fibre access) networks to be delivered at the earliest opportunity since, of known technologies, these offer the best means of meeting user demand, particularly for upstream services. The UK should have a strategy to deliver this outcome.

In parallel, mobile infrastructures should also be providing appropriate service levels universally.

¹ See www.fisp.org.uk

² 'The need for a clear communications infrastructure policy' – letter to Secretary of State, Maria Miller, dated 28 February 2013

³ Five Priorities For Achieving Europe's Digital Single Market – Boston Consulting Group Oct 2015

In relation to the above, we believe that Sections 9-11 of the consultation document cover the most critical areas and we agree with Ofcom's view of the future policy challenges, notably the need to encourage investment and sustainable competition.

Getting the right balance between effective competition and sustainable investment is critical if the whole of the UK is able to benefit from the digital economy.

Investment that will deliver widespread availability of services

We understand the investment challenges and, in this context, there is a need to decide whether, (and over what timescale), the current competition model is likely to attract investment in the areas that most need it.

The UK has a long history, going back some 30 years, of promoting infrastructure competition and there has been significant investment and varying levels of competition. However, we have also seen market failures and increasing consolidation and the incumbent operator, BT, still has a strong position.

If infrastructure competition is still a desirable objective, it is important to assess what is sustainable, particularly at the access level, without long-term regulatory protection. As with today, high-density population areas will continue to justify competitive infrastructures but the less dense areas not so.

Therefore, it may be necessary to accept that certain areas will continue to be monopolies in fixed access and that the focus of regulatory attention should be on those areas. In this respect, it isn't essential for any operator to replicate every element of infrastructure (i.e., both passive and active). For example, if adequate passive infrastructure (e.g., ducts, masts and poles) is available, competitive active infrastructures, (i.e., transmission systems such as fibre, copper, wireless spectrum) should be able to co-exist, probably over a wider area than today.

Furthermore, in such a high growth sector, it is debatable whether public sector support is really required and an adjustment of regulatory conditions to allay some of the perceived risk of private sector investment must be at the heart of regulatory policy.

Sustainable and effective competition

The consultation document looks for views on the model of competition that future regulatory strategy should focus on (e.g., full end-to-end networks, passive access to support end-to-end networks or active wholesale remedies to deliver downstream competition).

Of these options, in the Internet age, most services will go 'off-net' at some point so full end-to-end networks are unlikely to meet needs. Passive access (or third party, independently operated passive networks) could be a better model going forward.

Ofcom refers also to the need for 'affordable prices'. Our concern is that this should not be interpreted as low prices. The key focus should be on what consumers are willing and able to pay. Relatively high mobile prices and the strong growth of mobile services and user equipment have demonstrated a willingness to pay for a valuable service. Another example has been the willingness to pay for Sky Sports subscriptions.

Looking forward

The fundamental question that each of us in this industry has to answer is whether we are wholly satisfied with where the UK is today. FISP believes that, while our situation is "good in parts", it would be unjustifiably complacent to claim complete satisfaction, thus implying that no change to the status quo is necessary. Worse still would be the growing realisation that the UK is lacking in the sort of vision that is leading our competitors to adopt more forward-looking policies.

Ofcom understandably asks whether there have been, or are, changes in the overall

market context that might suggest the need to update or evolve the current model of fixed access network functional separation and for suggestions on what it should be investigating more closely. We urge Ofcom to continue its encouragement of widespread debate in this vital area. It is central to our future prosperity as a trading nation that we get this right, and get it right now, because another opportunity is unlikely to arise for at least another decade. We must not be swayed by the siren calls of vested interest, nor by veiled threats of legal challenge or other interference.

In previous submissions to DCMS, we have questioned:

1. Whether there is a clear understanding of the actual cost of providing 'fit-for-purpose' access to the more remote areas.
2. How we should define 'fit-for-purpose'. This could involve looking at the needs of the more advanced (small) businesses in any area - since it is essential that such businesses are able to flourish.
3. How we should assess demand in the more remote areas. In this respect, trying to distinguish between business and residential demand is increasingly irrelevant, since many living in rural areas merge business and social use of their service.
4. Whether Openreach would be an attractive investment opportunity if it were either more open to competitors or a structurally separated business. It should be a valuable asset due to its coverage footprint. However, any such move would have to be attractive to BT's Board and its shareholders rather than a regulatory imposed outcome.
5. How local initiatives could do even more to accelerate local access network upgrades.
6. Whether the longer-term future of broadcast TV is 'over the air'. For example, if distribution over a high capacity fixed network would be a better mid to long-term option and help to justify the investment to deliver universal fibre to the premise.

In addition to the above questions, we believe that the key factors to consider are that:

1. All citizens should be able to fully engage with the local, national and global economy with service levels and a quality of experience that are fit for whatever purpose they require. This requires an ambitious 'service level floor' to be set that will allow the most remote customers to properly engage. This is not the case at the moment.
2. NGA network roll out, coverage and technologies present cost saving and revenue opportunities as well as risks but more capital and operating cost information would help potential investors/decision makers.
3. Profitability is there and telecoms access networks, like utilities, will make money over time. This suggests that funding can come from the private sector, so long as payback times are not too compressed.

In summary, FISP would like to see the outcome of the review offering more than a 'steady as she goes' approach.

We hope that this is useful input and we would be pleased to follow up if required.

Yours sincerely

Malcolm Taylor
Director

Note:

The Directors of FISP are Malcolm Taylor, David Harrington, David Brunnen, Michael Rowbory, Claire Milne and Anna Coast and papers are produced with the support of independent, experienced advisors.

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