

## Response from the Advisory Committee for Scotland to Ofcom's Wholesale Local Access Market Review - Initial proposals to develop an effective PIA remedy

*'The Ofcom Advisory Committee for Scotland (ACS) advises Ofcom about the interests and opinions, in relation to communications matters, of persons living in Scotland.'*<sup>1</sup>

This response to Ofcom's 'Wholesale Local Access Market Review - Initial proposals to develop an effective PIA remedy' is from the ACS. In no sense, does it represent the views of Ofcom or any of its staff. However, it draws on the collective knowledge and expertise of the members of the ACS, informed by our individual professional experience and through discussion at our meetings, the agendas and minutes of which are available on the Ofcom website.

The ACS broadly welcomes the initiative by Ofcom into developing an effective PIA remedy. The ACS takes the view that it is important for Scotland to remain a competitive, fair and inclusive society and that digital communication services are becoming increasingly important to the economic and social wellbeing of society. This is best brought about by a functional and competitive market in both retail and wholesale products to both businesses and consumers, underpinned by infrastructure competition (to the extent that infrastructure competition exists in Scotland). Our view is that we would like to see a PIA remedy which will help to expand the geographic portion of Scotland where there is effective infrastructure competition, without slowing down further rollout of digital services in rural areas.

### The importance of well-designed PIA arrangements

The shift of emphasis in the Strategic Review of Digital Communications towards encouraging investment in fibre based infrastructure rather than copper based infrastructure is particularly important due to the long distances involved in servicing connections to customers in Scotland. This is clearly most important in rural communities but is also applicable in urban environments.

The national announcements made by a number of the Communications Providers (CP) to date regarding their plans for the deployment of fibre to the premises (FTTP) have included Scotland, but only those areas where a clear case can be made for independent 3<sup>rd</sup> party infrastructure overbuild.

Until now it has been apparent that existing PIA arrangements were not working effectively. It appears this was mainly due to concerns from the CP's regarding cost v benefits and the certainty of building a business case to invest; the timescale and complexity involved in using the existing PIA processes; and restrictive use conditions which precluded (largely, in practice) the use of a single infrastructure to service both business and consumer needs on the same platform.

As a result, little or no investment has been made to date utilising PIA in Scotland by the CP's. The consequence is that infrastructure competition only exists in those geographies where completely independent overbuilt 3<sup>rd</sup> party infrastructure can be justified. It is clear that the CP's can make the case for investment in independent infrastructure in some areas but only on the basis that they can achieve greatest economic return by building a single platform upon which all of their products and client types (consumer and business) can be serviced.

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<sup>1</sup> Ofcom - Advisory Committee for Scotland – Functions and Role  
<http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/scotland/>

This has resulted in Scotland having only a small geographic footprint where there is genuine choice of supplier based upon infrastructure competition. We have widespread adoption of wholesale product competition, a far less effective basis for competition, over the bulk of the Scottish geography.

## Detailed response to the consultation

The ACS considers that the five actions to address an effective PIA remedy are to be welcomed. These are:-

1. Equivalence of Inputs between BT businesses and other CP's
2. Removal of usage restrictions on PIA based infrastructure
3. Pricing review in absolute but also inclusive of ancillary charges
4. Online information and detailed records data to be made available
5. More efficient processes which can give greater certainty of outcome, cost and timescale.

Equivalence of Inputs, whereby the downstream BT businesses have to follow exactly the same processes as other CP's, has worked well in other regulated areas. The Openreach (OR) processes and systems should be built such that BT businesses consume the PIA product in exactly the same way as other OR customers.

The ACS considers that regulations that permit only certain technologies or products to be offered over PIA based infrastructure are no longer required, and are an impediment to the most economic network deployment. Continuing to have regulatory restrictions of this nature are over-burdensome, likely to distort the market in favour of BT and stifle innovation. Such restrictions also limit market entry for smaller operators, who can only grow into servicing consumer ultrafast broadband at scale when there is a mix of other high margin customers which can support their cashflow and margin mix needs. Usage restrictions of any kind will effectively insulate the BT downstream businesses from free and fair competition.

In terms of cost recovery and charging there should also be equivalence when recovering physical infrastructure costs for such things as duct repairs.

CP's and indeed the other downstream BT businesses, should have to bear reasonable and proportionate survey costs, but should not have to bear the cost of continual infrastructure surveys to establish whether records are correct in circumstances where OR has failed to keep them up to date. The ACS suggests that OR should be mandated to maintain records to a high degree of accuracy and quality as a baseline, before other charges can be levied. The new streamlined processes should be viewed as an opportunity to continually improve digital record accuracy and quality over time.

Regarding the construction of new infrastructure, new civil works today are provided to OR by certified independent civil works contractors commissioned to undertake the works exclusively by OR. These contractors operate with physical infrastructure standards, materials specifications and within the confines of the New Roads and Street Works Act. In practice the 'commissioning party' for street works extensions to existing infrastructure need not be limited to OR, provided the contractor supplies digital records evidence that the works have been completed to the appropriate standards, tested, certified and recorded appropriately.

Installation of cable and jointing up to the point where it connects into a live network can also be undertaken by certified independent civil works contractors. We consider that in practice a certified contractor who could be commissioned by a CP to build new network is likely also to be able to undertake the second phase of cable works and therefore mitigate many of the delays which could arise through the need to coordinate with OR. The phase of cable work involving splicing and Optical Time Domain Reflectometry (OTDR) testing to the exchange over live network may however require the active

involvement of OR. The case for cabling works being 'commissioned' by a third party is therefore, we consider, also a role that can be provided by a certified independent civil works contractor up to the point when connection and testing to live network is required.

In terms of overhead cable on poles, Ofcom should seek the necessary powers to compel OR to undertake a rolling program of investment over a suitably long period of time to replace all overhead copper cable with Hybrid copper/fibre cable. Where OR are building new overhead pole infrastructure, use of this type of cable should be mandated from a suitable near future date.

This issue may also speak to the need for forward visibility for capital investment expenditure in a way that other regulators have always mandated (gas, water, electricity), particularly if it can be done on the basis of regulated return on investment. This would take OR infrastructure closer to the 4th utility position it appears to be assuming with the development of a USO.

Where overhead poles require fibre installation as a result of a CP request, then in the same way that certified independent civil works contractors could be used for ducts/cable, a similar provision could be made for poles/cable, again with deference to connection and testing to live network perhaps being an exception.

The ACS recognises that the wind and ice loading characteristic on a pole route will change as a result of an additional second cable but in all but the most exposed locations, the physically smaller and lighter fibre cable and joint enclosures should not result in exceeding the design loading for poles in the vast majority of cases. Therefore a pragmatic approach towards engineering standards should be agreed with clear exceptions for pole routes which are exposed or at altitude. A mechanism should be included to allow consideration of the remaining life of the existing copper cable, and, if replacing it with a hybrid copper/fibre would be the sensible economic decision bearing in mind installation costs, splitting the cost appropriately between OR and the CP's.

In regard of provision of sufficient certainty for charges over the lifetime of a PIA provisioned route for a CP, it is clear that the current charging mechanism does not give clarity and certainty. An explicit long term charge based upon the current methodology at the time at which the service is ordered is a pragmatic way forward.

Ancillary charges should be limited by Ofcom where possible, recognising that if 'self-built' network extensions or new cabling can be provided by certified independent civil works contractors commissioned and controlled directly by the CP's, then many of the causes of ancillary charges should fall away. Other so called 'unavoidable ancillary charges' should be heavily scrutinised by Ofcom as to their applicability and fairness, their impact upon timescales and equivalence.

The proposal from Ofcom that OR should make available digital network records so that CP's can plan on the basis of plant availability, with suitable granularity of detail and with active Geographical Information System (GIS) interworking, is welcomed.

The question arises as to who exactly will get access to this GIS data and on what basis? An 'Electronic Communications Code operators only' approach would preclude a vast number of smaller operators, ISPs and WISPs who could use PIA for local and regional solutions. There are also non-service provider bodies in Scotland such as Scottish Futures Trust, Community Broadband Scotland or Scottish Enterprise who have legitimate grounds to understand OR plant records and who are involved with community based solutions or aggregation of public and private sector demand based solutions in less economic areas. One solution may be to allow the UK's devolved administrations as well as service providers to have access to this data. In the case of the Devolved Administrations, they could be allowed to share the data amongst the various departments and non-departmental organisations according to local data sharing

needs, protocols and security considerations.

It may not be possible to establish a basis for access amongst the CP's to this GIS data for free – but any fees would need to be minimal so as not to undermine the case for PIA investment.

## Conclusions

This is an important time to ensure that future investment in Scotland's digital infrastructure has appropriate, relevant and fair controls.

The re-examination of the regulatory regime for PIA is to be welcomed, with the hope that streamlined processes and shared data will allow the CP's the certainty of outcome regarding cost and timescale which heavily mitigate against the use of PIA today.

On a note of caution, there is a risk that a successfully revised PIA system would result in an abandonment of plans by other CP's to build independent infrastructure in some areas. If we get this process right, then in rural areas of Scotland PIA should become the best way to provide infrastructure competition beyond the basic shared network elements, and eliminate the economic waste of overbuilt infrastructure which impedes the provision of rural access and services. The ACS does however recognise that in urban areas, abandoning independent network investment in favour of PIA would not necessarily be the best outcome, as there are advantages to plurality and diversity where demand allows it, not least in terms of national resilience. PIA measures therefore need to be sufficiently flexible to allow fine tuning of the system to get the balance right.

**ACS**

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