

Response from Councillor Nick Collinson, Portfolio Holder for Community Leadership & Human Resources.

**Question 1: Do stakeholders agree that promoting effective and sustainable competition remains an appropriate strategy to deliver efficient investment and widespread availability of services for the majority of consumers, whilst noting the need for complementary public policy action for harder to reach areas across the UK?:**

Healthy competition and market failure

In rural areas digital communications are more about actual availability and minimum levels of actual utility than about competition. BT has been the only successful bidder in the BDUK local authority projects.

In terms of network provision, there is effectively very little competition. BT and Virgin Media control the two main networks, with Virgin Media almost exclusively covering the major urban and suburban areas. This leaves BT as the only option elsewhere. In isolated rural communities Ofcom should find ways to make the market sector more attractive, possibly with a focus on local SME providers.

The issues caused by market failure, typified by persistently poor or absent service for either broadband and/or mobile coverage / signal in rural areas of Wealden are a significant hindrance to local economic growth and regeneration. Ofcom must be energetically proactive in addressing these issues, not just 'note the need'. This approach is supported by the Rural broadband and digital-only services report of the House of Commons Environment, Food and Rural Affairs Committee (3 February 2015.)

Ensuring universal access to existing technology before worrying too much about the next steps is an important principle. As the current market still presents real failures, consideration of why and how to resolve them should be a critical part of its ongoing development.

**Question 2: Would alternative models deliver better outcomes for consumers in terms of investment, availability and price?:**

Need for an effective regulatory framework

The separation of infrastructure and service provision, with a certain amount of public service obligation is used in the rail sector (think Network Rail and Virgin Trains, Southern etc) and it is a small step to envisage a similar approach for digital communications infrastructure and service providers. This approach might also allow a more even spread of masts and transmitters across the country, though the locus of power to grant planning permission for these might need to be reconsidered.

Similarly, in terms of helping to minimise market distortion through widely varying service provision costs, it would be a small but helpful step to introduce some small element of price balancing to help contribute to a more even distribution of service provision across all parts of the country.

**Question 3: We are interested in stakeholders' views on the likely future challenges for fixed and mobile service availability. Can a 'good' level of**

**availability for particular services be defined? What options are there for policy makers to do more to extend availability to areas that may otherwise not be commercially viable or take longer to cover?:**

Definition of service levels

A 'good' level of availability for particular services should be defined in terms of a minimum specification required to achieve stated objectives, rather than a minimum speed or signal level, that is, defined in terms of what you can do. This would give the definition more relevance across a widely varying picture of provision and hopefully a little more longevity in a fast moving and exponentially developing sector.

Digital communications infrastructure and services will be key to enabling the potential for smart cities to aid economic growth, and to support the health agenda in the implementation of change in the way health services are delivered or accessed.

**Question 4: Do different types of convergence and their effect on overall market structures suggest the need for changes in overarching regulatory strategy or specific policies? Are there new competition or wider policy challenges that will emerge as a result? What evidence is available today on such challenges?:**

Need for sea change in approach to digital access

Digital access should be considered alongside other essential utilities as a universal service obligation for all new development, residential or commercial just like water or electricity.

Legislation should be used to compel all new residential and commercial development, including development not requiring planning consent, to have the necessary digital infrastructure in place or to prove it is already available. If necessary this could be limited geographically to rural areas where provision is poor.

See also response to Q2

**Question 5: Do you think that current regulatory and competition tools are suitable to address competition concerns in concentrated markets with no single firm dominance? If not, what changes do you think should be considered in this regard and why?:**

No particular comments

**Question 6: What do you think is the scope for sustainable end-to-end competition in the provision of fixed communications services? Do you think that the potential for competition to vary by geography will change? What might this imply in terms of available regulatory approaches to deliver effective and sustainable competition in future?:**

In order to address the issues of digital communication infrastructure and service provision in rural areas such as Wealden, there is a need to ensure that the variation in geography,

population density and their effects on competition is addressed. There are regulatory and legislative changes which could facilitate this. See particularly our responses to Q2 and Q4.

**Question 7: Do you think that some form of access regulation is likely to continue to be needed in the future? If so, do you think we should continue to assess the appropriate form on a case by case basis or is it possible to set out a clear strategic preference for a particular approach (for example, a focus on passive remedies)?:**

No particular comments

**Question 8: Do you agree that full end-to-end infrastructure competition in mobile, where viable, is the best means to secure good consumer outcomes? Would alternatives to our current strategy improve these outcomes, and if so, how?:**

See responses to previous questions

**Question 9: In future, might new mobile competition issues arise that could affect consumer outcomes? If so, what are these concerns, and what might give rise to them?:**

Many rural areas are still served only by unreliable 2G, or possibly 3G networks, while urban areas race to secure the infrastructure for 4G & 5G.

The increasing drive to migrate 3G users to 4G (sometimes free of charge e.g. O2's current initiative in October 2015) and even 5G, also risks the emergence of a new digital divide.

Such significant discrepancies in coverage and technology act as a catalyst to exacerbate issues around social inclusion and rural isolation.

**Question 10: Does the bundling of a range of digital communications services, including some which may demonstrate enduring competition problems individually, present new competition challenges? If so, how might these issues be resolved through regulation, and does Ofcom have the necessary tools available?:**

No particular comments

**Question 11: What might be the most appropriate regulatory approaches to the pricing of wholesale access to new and, risky investments in enduring bottlenecks in future?:**

Need to minimise distortion in the market

This could be achieved by providing some, possibly minimal, intervention funding, or requiring providers to cover a % of uncompetitive market (e.g. in hard to reach rural areas such as parts of Wealden District) offset by profits from highly lucrative, frequently urban, competitive markets.

**Question 12: How might such pricing approaches need to evolve over the longer term? For example, when and how should regulated pricing move from pricing freedom towards more traditional charge controls without undermining incentives for further future investment?:**

No particular comments

**Question 13: Are there any actual or potential sources of discrimination that may undermine effective competition under the current model of functional separation? What is the evidence for such concerns?:**

No particular comments

**Question 14: Are there wider concerns relating to good consumer outcomes that may suggest the need for a new regulatory approach to Openreach?:**

Need for open, transparent data at small local level geographies

Need for full data transparency about actual service availability, coverage, speeds, signal strength etc including not spots and cold spots at local level, including data in re-useable formats that can be aggregated at various small scale geographic, statistical and administrative boundary levels (e.g parish, ward and district - not just maps, or individual post code searching.

The data clearly exists behind a plethora of postcode search facilities, but it should be made freely available for local authorities, parish councils, community groups, academics etc.

This lack of transparent data is due to issues around 'commercial in confidence' sensitivities, and a significant disadvantage of a commercial market approach to what is now essential infrastructure.

We are grateful that Ofcom does make some broadband service data available via its website which with some technical expertise can be used to give an indication of local coverage. However, it also has the interesting feature that postcode areas where broadband speed data is not available are shown as having no speed, rather than unknown speed. This may unhelpfully misrepresent the actual picture on the ground.

**Question 15: Are there specific areas of the current Undertakings and functional separation that require amending in light of market developments since 2005?:**

No particular comments

**Question 16: Could structural separation address any concerns identified more effectively than functional separation? What are the advantages and challenges associated with such an approach?:**

No particular comments

**Question 17: What do stakeholders think are the greatest risks to continuing effective consumer engagement and empowerment?:**

Need to maintain consumer engagement and active participation in the market  
Notwithstanding the issues around lack of choice in service provision in some rural areas, there are potential risks that a large number of service providers with multiple packages in competitive (frequently urban) markets may confuse consumers, who may then disengage. It is a question of balance, and we would encourage Ofcom to focus on how to stimulate more competition in rural areas, to counter the bigger risk of no competition or single supplier dominance as currently experienced.

**Question 18: What indicators should Ofcom monitor in order to get an early warning of demand-side issues?:**

Key indicators to monitor are:

1. Not spots (broadband) and cold spots (mobile) [i.e. provision of service Y / N
2. Quality of service
3. Real time issues e.g squeezing bandwidth at certain times to get more customers on, to the extent that the service slows so much as to be more or less unuseable

**Question 19: What options might be considered to address concerns about consumer empowerment at each stage of the decision-making process (access, assess, act)? What more might be required in terms of information provision, switching and measures to help consumers assess the information available to them? What role may Ofcom have to play compared to other stakeholders (including industry)?:**

No particular comments

**Question 20: Are there examples in competitive or uncompetitive sections of the market where providers are not currently delivering adequate quality of services to consumers? What might be causing such outcomes?:**

Please see responses to previous questions, particularly in relation to the digital communication issues experienced in rural areas such as Wealden.

**Question 21: What further options, if any, should Ofcom consider to secure better quality of service in the digital communications sectors?:**

Please see responses to previous questions, particularly in relation to the digital communication issues experienced in rural areas such as Wealden.

**Question 22: Might there be future opportunities to narrow the focus of ex ante economic regulation whilst still protecting consumers against poorer outcomes?:**

No particular comments

**Question 23: Where might future network evolutions, including network retirement, offer opportunities for deregulation whilst still supporting good consumer outcomes?:**

Potential network evolutions - risks as well as opportunities

In Wealden we have a higher than average proportion of elderly and very elderly residents. Support services for these frail and vulnerable people such as Lifeline depend on relatively old digital infrastructure. It will take time and money - both of which are increasingly scarce in local government - to allow such services to evolve or be redeveloped to be able to take advantage of newer technologies.

**Question 24: What are the potential competition and consumer protection implications of the rise of OTT services? Might the adoption of such services enable future deregulation without raising the risk of consumer harm?:**

No particular comments

**Question 25: Are there any areas where you think that regulation could be better targeted or removed in future? What would be the benefit of deregulation as well as the main risks to consumers and how these could be mitigated? Please provide evidence to support your proposals.:**

No particular comments