

OFCOM Advisory Committee Scotland response to Ofcom's Review of Digital Communications 2015 ("the Review") Terms of Reference ("TOR")

We refer to the above and to section 1.47 inviting comments on the scope and content of the Review.

Section 1.26 of the TOR focuses on the core future issues as: efficient investment; focused regulation delivering competition; and potential for deregulation. In the information summary provided to the ACS for consideration at its April 2015 meeting, there is a suggestion that the core focus of the DCR will be on securing effective competition in order to drive investment and innovation. It is expected that 70-90% of the required investment will come from the private sector whilst between 10-30% will be public sector led investment.

ACS recognises the importance of the competition drivers mentioned in the report, but also recognises that "on the ground" significance will vary within the economies of the devolved administrations, due to the overwhelming effect of such factors as rurality and population density, which are major issues in Scotland.

The ACS suggests that the DCR will need to consider whether activities to enable competitive markets in the 70-90% may unduly adversely affect provision in the remaining 10-30%. It is important to look at the whole picture. A decision to do something to benefit 90%, even if it disadvantages the remaining 10%, may be acceptable. If the split is 70%/30%, as in Scotland, that decision becomes much harder to justify.

A good example of the need for this nation by nation view is the criteria for the MIP scheme, which had the laudable intention of ensuring that consumers helped by it have the choice of all 4 providers. Unfortunately it had the (presumably) unforeseen outcome that in areas with small relatively densely populated areas, separated from others by very long distances/complex geographies (generally, a situation unique to Scotland within the UK), often no provision was possible under the scheme, even if provision by 2 providers would have been very feasible.

Similarly, one could consider whether the negotiated settlement whereby the MNO's will ensure all 4 providers reach 90% of the UK (though a far smaller proportion of Scotland), removed the driver for allowing pay by use roaming, which might have been far more beneficial for those in rural areas with only single providers which vary between adjacent settlements.

In some significant parts of Scotland, there will be no material infrastructure competition and quite possibly no service provider competition either, so no competition based driver of investment. Some state intervention at UK and/or Scottish Government level is therefore essential if any tangible infrastructure and service improvement, or indeed USO, is to be achieved. Strategies to increase competition which also increase the cost of such interventions would be counter-productive. Given the variation between nations, the ACS suggests that the DCR needs to think about strategies on a nation by nation basis, as a single UK analysis is increasingly simplistic.

ACS, May 2015