

## **Response from the Advisory Committee for Scotland (ACS) to Ofcom’s Consultation on Supercharging Investment in Fibre Broadband – Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26 (Jan 2020)**

*‘The Advisory Committee for Scotland advises Ofcom about the interests and opinions, in relation to communications matters, of persons living in Scotland.’*

The response from the ACS to this consultation draws on the knowledge and expertise of ACS members and is informed by our individual experience and through discussion at our meetings. It does not represent the views of Ofcom or its staff.

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### **Introduction**

Various reports (e.g. recently from OECD<sup>1</sup>) indicate that the UK significantly lags behind most of the world’s major economies in deployment of “full fibre” (Fibre To The Premises, FTTP). Ofcom’s consultation to “supercharge” the UK’s investment in fibre broadband is therefore both welcome and urgently required.

The Ofcom consultation on “Promoting competition and investment in fibre networks” is an extensive set of documents focused on creating the conditions to improve the business case for FTTP across the UK. Ofcom’s approach is to encourage appropriate balance between encouraging competition in more urban areas (Area 2 in Scotland), and both regulating prices and providing conditions to encourage investment in less profitable parts of the country (Area 3 – typically rural areas but also notably including some deprived urban areas).

This response highlights, from a Scottish perspective, both encouraging and concerning aspects of Ofcom’s proposal.

### **The Scottish Context**

This consultation should be placed into context of Scotland’s communications infrastructure. Using statistics from Ofcom Connected Nations 2019<sup>2</sup>, in Scotland in 2019, only 8% of homes and businesses had access to full fibre. Additionally, only 42% of Scotland’s geography is covered by 4G from all 4 mobile operators, with 22% of Scotland being classified as so-called “not spots”. Scotland’s communications infrastructure, therefore, while improving year-on-year, is still not competitive on a UK, European or global scale – for example with Denmark having 99% 4G coverage across its landmass, and Spain having close on 80%<sup>3</sup> of FTTP coverage.

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<sup>1</sup> <https://www.ispreview.co.uk/index.php/2019/06/uk-ranks-5th-in-2019-eu-broadband-connectivity-progress-study.html>

<sup>2</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research/connected-nations-2019/nations-supplements>

<sup>3</sup> <https://www.ispreview.co.uk/index.php/2019/06/uk-ranks-5th-in-2019-eu-broadband-connectivity-progress-study.html>

While the challenges of rural connectivity have received welcome attention in recently years, we also need to appreciate that “not spots” of good broadband access exist throughout urban Scotland (Area 2). This means there is a notable difference between advertised speed and delivered speeds, as a result of focus on speeds delivered to the cabinet (FTTC), rather than as delivered to the premise, which causes frustration and disappointment for consumers and businesses alike.

## Concerns

ACS notes the following concerns from the consultation:

1. ACS appreciates that the proposals will help generate competition in more urban areas, although these are areas that in any case are more likely to attract fibre investment from service providers.
2. The ACS is aware of concerns that have been raised by some stakeholders in Scotland about the potential for retail price increases. The ACS would welcome greater clarity from Ofcom on why it does believe this will lead to higher retail prices for consumers in rural areas in its final statement – and where some of the Ofcom proposal ideas, such as the Regulated Asset Base (RAB) ideas discussed below could be used to mitigate this.
3. The ACS would also encourage Ofcom to take into account – and acknowledge in the Ofcom proposal - the particular deployment challenges in Scotland, including the effectiveness of the Physical Infrastructure Access remedy. As Ofcom will know, ducts and poles in back gardens with associated wayleave issues have been highlighted as a particular issue in Scotland.”
4. “Areas that are hard to reach”: While ACS appreciates that Ofcom cannot dictate where providers install fibre, it is important that additional measurement criteria are put into place in order to assess *where* fibre is provided, in order to show that fibre provision is aligned to key social and economic priorities. The ACS offers these suggestions of criteria that Ofcom *could* measure (“*you obtain the behavior that you measure*”), rather than just percentages of premises covered by fibre:
  - a. For area 2 (urban), measurements of the following would be insightful – percentages of the following classes of location covered by full fibre:
    - i. Residential
    - ii. Businesses
    - iii. Tourist
    - iv. Sports
  - b. In particular, in rural areas (Area 3), it is important to measure if fibre investment is aligned to the major economic and social areas of rural communities - for example
    - i. Significant businesses e.g. major exporters and tourist businesses
    - ii. Tourist sites
    - iii. Public sector sites
    - iv. Motorway and “A” class roads (to support mobile operators)

.... i.e. not only to areas of residential population.

With this in mind, there are several tables and charts throughout the consultation document that present data at a UK aggregate level. The ACS encourages Ofcom to publish these tables broken out by UK nation, in order to shed light at each nation level.

5. With Area 2 – Scotland’s urban areas – there are still pockets of poor broadband access, e.g. in Industrial Estates and Business Parks, and some residential streets that are a distance from the cabinet. We note in Ofcom’s proposal the use of a postcode system which unfortunately appears in cases to lack the granularity necessary to distinguish such “not spot” areas, which could be interpreted as some “not spot” premises as having been incorrectly categorized i.e. grouped in with other postcode premises that are more competitive. While ACS appreciates that the postcode system used in this Ofcom consultation proposal is at an aggregate area level, and that a more granular postcode system would have practical challenges, we feel that the existing broadband “not spots” are not well served by the proposals for Area 2 in particular. Are there, for example, opportunities with the RAB proposals discussed below, to be applied to Area 2 “not spots” to help incentivize fibre provision in such areas? On the other hand, ACS also appreciates that Ofcom, through regulations, cannot mandate that fibre broadband must be provisioned in a specific area. Finally, ACS recognizes that this proposal is a market review. We would, however, be interested to understand better how these proposals sit alongside Ofcom’s other work (e.g. around universality) to deliver better broadband.
6. With specific reference to Volume 4, Pricing Remedies, ACS welcomes proposals to enable OpenReach to generate a broader business case for investment in Area 3 using, for example, Regulated Asset Base (RAB) mechanisms. We understand that this model is used in other industry sectors which have a monopoly provider e.g. energy. The ACS would like to see worked examples of how this could be attractive, and ideally validation by service providers that this proposal is indeed not just an idea, but a valuable and feasible mechanism to encourage fibre investment.

Overall, while we welcome price controls in Area 3, ACS remains concerned that fibre broadband in Area 3 will be priced excessively, as compared to urban areas. While the RAB proposals allow recovery of costs from a wider asset base in Area 3, this still leaves the Area 3 investment to be funded by residents and businesses in Area 3. It should be noted that while rural Scotland accounts for 17%<sup>4</sup> of population, rural areas account for 27%<sup>5</sup> of Scotland’s GVA (Gross Value Add). With whisky and farmed salmon being not only Scotland’s #1 and #2 exports, but also the UK’s #1 and #2 exports, and with tourism<sup>6</sup> contributing around £6bn or 5% of GDP, it does not seem proportionate that rural areas are penalised with high costs for fibre broadband. Similarly, from a service provider perspective, it hardly seems fair that the RAB proposal only applies across Area 3. Might an alternative be that service providers could use the RAB in *both* areas 2 and 3 in order to justify investment in fibre broadband in the hard-to-reach Area 3?

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<sup>4</sup> <https://www.gov.scot/publications/rural-scotland-key-facts-2018>

<sup>5</sup> <https://www.5gruralfirst.org/report-new-thinking-applied-to-rural-connectivity/>

<sup>6</sup> <https://www.gov.scot/publications/tourism-scotland-economic-contribution-sector>

7. Finally, there are multiple different public investment schemes to fund or part fund investment in broadband, from the Scottish Government's R100 investment, UK government funding of £5 billion to help provision in the 20% hard to reach areas of the UK, to voucher schemes. It is important that there is no confusion of public funding and incentives for service providers to invest. The incentives should result in additional investment and this should be made clear in the proposals and clearly measured in the execution phase of these proposals. The ACS therefore would welcome additional information and clarity on how these proposals will interact with publicly funded broadband rollout schemes, such as the Scottish Government's R100 programme.

## **Conclusion**

Overall, the ACS believes that this proposal is a welcome move to accelerate fibre to premises across the whole of the UK. That said, it is important that we find alternative mechanisms, e.g. sector measurements as outlined above, to measure the rollout of fibre broadband to all sectors of our economic and social structures. ACS is also firmly behind proposals to encourage investment in Area 3/hard to reach areas. We believe, however, that this section of Ofcom's proposal would benefit from real world worked examples and validation, ideally from service providers, that the proposals are indeed practical incentives that will generate additional fibre investment.

**Ofcom's Advisory Committee for Scotland**

**30<sup>th</sup> March 2020**