

Deputy First Minister
and Cabinet Secretary for Finance, Constitution and Economy
John Swinney MSP



T: 0300 244 4000
E: dfm@scotland.gsi.gov.uk

Sharon White
CEO Ofcom

By email: sharon.white@ofcom.org.uk



LEGACY 2014
XX COMMONWEALTH GAMES
SCOTLAND

5 November 2015

Sharon White

OFCOM STRATEGIC REVIEW OF DIGITAL COMMUNICATIONS

With apologies for the delay in responding, I am pleased to enclose the Scottish Government's response to Ofcom's Digital Communications Review (DCR) discussion document. This has been prepared in conjunction with Scottish Futures Trust (SFT), with whom we are collaborating on our World Class Digital Infrastructure programme. SFT has submitted a more detailed, but complementary, response to the discussion paper and should be considered alongside this one.

The Strategic Review is of huge significance for Scotland. We believe there are two key challenges going forward requiring a coherent overall strategic approach for public policy, funding and regulation:

- The need for fit for purpose telecoms infrastructure and services to support a world-class digital economy; and
- Ensuring that the regulatory framework does not exacerbate the digital divide and that more remote areas see connectivity improvements in line with other parts of the UK.

The competition-based approach which has characterised telecoms regulation in recent times has delivered benefits for consumers in many parts of the UK, including parts of Scotland. However, large parts of the country have not shared in these benefits. In areas where there is little or no competition, both in terms of infrastructure and services, the regulatory environment has not been able to incentivise investment in a way that would mitigate against the lack of competition. As a result, in parts of Scotland, as in other parts of the UK, an infrastructure deficit has been created over time; which public subsidy alone will not be able to bridge.

Our key ask of Ofcom going forward, is that markets are assessed at a more granular level so as to uncover these differences and consider how regulatory levers could be used to address areas of market failure.

In parallel with tackling the rural connectivity challenge, the Scottish Government has set out an ambitious vision for Scotland to become a world class digital nation. This will require the development of a fit for purpose converged infrastructure that underpins innovation in digital services and across the wider economy.

The telecommunications sector is evolving rapidly, both in terms of technology and market structure. The commercial reality is that the private sector will go first to more densely populated areas. The regulatory frameworks at UK and EU level should, therefore, focus more on ensuring that the more remote areas are not always left to last and see connectivity improvements in line with other parts of the UK. Failure to achieve this will increase the economic fragility of these areas. This will require a combination of:

- A dynamic universal service obligation, which is linked to evolving average broadband speeds and quality of service;
- Regulatory encouragement of infrastructure sharing in areas where commercial case for investment is insufficient; and
- A state aid framework at EU level that allows early action and investment in areas where the market cannot be expected to reach:

I regard the investment issue as being central to this review. The public sector has had to make a substantial investment in digital infrastructure in recent years. While I accept that this investment has been necessary, Government needs to be reassured that there is sufficient transparency and oversight of the investment levels of regulated players, notably BT. Given that, in many parts of the UK, there is a lack of competitive pressure; it is vital that the regulatory environment does not encourage a two tier infrastructure between areas that have infrastructure competition and those that don't.

Separating Openreach from BT has been suggested as one way of addressing investment concerns, amongst other things. What is clear is that the status quo is not acceptable and any new approach needs to focus on outcomes – high quality of service standards, transparency of investment and recycling of profits back into infrastructure investment. I am not convinced that current arrangements provide the clarity needed around levels of planned investment, certainly when compared to other sectors such as energy or water. Ofcom's discussion document also recognises that the quality of service offered by Openreach has, too often, been equally poor for everyone. The Scottish Government has experienced this at first hand through our Scottish Wide Area Network (SWAN) programme.

There are a range of solutions available that will ensure the regulatory framework delivers these outcomes and we believe that Ofcom is best placed to assess options. Our view is that strengthened, and more rigorously enforced, functional separation arrangements may well produce the main outcomes we want to see, without the associated disruption to the market. However, if these outcomes cannot be achieved effectively through enhanced functional separation, then structural separation of Openreach should become a very real option in the longer term.

A regulatory fix will not, on its own, solve all of the issues identified in this submission. This will only be achieved through genuine collaboration between Government, regulator and industry.

Our collective aim should be to maximise commercial investment, while ensuring that public interventions and regulatory remedies are both proportionate and effective.

I have been hugely gratified by the engagement between the Scottish Government and Ofcom in recent months. I anticipate that this submission will be the starting point for more detailed discussions between Ofcom, SFT and Scottish Government on the issues raised. I look forward to discussing these further with you in the months ahead.

Yours sincerely,



JOHN SWINNEY

