

# Ofcom Consultation Response (South West Internet CiC)

## Executive Summary

South West Internet CIC is a specialist Internet Service Provider (ISP) which has been significantly disadvantaged by OFCOM's failure to fulfil key elements of its stated core functions. Despite providing broadband to customers generating £millions to the local and regional economies, SWI receives no public subsidy or aid and yet must compete against a State Aided monopoly supplier which OFCOM has neither curbed nor fulfilled its own stated remit with regard to the promotion of competition, the delivery of public policy and, especially, investment in broadband.

As a direct result of the way in which contracts have been drawn up with BT, it is now effectively impossible for any other provider (or alternative technology) to invest in broadband infrastructure provision until after 2017 because BT will not disclose which areas it will, itself, be investing in with public funds.

This problem is, in part, caused and exacerbated by OFCOM using seriously flawed data, including basing policy on studies on user-experiences only in areas where telecoms infrastructure is already good, thus ignoring (and excluding) swathes of rural exchanges and users. Consequently OFCOM's data ignores areas of "market failure" and the rural "citizens" who live there.

OFCOM must take immediate action to ensure greater fairness, transparency and openness in the provision of broadband to ensure that providers who can (and already have) delivered fast and superfast broadband services in hard to reach areas are not prevented from continuing to do so (or squeezed out of existence) by secretive and unfair practices by a state aided monopoly which is not currently operating in the interests of **ALL** customers and is actively and quite clearly is operating against the best interests of a significant minority.

**To remedy this OFCOM must improve its own understanding of the way in which this market is operating and be much more robust in fulfilling its obligations as the market regulator.**

## Company Background

My company (currently trading as South West Internet CiC) has been providing internet services to rural communities for more than 25 years and fixed wireless broadband since 1998. Aside from residential users it has enabled businesses, self-employed and many others to remain working away from urban areas, reduced carbon footprints and provide essential employment opportunities. The network currently stretches from Exmoor in Devon to Portland on the Dorset Coast. Funding for the roll-out came from 'rabbit' grants to consumers and a successful tender with West Somerset District Council after representations for the provision of this vital infrastructure from a group of local businessmen.

SWI is the only surviving network, as far as we are aware, that has not received any external funding from any public body. SWI supports the economic activities of broadband customers totalling many £millions

Our focus is on the delivery of essential broadband services in areas where “market failure” has resulted in no other practicable broadband solution.

## Ofcom’s strategy. (Quotes from annual plan)

The overarching strategy is to ensure that UK communications markets work to support consumer and citizen interests.

*“We will work for consumers and citizens by promoting effective competition, informed choice and the opportunity to participate in a wide range of communications services... We will be informed through high quality research and information...”*

*2.5 Effective competition and informed choice across all communications services is a key element of our strategy to help deliver competitive markets.*

*2.10 We also continue to **contribute to public policy defined by Parliament**. We have a role to assist in the development, implementation and enforcement of policies to ensure they deliver the desired citizen outcomes.*

*3.1 Promote effective competition and investment in both current and superfast broadband.”*

## SWI Consultation Response

It is our contention and opinion that Ofcom has failed on all counts to deliver this strategy.

Over the past year we have been in contact with the Public Accounts Committee, our local MP Mr Oliver Letwin, Dorset County Council and many other representative bodies. Not one of these has been able to extricate themselves from the broadband roll-out contract awarded to BT by the County Councils under the guidance of BDUK department of the Department of Culture, Media and Sport.

In particular Ofcom has failed to perform even the most perfunctory checks to ensure that the market was operating correctly and that the monopoly provider BT, was not being given unfair State Aid subsidy in breach of EU Directives.

No analysis has been conducted of alternative solutions and no consideration has been given to using alternative technologies for the provision of broadband supply into rural areas. What little research that was conducted (by Broadband Stakeholder Group (BSG) and other committees) was fundamentally flawed and biased by virtue of the involvement and influence of BT on these committees. The monitoring by Ofcom of the operation of this market and the resulting annual fixed-line performance report is similarly flawed and suffers from multiple statistical deficiencies.

The result is that despite the fine words in the Ofcom reports, the facts on the ground are that all competition with BT is now impossible until 2017 and consumers have very little choice. As a monopoly provider BT is playing by the rules it has written for itself into its contract. It is our contention that the award of this billion pounds contract to a commercial monopoly provider is undoubtedly a contravention of EU competition legislation and as such probably illegal.

We are therefore disappointed but not totally surprised that you are powerless to deliver on your remit. Perhaps you could explain in your 2014/15 priorities how you are going to ensure the rural broadband is opened up to competition. We were recently asked by Dorset County Council whether we had any plans to invest in broadband infrastructure up to 2017. It doesn’t take much imagination to realise the question is a total waste of time when private investment is potentially going to be

undermined by the monopoly provider using tax payers' money. And where that monopoly provider is not required to disclose where it plans to fund activities (subsidised by the UK taxpayer) or justify them, in any way whatsoever. In this context, BT's strangle hold on both the delivery mechanism and the public funds allocated for facilitating provision of the infrastructure for delivery, is very effectively holding back investment in broadband in rural areas, especially those where alternative technologies have already been proven to provide vastly superior results than those offered by BT.

Similarly any attempts by any companies other than BT to secure State Aid support, requires the company to deliver a solution that exceeds the performance of BT's superfast solution (ie exceeding 30 Mbps). In many cases these locations are remote, sparsely populated and currently receive BT broadband speeds of less than 1 Mbps (if any). BT has stated on many occasions that these locations will never receive a BT superfast broadband service – because it is economically impossible for BT to supply a commercial service using current BT technology. It is wholly wrong that BT's failure in this respect, should be allowed to prevent “customers and citizens” from benefiting from superior services that others could provide if: they were given access to relatively modest amounts of public funding; and their market was not be heavily distorted by BT's refusal to publicly identify the markets/areas it cannot reach.

Citizens in these locations are being disadvantaged. They have limited access to communication services, and are consequently excluded from numerous on-line public and commercial services as well as being effectively barred from the growing number of statutory activities which are increasingly being offered (sometimes exclusively) via the internet. House prices are dramatically reduced and the educational attainment of children in these areas has been shown to be lower than children in areas with “fit for use” broadband.

## Statistical Fraud

Ofcom claims to be informed through high quality research and information. And also to communicate this high quality research and information in order to **contribute to public policy defined by Parliament**

The UK Fixed-line Broadband performance report May 2014 on your web site is inaccurate and the methodology used in the supporting spreadsheets is flawed. For your information here are my comments.

- Only Exchanges with at least 1 LLU operator were used in the study – This excludes pretty much EVERY rural exchange and EVERY rural user from the study. With reference to table 5.1 page 55. The Ofcom analysis does not include Market area 1 (where BT Is the only supplier). This means that the study only includes the 2,200 exchanges in predominantly urban areas, but excludes the 3,300 exchanges in the predominantly rural areas (where BT is the sole supplier). Given that the Rural Broadband funding subsidies that have been given solely to BT are to promote the improvement of rural broadband, it is unacceptable that the Industry regulator should only be monitoring broadband supply in areas where the market is apparently operating successfully yet ignores the areas of market failure.
- Users > 5 km from exchange excluded. Removing outliers in this fashion distorts average calculations.
- Distance weighting was used for ADSL users. In other words users further from exchanges had their resulting speeds artificially increased (e.g. the results were changed)
- Results were excluded where the range of the results were extreme! In other words if the results showed too much variation they were judged as wrong and not included in the analysis. Removing “inconvenient” outliers in this fashion distorts the results.

- The dataset for the national analysis had to be reduced because of over representation of users with superfast services, this is not explained, but it suggests distortion in the way that households participating in the study were recruited
- Anomalous results excluded - Sites with < 1 Mbps were identified by BT as having faulty home hub devices, which the report claims has now been addressed. The results from these anomalous results have not been included in the analysis

As a purely academic exercise in statistical analysis there is no merit in the methodology used. A sample analysis should represent the population as a whole. But this is not an academic exercise, the Ofcom research results are being used to inform politicians and aid in the formulation of Government policy.

The role of Ofcom, the Industry regulator – is to regulate the Market for the benefit of Citizens. The research report, presents normalised results that highlight supply activities in areas where the market is working. It fails conspicuously to address the consumer experience or the functioning of the market in areas of market failure.

Ofcom has produced an apparently professional report that is sanitised for use by politicians to communicate good news and success stories. In fact it is a misleading and dishonest study that fails to reflect consumer experience.

## **Recommended Priority Actions**

Ofcom's main priority for 2014/15 should be to understand the broadband marketplace as experienced by citizens across the whole of the country, especially those locations where BT is the sole supplier. To achieve this Ofcom's national fixed-line study needs to recruit participants in the study that accurately represent the UK population. This study should be extended to include alternative technologies (satellite and fixed wireless).

Ofcom to investigate the contracts awarded to BT to identify existence of monopoly abuse.

Ofcom to commission an audit of all Government agency contracts awarded to BT and to provide a breakdown of the value of all commercial contracts given to BT over the last 5 years. The analysis to be broken down to Local Authority level.

Ofcom to investigate restriction clauses used by Government agencies when tendering that exclude other organisations from bidding.

Ofcom to investigate use of Framework agreements used by Government agencies when procuring broadband services that restrict participation by other organisations.

Ofcom to investigate the contracts awarded to BT and appropriateness of the confidentiality clauses allowing BT to cherry pick locations, with no obligations to communicate these choices or the reasons for these choices to any parties, including MPs, and the awarding County Councils.

Ofcom to require BT to disclose locations where BT is unable to satisfy the superfast broadband requirements, for which BT has been subsidised. Failure by BT to disclose these locations, should result in penalties against BT.

Ofcom to investigate market distortions that have arisen as a consequence of State Aid subsidy rules not being followed and thus failing to accommodate alternative solutions.

Ofcom to propose remedies to ensure that all UK citizens can be guaranteed access to a “fit for purpose” super fast broadband service, within the timeframes promised by Parliamentarians

Ofcom to consider the imposition of a Universal Service Obligation upon BT to provide superfast broadband services in locations where BT has been subsidised by the tax payer to provide superfast broadband services.

Ofcom to require BT to disclose capacity capabilities of BT network infrastructure when broadband performance to citizens using broadband supplied over that infrastructure fails to meet minimum requirements.

## **Conclusion**

BT is a national asset. The economy of the country relies on BT to provide a competent, efficient and a robust communications capability. It is in the UK National Interest that the activities of BT are monitored such that deficiencies in the supply of services may be identified and remedied.

This is the responsibility of the Industry Regulator, and this responsibility includes the investigation of possible monopoly abuses and the cultivation of an Industry that maximises competition to the kerb, for the benefit of UK citizens.