

Sharon White
Ofcom
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ENGLAND

Our date
2016.09.22

Our reference

Your date

Your reference

Our contact
Lars Godell

STRENGTHENING OPENREACH'S STRATEGIC AND OPERATIONAL INDEPENDENCE

Dear Ms. White,

As the President and CEO of Telenor Group, a leading international telecommunications company with activities across Europe and around the world, I am writing to you to share my perspectives that I hope may be useful in delivering a positive outcome in the UK's Digital Communications Review (DCR).

My writing is also motivated by the fact that I am keen to help avoid possible negative DCR outcomes that may influence or indeed risk serving as a precedent in other markets. We have noted Ofcom's stated intent to submit its proposals formally to the European Commission.

I believe Telenor is well positioned to provide input to Ofcom, given our position as the incumbent operator in Norway but also an access seeker in many European markets including Sweden. I highlight the Swedish market because of your recent comments to the UK CMS Parliamentary Committee, where you indicated the incumbent Telia, "has done a very similar thing to the leading proposals in the DCR". Telenor has first-hand experience as a customer of Skanova, Telia's legally separate, wholly incorporated, fixed access network business.

Telenor shares Ofcom's vision of the great benefits to society - and to the telecom industry - from everybody being connected to very high-speed networks. For more than 30 years the UK has been at the forefront, pursuing this vision through successful deregulation of the UK fixed-line telecoms market, based on a pragmatic and fact-based approach to regulatory decision-making.

I understand that one of the key substantive differences between BT's and Ofcom's proposals remains the incorporation of BT's fixed-line access network business Openreach. My biggest concern is the intention to move the BT/Openreach structure to BEREC's Level 7 model defined as "Legal Separation" - a very risky and costly measure that nobody else in Europe has effectively undertaken. Based on our experience across Europe, we struggle to see how legal separation of Openreach will help with Ofcom's ambitions to deploy more fiber-to-the-home (FTTH) or indeed deliver improved service.

It is also our experience that the hoped for benefits of greater independence and impartiality are not dependent on the legal status of the fixed access business – incorporated or not – but rather driven by behavioural issues combined with strong governance bodies, internal protocols and legally binding commitments. Legal separation does not in itself address/prevent issues of possible competitive discrimination within a regulated company (for example information sharing via IT systems or from employees of the legally separate company talking to retail colleagues about competitors' plans). Nor does it provide a panacea for concerns for how information flows within and across companies.

By example, I would reference a few observations of the only known legally/functionally separate Telia model and our experience in the Swedish market;

- Firstly, the Openreach model today –offers a better formalized model of impartiality and equivalence for wholesale customers than does Telia's model (or indeed in any other market).
- Secondly, we cannot identify any tangible benefit that has arisen from the incorporation of Skanova. It has been a non-factor when considering the outcomes of the Swedish market. Indeed it is an approach that has not been repeated in any other of the many markets that we operate.

In my view, BT's public offer in response to the DCR reflects significant tangible movement towards Ofcom's goals of greater impartiality than would legal incorporation.

I understand Ofcom's desire to further strengthen the UK telecom's sector given the importance of connectivity to the overall strength of a national economy. I believe the current BT Openreach model, enhanced by BT Group's current offer will do much to achieve Ofcom's goals and would caution against the pursuit of legal separation not underpinned by a rigorous cost/benefit analysis. Even if it were the case that it could be achieved without cost or delay, there is simply no precedent, and no case for benefits that would justify the potential deterrent on investment that would result.

The issue of functional/legal/structural separation of incumbents' fixed access networks represents a dead end for the UK and European consumers and telecom industry. There are more important regulatory issues to be dealt with, such as making sure UK and Europe's regulatory framework gets future-proof by stimulating the massive investments needed for 5G and ultrafast fixed broadband networks and ensuring competition in the same ultrafast markets.

I would encourage you to reassess how your worthy objectives for the UK market can be achieved with as little disruption as possible at this pivotal time, and how you can avoid risking the many strengths of the UK model. Please let me know if Ofcom would like to better understand our relevant combined access seeker and provider experience via a meeting.

Kind regards,

Sigve Brekke
President and CEO
Telenor Group