



Department for Culture, Media and Sport

Government response to the House of Lords Communications Select Committee Report, “Broadband for all – an alternative vision”

Presented to Parliament by the Secretary of State for Culture,
Media and Sport and Minister for Women and Equalities by Command of Her Majesty

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Introduction

The Government welcomes the House of Lords Select Committee's 1st Report of Session 2012-13.

The Government is grateful to the Committee for its examination of the key issues relating to the key broadband policies as set out in the 'Britain's Superfast Broadband Future' based on written and oral evidence from stakeholders. We welcome the detailed consideration the Committee has given to these issues, and note its recommendations.

The Government has carefully considered all the recommendations suggested by the Committee and is pleased to be able to present its response.

The Government's Approach

The Government welcomes this report by their Lordships and acknowledges the recommendations and themes presented. Before responding in detail to these, we thought it appropriate to summarise the Government's current approach and why we believe this is right way forward.

The Government recognises the economic growth potential of broadband and has made available £530m to stimulate private investment to take superfast broadband to 90% of UK premises and basic broadband coverage to virtually everyone else at a speed of at least 2Mbps. It has also allocated a further £150m to support the development of super-connected cities which will have ultrafast broadband and high speed wireless internet access. This support, in addition to commercially-led deployment by the private sector, is aimed at delivering our key ambition of having the best superfast broadband network in Europe by 2015.

The current Government approach is to support the extension of fibre deeper into the network, including the transmission network (backhaul/middle mile) where this is a bottleneck. The Government has sought to encourage infrastructure competition through providing funding to stimulate private investment in locations where the commercial investment case is weak and would be unlikely to happen at all without subsidy.

The Government considered a range of different delivery options prior to embarking on its current approach, including taking into account the cost and need for delivering sustainable solutions that do not require continued government subsidy. It considered that the market was best placed to determine which solutions and network design could deliver affordable and sustainable services to consumers – with technology neutrality key.

The Government's approach is for procurement to take place at a local level, and through Broadband Delivery UK (BDUK), the Government has worked closely with local authorities across England to ensure all have local broadband plans that set out how they will meet the Government's ambitious coverage targets. Similar plans have been developed by the Devolved Administrations in Scotland, Wales and Northern Ireland. This approach leverages local and European funding, and as a result over £1bn of public funds in total will be invested in delivering broadband to remote and rural areas, together with significant funding from the commercial sector.

To facilitate the procurement process and to avoid local authorities having to repeat costly and time consuming procurements, the Government has procured the Broadband Delivery Framework, enabling local authorities to invite suppliers to bid under mini-competitions to deliver their local projects. BT and Fujitsu were confirmed as the chosen suppliers following a rigorous assessment process which ensured that the suppliers were capable of delivering affordable and sustainable services to consumers. The Broadband Delivery Framework provides for projects involving a gap funded investment model. All procurements will be complete by summer 2013, with deployment starting on the first projects from summer 2012.

The Government are supporting the programme of investment with a series of policy and regulatory interventions that will lower the cost of deployment for commercial providers and provide greater certainty to allow the market to invest. The Government recently announced that:

- broadband street cabinets and other infrastructure (such as overhead infrastructure) can be installed without the need for prior approval from the local council (except in Sites of Special Scientific Interest);
- broadband companies will face less cost and bureaucracy in laying cables in streets;
- broadband cables and cabinets can be installed on or under private land without the bureaucratic burden of long-running negotiations; and
- Government will broker a new deal for the installation of broadband with industry and highway authorities to ensure that traffic regulation does not hinder the roll out of superfast broadband

These measures will tackle issues that are costing communications providers time and money, delaying the roll out of superfast broadband to the areas that need it most. We will be bringing forward these measures as soon as possible, following consultation where necessary.

We believe that this approach of both supporting investment and implementing policy and regulatory interventions will enable the commercial market to deploy superfast broadband to as many households as is commercially viable, as well as providing support in areas where the commercial investment case is challenging. By enabling local authorities to take control of investments in their area, we maximise public and private investment whilst ensuring local needs are taken into consideration.

The Government's Response to the Recommendations

The Government welcomes the Committee's detailed recommendations, and is pleased to be able to respond to them – either individually or grouped according to a broad theme. We believe that the approach we have taken is the most appropriate way to meet our goal of having the best superfast broadband network in Europe by 2015, and ensure that 90% of households have access to superfast broadband with the remainder receiving at least 2Mbps. Our responses to the recommendations reflect this and demonstrate why we believe we are on the right path.

Recommendation

253. We recommend that the Government consider our vision for the UK's broadband infrastructure as set out in this report. As a first step, we recommend that the Government undertake to produce detailed costings of our proposal, not least because our proposal removes the final mile—the most expensive per capita component of the network—from the costs requiring public subsidy. (Para 53)

The Government thanks the Committee for the suggestion of a focus on digital hubs. This is something that was considered during the course of the detailed work undertaken by BDUK, and is something that is still being considered for certain projects, depending on the need and viability. Our plans will deliver fibre deeper into the network and it will be down to individual procurement processes undertaken by Local Authorities to determine how best to connect homes from that point onwards – for example whether through an existing copper connection in the case of fibre to the cabinet solutions, fibre to the premise solutions, or a fixed wireless solution. The procurement process will determine which is the most suitable, and as importantly, affordable, with sustainable service provision without the need for further on-going subsidy.

Regarding the recommendation to undertake a detailed cost study of the proposal, the Government does not believe that it should deviate from the current course of action, so any costings of an alternative proposal would not be helpful at this point. It is also likely that their Lordship's proposal would cost far in excess of the funds available to Government at this point – analysis by consultancy Analysys Mason¹ following the publication of the report estimated that delivery of digital hubs as outlined in the report would cost more than is currently available, concluding that:

“The major challenge faced by the House of Lords proposals is that they appear to require substantially more public funding than is currently available.”

¹ <http://www.analysismason.com/About-Us/News/Press-releases1/UK-fibre-optic-hubs-PR-Jul2012/?bp=%252fNews%252f>

“As the report notes, the amount of government funding allocated to broadband schemes totals £750m — less than our estimated cost for building hubs in the most rural 10 percent of the UK. If the hubs were expected to provide greater population coverage (perhaps as much as the final 33% of the UK population), then the shortfall would be even greater.”

Recommendation

254. We endorse the European Commission’s suggestion that open access to dark fibre at the cabinet-level should be introduced as a condition of BDUK’s umbrella state aid permission. (Para 59)

The Government is content with the position on access to infrastructure set out in the Commission’s guidelines on State aid for broadband² that the access requirements placed on suppliers in receipt of State aid should serve to promote effective and sustainable competition. The guidelines recognise that ‘open access’ to supplier-installed dark fibre in the access network provides one route, but not the only route, to enabling passive access. Rather, the Commission recognises the need to balance the costs of competition with other access products (e.g. physical infrastructure access offers a mechanism whereby a supplier can invest in its own infrastructure, deploying and re-selling its dark fibre deployment). Key is that the stipulated access products offer a realistic chance of promoting effective and sustainable competition.

255. Accordingly, not least, in order to expedite its own programme, we recommend that the Government incorporate open access to dark fibre voluntarily as a feature of its Framework agreement with suppliers. (Para 60)

The Government has addressed this in the Broadband Delivery Framework contract that requires a supplier to offer either physical infrastructure access (which allows a competing infrastructure provider to install their own fibre connectivity and to offer wholesale access to it) or the provision of dark fibre (installation of fibre by the supplier and to wholesale its provision). Furthermore, the intended evaluation approach for each of the local authority procurements also requires that a positive weighting is applied to those suppliers offering both a passive infrastructure access product and a dark fibre product. There is therefore an incentive for suppliers to consider, on a voluntary basis, the provision of a dark fibre product.

In addition to this, the network access conditions that apply to the winning supplier require that supplier to meet all reasonable requests for new forms of network access i.e. network access requests made during the contract term. Therefore, a supplier is required to meet a reasonable request that a communications provider might make for access to its installed dark fibre.

Rather than expediting BDUK’s programme, mandating the provision of dark fibre is likely to impede progress. BDUK has sought to ensure the right balance is struck between competition and value for money. The Government does not therefore

² http://ec.europa.eu/competition/state_aid/legislation/specific_rules.html#broadband

anticipate that the Commission will mandate dark fibre as a specified access product. Placing that additional requirement (in addition to a passive infrastructure access product) on suppliers would be likely to significantly increase the cost of delivery with no clearly identified additional competitive benefit.

256. More broadly, we endorse and invite the Government’s view on the European Commission’s conclusion on the broadband investment environment that: “securing truly equivalent access by alternative operators to incumbent networks is probably the most important guarantee of sustainable competition, on existing and new networks.” (Para 61)

The Government supports Vice President Kroes’ view that key regulated access and interconnection products must support equality of access for all companies. This is a key feature of BT’s 2005 Undertakings³ that functionally separated BT Openreach (BT’s infrastructure division) from BT’s retail divisions (such as BT Retail) and ensured that all companies can access certain aspects of BT’s network on the same terms that BT Retail can. Ofcom can also impose non-discrimination remedies on BT that require equivalence of access if BT has been found to hold Significant Market Power (SMP) following market review.

The Government is content that the remedies that Ofcom imposes (such as those in the local loop unbundling market or the recent physical infrastructure access requirements), in both instances, are considered to be proportionate and targeted at ensuring the development of effective and sustainable competition.

Recommendation

257. Broadband policy should begin from the question: what should the UK communications infrastructure look like? (Para 75)

The Government believes that the UK’s communications infrastructure should have good coverage across the UK, and offer consumers the choice of providers and price competition in all markets. We believe this has been achieved, both in the fixed line and mobile sectors. The plans to deliver superfast broadband to 90% of the UK and at least 2Mbps for the rest, alongside the 4G coverage commitments, combined with effective regulation will ensure that this continues.

258. In addition, it should be a fundamental principle of broadband policy that whatever measures are undertaken to enhance or extend its availability, they strive to bring about equality of opportunity to access broadband across all communities in the UK. (Para 76)

³ *Undertakings given to Ofcom by BT pursuant to the Enterprise Act 2002 [Consolidated version of the Undertakings (covering all variations up to and including variation number 22), dates 23 March 2010], at*

<http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/bt/consolidated.pdf>

259. In this sense, Government policy on broadband should be driven, above all, by the social benefits it can unleash, and the need to arrest and ultimately reduce a damaging digital divide. (Para 77)

The Government agrees with the Committee that social benefits should be one of the key drivers for our broadband policies, but would also emphasise the potential of broadband to support economic growth. That is why we have put into place a programme that will deliver superfast broadband of at least 24Mbps to at least 90% of households, with the remainder able to receive 2Mbps basic broadband – which is sufficient to allow consumers to utilise internet-based services such as the BBC iPlayer. As the Lords recognise, it is the final 10% that is particularly challenging, with very significantly higher costs per premise.

Recommendation

260. We recommend that future broadband policy should not be built around precise speed targets end-users can expect to receive in the short-term, however attractive these may be for sloganeers. (Para 110)

Current policy is not built around precise speed targets. We have defined superfast broadband as a speed greater than 24 Mbps, in line with the definition adopted by Ofcom in a 2010 report and the BDUK Programme Delivery Model⁴. That speed represented the limit of what was deliverable over copper lines using ADSL2 technology. Superfast broadband therefore represents a step change in terms of capability compared to what was generally available to consumers in 2010. As noted above, the minimum target speed of 2 Mbps for those we will not be able to reach with superfast broadband by 2015 is also based on the delivery of a basic capability rather than a focus on a specific speed.

As the Government set out in the strategy document “Britain’s Superfast Broadband Future” in December 2010, we will be using a number of indicators to determine whether the UK meets our ambitions of having the best superfast broadband network in Europe by 2015. This does include speed – both upload and download. We do believe this is an important factor – not because it is attractive for sloganeers, but because it has a definite impact on how consumers use the internet and is something that consumers identify with and can measure easily. We believe that it is such an important factor that in August 2012, the Secretary of State for Culture, Media and Sport set out ambitions for the UK to have the fastest network of the larger European countries by 2015. This is because history has shown us that speed is never enough and we should not be complacent.

However, as the strategy document recognises, speed is not the only factor. Choice, coverage and price are also essential – it is important that consumers can access as good speeds as possible, through as many providers as possible, at a price that is affordable. The UK has one of the most competitive broadband markets in the world

⁴ <http://www.culture.gov.uk/publications/8482.aspx>

and we believe it is essential this continues. Ofcom are due to publish the first European scorecard by the end of the year.

Recommendation

261. In addition, broadband infrastructure policy should be driven by an avowedly long-term, but also flexible view of the infrastructure's future. (Para 111)

262. As an overriding principle, we recommend that Government strategy and investment in broadband infrastructure should always be based on a minimum ten year horizon and possibly beyond. (Para 112)

263. While we acknowledge the presently elusive nature of a 'killer app,' we believe there is a clear need for the Government to state in explicit terms a long-term vision for a pervasive, robust and resilient broadband infrastructure, central to national policy and infrastructure planning. (Para 113)

264. We anticipate and recommend that policy should be ultimately directed towards universal, point-to-point FTTP as this is a technology not only able to accommodate current demand, but at current rates of growth, will be able to accommodate the UK's bandwidth demands for many decades to come. (Para 114)

265. In this sense, we recommend that the Government should set out an even bolder vision for broadband policy than is currently the case. (Para 115)

We support the Committee's view that policy and investment should focus on the longer term, and we believe that our current policies and investment programmes do this. However, technology moves fast and it is not for Government to determine the technology used to deliver greater speeds and reliability. The market is much more adept at ensuring access continues to be affordable whilst delivering the speeds and bandwidths we all want to see. Government's role is to provide the right environment for investment to take place, and provide appropriate support in areas where the commercial case is challenging.

The Government is committed to enabling and encouraging the private sector to deploy new network infrastructure as quickly and efficiently as possible. That is why a package of support measures was announced on 7 September aimed at removing or reducing barriers to deployment of network infrastructure by communications providers.

Recommendation

266. Given the impossibility, with current constraints on resources, of rolling out universal point-to-point FTTP, we recommend that Government policy should,

as an intermediate step, aim to bring national fibre-optical connectivity—which would include, as a minimum, fully open access fibre backhaul—within the reach of every community. This will provide the platform from which basic levels of service can be provided to all, and an improved service where there is sufficient demand. (Para 116)

267. As a point of principle, we believe it is incumbent on the Government to ensure that policy and regulation in the interim guarantee that there is a clear path from any intermediate steps which may be taken to the roll-out of point-to-point FTTP and that, crucially, these steps will not serve to hinder or hold back any future upgrade. (Para 117)

It is not for Government to decide which technology is the most suitable, as it is likely that a mix of technologies will be needed in the UK, given the topography and commercial challenges faced in the more rural and remote areas of the UK.

As the Committee recognises, delivering universal point to point Fibre to the Premise would be extremely costly – estimated at in excess of £25bn. We believe the investment programmes being delivered by the market in the more attractive areas of the country for investment will provide consumers with the access they desire, with a choice of providers at an affordable price. Ofcom, as the National Regulatory Authority, has a duty to ensure effective competition in the market and we believe they are meeting this obligation fully. In those areas where subsidy is needed, we expect those networks built using public funds to provide wholesale access to other operators in full accordance with European State Aid rules.

Recommendation

268. It should be a fundamental principle of broadband policy that measures be undertaken, where possible, to reinforce the robustness and resilience of the network as a whole. (Para 124)

The Government supports the Committee's view and believes that its policies strike the right balance. The telecommunications sector is very resilient and is characterised by excellent Government and industry cooperation via the Electronic Communications - Resilience and Response Group (EC-RRG), the industry group for which the Department for Business, Innovation and Skills (BIS) provides the secretariat function. The group works to share best practice and to improve existing sector resilience further. The EC-RRG is acknowledged as an excellent example of cooperative working and leads on maintaining resilience within the telecoms sector which is considered to be one of the most robust sectors of the Critical National Infrastructure. EC-RRG has representatives from all of the major telecoms providers as well as the Regulator.

The EC-RRG manages the Telecoms Emergency Plan which sets out management processes for handling emergencies, priority customers and priority services (and is regularly exercised). EC-RRG is made up of Category 2 responders (under the Civil Contingencies Act 2004) as well as others who participate voluntarily. Each individual operator has their own plans for how to manage an emergency affecting their systems,

as well as plans to restore service to their customers, and will action these when necessary.

Specific requirements under the European Electronic Communications Framework Directive, designed to enhance the security and resilience of communications networks and services and minimise disruption to them, have been in place since May 2011. Measures include increased requirements on providers to ensure the security and resilience of their networks and services. The requirements are wide ranging and aim to develop a high level of security and resilience in the Communications sector, as well as increased transparency on measures taken to achieve this. Requirements have also been placed on companies to report any significant incidents to the Regulator (Ofcom), and undergo a security audit in the event of any clear evidence that companies are not compliant with the Directive.

The Civil Contingencies Act 2004 provides the backdrop for work on enhancing resilience. Currently certain communications providers are required to share information on resilience (as part of their role as Category 2 responders), which they do through the EC-RRG – though this group actually goes wider and includes volunteers from the wider communications service provider community who are not legally required to share information.

The Digital Economy Act 2010 addresses key issues that needed to be progressed to make the UK a world leader in the supply and use of digital networks and technologies and acknowledged the importance of existing work on resilience and security. The Act sets out proposals that allow Ofcom to assess the delivery of communications services in the face of problems that are realistically likely to be faced and makes the promotion of investment in communications infrastructure one of Ofcom's principal duties. In addition, Ofcom has an obligation to write every three years to the Secretary of State giving a full assessment of the UK's communications infrastructure, including its resilience. The first of these reports was produced in October 2011.

Recommendation

269. We recommend the Government ensure freedom and economy of passage for communication of data across the UK. (Para 125)

The Government is committed to making broadband access as widely available as possible and we have reiterated our commitments in that area already in this response. In addition the Government has worked with industry to develop an Open Internet Code of Practice which commits signatory ISPs to full and open internet access products and confirms that traffic management practices will not be used to target and degrade the services of a competitor.

Recommendation

270. We recommend that Ofcom, in addition to its duties on competition and investment, be given an additional duty to monitor and foster the efficient utilisation of existing capacity (including, for example, use of the communications infrastructure owned by other infrastructure providers) to

provide a robust and resilient national network that promotes affordable open access to wholesale and retail connectivity across the UK. (Para 126)

The Government believes that Ofcom's existing duties and powers are sufficient to ensure that there are competitive retail and wholesale broadband access markets operating in the UK. Ofcom conducts periodic market reviews and implements remedies as and when they are required to promote competition and investment, a notable recent example being the decision to open up BT's network of ducts and poles to competitors.

The intention of this remedy is to deliver greater infrastructure competition and competitors are now able to deploy their own equipment using BT's existing network, at a regulated price. These products are still in their relative infancy but the expectation is that consumers will be able to benefit from competitors able to control their costs by deploying competing networks using BT's ducts and poles and pass this saving to consumers, rather than needing to invest the significant sums needed to build brand new networks, which incur large civil engineering costs.

Ofcom also publishes an infrastructure report providing extensive information on the availability of communications networks in the UK. The first report was published in 2011 with the second report expected before the end of the year.

Recommendation

271. We recommend that the Government's targets should refer to minimum and median levels of service, and that Ofcom adapts its scorecard accordingly. (Para 132)

Whilst the Government recognises that headline speed is not always an accurate indicator for the speeds received, due to other issues such as contention, interference and home wiring issues, we believe headline speed offers consumers an indication of the speed that will typically be received. It is also not always possible to assess minimum or median speeds without expensive monitoring equipment in every home. We believe it is also important to provide consumers with as accurate information as possible at the point of sale so they can make an informed choice about whether or not to subscribe to a service. Ofcom's broadband code of practice regarding speeds ensures this, and enables consumers to differentiate on service provision.

Recommendation

272. In order to ensure the digital divide is not widened, we recommend that the Government commit to reducing the digital divide between the minimal service levels guaranteed to all and the median service levels enjoyed by the majority. (Para 134)

The Government is committed to reducing the digital divide, which is why we have put in place a detailed plan of action that will deliver superfast broadband to 90% of households, and at least 2Mbps to the rest.

Additionally, the Rural Community Broadband Fund is aimed at supporting superfast broadband projects in the most rural and remote areas of England, in the final 10% that will not be reached by the BDUK programme.

Recommendation

273. It is our view that a Universal Service Obligation (USO) is not an appropriate way to bring about universal access to minimum levels of service, not least because in practice, imposing legal obligations on ISPs could easily and quickly lead to drawn out proceedings in the courts. (Para 136)

Recommendation

274. We do, therefore, endorse the approach adopted by the Government: pledging a Universal Service Commitment, to which it will be politically accountable, and stating explicitly a clear political aspiration to provide universal access to a minimum level of broadband provision. This, in our view, is at this stage a more appropriate approach than introducing a legally binding USO. (Para 137)

We are pleased that the Committee recognises that a broadband USO would not deliver universal coverage in a timely or proportionate fashion, and that the Government's proposed approach to make available at least 2Mbps to virtually every household is appropriate.

Recommendation

275. We recommend that the Government, Ofcom and the industry begin to consider the desirability of the transfer of terrestrial broadcast content from spectrum to the internet and the consequent switching off of broadcast transmission over spectrum, and in particular what the consequences of this might be and how we ought to begin to prepare. (Para 141)

276. While we do not support the introduction of a USO at present, we do believe that broadcast media will increasingly come to be delivered via the internet. As and when that happens, and particularly in circumstances where this applies to PSB channels, the argument for recommending a USO becomes stronger. The Government should begin now to give this active consideration. (Para 143)

The Government believes that it would be premature to consider such a move at this time, as it will be some time before an appropriate level of broadband coverage and access matches that available for Digital Terrestrial Television, as the Committee has identified. The Government recognises that there is an increasing number of television services delivered over the internet, but believes consumers should have the choice to decide how best to view and consume content.

Recommendation

277. We bring to the Government's attention the fact that we have heard a number of calls during this inquiry, with which we agree, for uptake and effective use of the internet to become a higher priority. (Para 150)

The Government agrees with the Committee that take up and effective use of the internet is vital. As the Committee will be aware, Martha Lane Fox, as the Government's Digital Champion has been instrumental in driving forward take up, through Race Online 2012. These campaigns have led to 2m more people accessing the internet for the first time over the last few years. Go-ON:UK, the successor to Race Online, is currently planning how to build on this success and is expected to make a formal announcement of its strategy in early November.

Recommendation

278. We urge the Government to provide a more coherent mechanism for the provision of enhanced broadband infrastructure in the final 10% than currently is the case with the Rural Community Broadband Fund. In particular, a new mechanism for distributing funds must meet the criticism that its predecessor was flawed in assuming all communities have the capital required, up front, to invest in their own access network. (Para 160)

We note the Committee's comments on the Rural Community Broadband Fund, jointly financed by BDUK and Defra and operated by Defra through the Rural Development Programme for England. The Fund is specifically designed to extend superfast broadband into the final 10% or so hard to reach rural communities that will otherwise only receive standard broadband under the BDUK rural broadband programme (to ensure that they are not disadvantaged). It is therefore only available to support technologies that deliver superfast speeds in these 10% areas, to avoid duplication of public funding.

The Committee raised particular concern over the ability of communities to pay for project costs upfront. Under the Fund, applicants will need to contribute 50% of funds from private sources towards the overall costs and show that they have cash available to meet any ongoing costs. It is an EU requirement that approved grant funds are claimed back after the expenditure has been incurred. Grant can be claimed in stages as costs are incurred.

We recognise that the requirement for communities to raise 50% of the project costs themselves through private investment will be challenging for some applicants. However, it is a competitive fund and we want to ensure that the available public funds can help as many communities as possible. During consideration of expressions of interest under the first round, we considered whether the ability to raise private finance was causing applicants any difficulties. However, there was no evidence that applicants were finding this to be a barrier and there has been considerable interest in the Fund so far within the existing criteria, with over 80 Expression of Interest applications. In practice, a mix of sources are being identified in applications, from the

raising of community shares, charitable funds and contributions from potential procured providers. Recognising the difficulties in raising private finance, the Government has provided a fact sheet on 'Raising Private Finance' which is available to all applicants under the Fund.

The Government considers the mechanisms under the existing Rural Community Broadband Fund to be workable.

Recommendation

279. In their deliberations over the potential reform of the Electronic Communications Code, we encourage the Law Commission to consider the impact of the Code on the roll-out and availability of broadband infrastructure throughout the UK. (Para 167)

One of the reasons the Law Commission were invited to undertake an independent review of the Code was because of the importance of electronic communications to the UK's economy and the social benefits of widening access to modern communications technology. Their current consultation which closes at the end of October, references this.

The Law Commission will be making their recommendations to Government in February 2013, and the Government intends to bring forward the reform of the Code to produce a wayleave regime which is more transparent, timely and cost effective for operators and landowners alike, and will better support broadband roll-out.

Recommendation

280. We urge the Government to consider reform of street works permissions and the current planning system, given their wider impact on the pace and sheer viability of the roll-out of broadband infrastructure throughout the UK. (Para 168)

The Government has been informed that some communications providers have concerns about potential delay and cost from the planning system and from street work permit schemes.

As a result, we recently announced a package of measures which included plans to streamline the planning process for broadband, including allowing broadband street cabinets and other infrastructure (such as overhead infrastructure) to be installed without the need for prior approval from the local council (except in Sites of Special Scientific Interest).

We will also work with industry and highway authorities to ensure that traffic regulation does not hinder the roll out of superfast broadband, insist that any new street works permit schemes approved between now and 2015 are focussed on the most traffic sensitive streets, and we will review permit schemes to streamline processes and

shorten the timescales for the approval of works. Any measures will only take effect in England, as this is a devolved issue.

Recommendation

281. We recommend that the Government require that all new building developments be ducted for fibre, with appropriate provision for an internet connection, and that building regulations for this be developed perhaps analogous to those which already require adequate provision, for example, for the delivery of mains electricity and sewage connections. (Para 170)

The Government already has in place ducting guidelines for developers to consider when building new developments. To supplement this, in December 2010, the Government published a Publicly Available Specification (PAS) for Next Generation Access in New Build Homes, which acts as best practice guidelines for developers, and provides developers with the information they need to future proof their homes.

The Specification is one stage before a full British Standard, and produced in association with the Building Research Establishment and the British Standards Institution, we believe this is a more appropriate route to ensuring all new build homes are equipped to make the most of superfast broadband, rather than requiring developers to meet a certain level of connectivity as part of building regulations.

Recommendation

282. The refusal to provide financial support for a project, like that in the Northern Fells, on the grounds that its proposal to use a technology (in this case white space spectrum) which would not meet the Government's speed targets, is a further illustration of the way in which such targets are actually counter-productive. We urge the Government to reconsider using speed targets to define the goals of their broadband policy. This would allow them to be more flexible with regard to the technologies used to provide enhanced connectivity, particularly to outlying communities. Loosening the reins a little could very quickly have the effect of bringing enhanced broadband capacity to the final 10%. (Para 177)

Any such project using public funding will be subject to constraints set out in the Commission's State aid guidelines for broadband that require solutions to provide a significant step change in capability. The UK's State aid umbrella scheme will provide flexibility to subsidise technologies other than FTTP and FTTC (such as fixed wireless) in recognition of their role as an interim solution when the economics do not yet support FTTP. These would need to first meet a set of minimum requirements regarding current capability (including speed) and upgrade path.

Recommendation

283. The alternative strategy we have put forward would avert the situation which has arisen under the current policy whereby communities are left

stranded with a minimal service because a viable enhancement falls below the—relatively arbitrary—mark set for public funding. We invite the Government to respond to our proposal that bringing open access fibre-optic hubs within the reach of every community would liberate communities and enterprises to evaluate the cost—benefit calculation themselves of the various different technological solutions available in the access network. (Para 178)

The Government's target is to successfully ensure superfast broadband is available to 90% of UK premises and basic broadband coverage to virtually everyone else at a speed of at least 2Mbps. Communities will continue to have the option of developing their own superfast connections if they so wish, and the deployment of superfast broadband to 90% of the country will bring all communities nearer to a fibre connection and reduce the cost to operators to serve them.

Recommendation

284. It should be a fundamental 'design principle' of the Mobile Infrastructure Project that where mobile coverage is being widened for the purpose of eliminating voice not-spots, coverage for data is widened and enhanced at the same time. (Para 182)

The Mobile Infrastructure Project is intended to improve mobile phone coverage, whilst ensuring technical solutions are compatible with future developments such as 4G.

Recommendation

285. The Government should consider the potential for serviced sites constructed as part of the MIP to be used as open access fibre-optic hubs more generally, from which independent third parties could extend out their own alternative, local access networks. (Para 186)

The locations of MIP serviced sites, as well as the backhaul solutions for individual sites, will be decided on a site by site basis in concert with the MIP Supplier and the MNOs, on the basis of best value for money and best meeting the MIP requirements. This could mean sites with either microwave or fibre-optic connections. In order to maximise the benefits of the MIP, the intention is to allow the sites to be available for additional uses, provided that those additional uses do not interfere with the main aim of improving mobile coverage.

Recommendation

286. As suggested in Chapter 3, the danger that results from the lack of competitive pressure in the construction of the UK's broadband infrastructure lies in the fact that the Government can easily find itself in thrall to the commercial interests of private enterprise, and therefore unable to direct broadband infrastructure in the wider interests of the UK. (Para 194)

287. We urge the Government, therefore, to recognise as a general principle that it will be vital to monitor the dominant, national providers vigilantly and to

deploy appropriate incentives to ensure they, and the market in which they operate, behave in the public interest as this will not necessarily follow automatically from competitive pressures alone. (Para 195)

The UK Government has assigned a set of key responsibilities and duties to the national regulator and competition authority for communications matters, Ofcom, under the Communications Act.

Ofcom has a range of formal powers to seek information from industry participants to allow it to take measured and proportionate action where it considers it appropriate to meeting its objectives. We consider that the responsibilities and associated powers that we assign to the independent regulator are likely to deliver the best outcomes for consumers and citizens in the UK.

The Government believes that this current regulatory regime is appropriate to ensure competition in the broadband market. The UK has one of the most competitive markets in Europe, with consumers able to experience excellent choice, service and price competition. This has been achieved with appropriate and proportionate regulation, established by carrying out market reviews. The interventions made by Ofcom have led to a number of innovations which have led to more investment in broadband, better choice and price competition for consumers. This has been most evident in the local loop unbundling (LLU) market, but also more recently in the Physical Infrastructure Access (PIA) requirement, which aims to reduce the barriers to deployment by enabling access to BT Openreach's network of ducts and poles.

It is a matter for Ofcom to determine whether the right regulatory framework is in place as we move towards greater superfast broadband, to ensure competition for consumers and businesses. BT's wholesale Generic Ethernet Access product is slowly being taken up by other providers such as Sky and Talk Talk and it will be for Ofcom to determine if this should be subject to price controls, as is currently the case for wholesale access for current generation broadband.

Recommendation

288. In addition, we note the argument of Chapter 3, that despite the presently non-competitive nature of much infrastructure provision in the UK, open access to existing connectivity can enable competition to play a role in extending the reach, connectivity and diversity, and hence also the resilience and performance, of these networks. (Para 196)

The European Commission's state aid broadband guidelines set out a framework for assessing interventions where there are proposals to correct identified failures (and related common interest objectives) in the provision of superfast broadband (or Next Generation Access (NGA) as termed by the Commission).

The Government believes it is important to ensure that where the economic assessment identifies failures in specific markets then the 'remedies' adopted only seek to address those identified markets alone. For example, where a market failure

has been identified in the provision of superfast broadband then the central role of State aid is to ensure that infrastructure is deployed and that in doing so the wholesale access conditions prescribed deliver genuine competition.

In particular, in considering full 'open access' conditions, it is key that the requirements imposed (a) have the primary objective of delivering the identified failure e.g. NGA infrastructure; and (b) balance the costs of access against value for money in the deployment (i.e. ensure that effective and sustainable access measures are specified in the contract and also provide a clear and 'open' route to alternative network access products should the market need them).

We consider it crucial to ensure consistency and coherence across State interventions (State aid and ex ante regulation) and taking that approach presents the greatest opportunity for effective and sustainable competition to develop. We think that this is the right approach rather than diverting commercial effort into exploiting arbitrage opportunities introduced by poorly designed and conflicting interventions.

Recommendation

289. We recommend that the Government's approach be explicit in its insistence that the technologies and infrastructures in which companies using public funds decide to invest be ones which offer a clear 'upgrade path' to point-to-point FTTP. (Para 200)

The BDUK sponsored rural rollout will result in optical fibre based solutions being delivered deep into rural areas, many of which will be FTTP from day 1. It is expected that facilities (breakout boxes) will be also be provided so the fibre paths can be extended further as and when communities demand the additional throughput and can assist in the costs of the final drop.

Recommendation

290. Where infrastructure providers using public money decide to invest in Passive Optical Networks, we recommend that the awarding of public money should be contingent on the installation of the splitter at the level of the local exchange rather than the cabinet, as this would enable passive unbundling, and thereby real competition between ISPs. (Para 202)

The Government does not believe this suggestion would be feasible. With breakout boxes and open access conditions available it would seem overly restrictive and limiting to specify an exchange building as the only location for a splitter. As the migration to FTTP begins, the reliance on the local exchange will be reduced.

Recommendation

291. We recommend that Ofcom draw on one of the mechanisms at its disposal to encourage, if not require, the universal adoption of standards like Active Line

Access, if not ALA itself, which are open, and industry-led, and contain a technical specification for the physical network itself, the wholesale products it should provide, and stipulations regarding the operation, administration and maintenance (OAM) systems interface between infrastructure providers and ISPs. The universal adoption of such standards would do much to level the playing field between alternative infrastructure providers and would help to stimulate competition at the access network level. (Para 219)

Recommendation

292. We understand Ofcom's cautious stance with regard to the removal of restrictions on Physical Infrastructure Access. However, we urge Ofcom to give the benefits of doing so full consideration. (Para 232)

Recommendation

293. In our view, the benefits of opening up the restrictions on PIA are likely to be significant, particularly were policy to be re-oriented towards the establishment of open access fibre-optic hubs, as we advocate. Removing the restrictions on PIA may, of course, have knock-on effects for the effectiveness and coherence of other aspects of the overall regulatory edifice. We, therefore, recommend that Ofcom evaluates alternative approaches to the regulation of the broadband market as a whole, in line with EU guidelines. (Para 233)

Recommendation

294. In light of the potential benefits, we recommend Ofcom actively considers the possible implications of putting its Revised EU Framework Directive Article 12 powers to use, by undertaking an Impact Assessment of doing so, including an open public consultation. Of course, some of Ofcom's existing remedies in the broadband markets may be rendered ineffective or incoherent by implementing these powers. In consulting on their use, therefore, Ofcom should make positive proposals for how these issues would be overcome. (Para 236)

These are recommendations that are for Ofcom respond to, should they believe it to be necessary. It would be inappropriate for Government to comment.

Recommendation

Ofcom should consider employing its Article 12 powers to oblige infrastructure owners to provide open access to dark fibre at the level of the cabinet, and active and passive access, together with rights to install and co-locate active equipment on relevant links at the level of the exchanges and other nodes. (Para 243)

This is a recommendation for Ofcom to respond to, should they believe it to be necessary. It would be inappropriate for Government to comment.

Recommendation

296. We urge the industry to work to ensure there is an organisation with the capacity to act as an intermediary between an array of separate network providers and larger-scale ISPs. We note that the existence and effectiveness of such an organisation would be vital to the success of an open access fibreoptic hub model. (Para 248)

The Government notes the Committee's recommendation for industry, and is aware that this is a model that some in the industry have been looking to pursue. We look forward to developments in this area.

Recommendation

297. The Government should consider, not least in light of the EU Commission's current consultation and the issues this raises concerning open access to dark fibre as a condition of State Aid, what the implications might be for broadband policy of a new 'house with a tail' model emerging in which the property owner becomes responsible for the construction and maintenance of their own final drop. (Para 250)

Whilst we recognise that this model has had some success in other European countries, most notably Sweden and the Netherlands in more urban areas, the Government does not believe that this model would be appropriate at this time, particularly given the complexities in accessing appropriate levels of finance in the housing market. In the more rural and remote areas of the UK, it is likely that the cost would be prohibitive for most householders. There would also need to be some work on interoperability and interconnections to ensure there would be sufficient number of service providers that would be willing to offer services over such a network built in this way.

Recommendation

298. We recommend that consideration should be given over time by the Government, Ofcom and the industry as to when and under what conditions fibre switchover would be appropriate and what implications it would have. (Para 252)

The Government does not believe that a move towards a fibre switchover at this point would be useful. The superfast broadband market is still developing and is likely to consist of a mix of technologies providing services depending on topography in the short-medium term. It is unlikely that coverage of a fibre only network will have reached sufficient coverage across the UK in the near future to allow such a switchover. At such time that this may be a reality, it will be important for Government, industry and the regulator to work together to consider the implications of such a move, as the Committee has suggested.



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