

DIGITAL COMMUNICATIONS INFRASTRUCTURE STRATEGY CONSULTATION: RESPONSE FROM THE MOBILE OPERATORS ASSOCIATION

1. INTRODUCTION

1.1 The Mobile Operators Association (MOA) represents the four UK mobile network operators – EE (including Orange and T-Mobile), Telefónica UK, Three UK, and Vodafone – on radio frequency, health and safety, and related town planning issues associated with the use of mobile phone technology.

1.2 We very much welcome the fact that the Government is consulting on this issue, because we agree with the comment in the consultation paper that “remaining competitive internationally is a key issue for the UK and a world class digital infrastructure is an important component of that competitiveness”. A number of the issues contained in the paper and a number of the specific consultation questions are outwith our remit, and we have not, therefore, sought to answer each and every question in the paper.

1.3 The rest of this response covers:

- Section 2 – General comments
- Section 3 - Answers to certain specific questions in the consultation paper

2. GENERAL COMMENTS

We welcome the fact that the consultation paper acknowledges that digital communications infrastructure is vital to the wider economy; that the mobile industry had delivered excellent coverage and lower prices than the EU average; and that the current climate for further investment is challenging. Government can influence the investment climate to incentivise further infrastructure deployment; and it has a number of policy and regulatory levers to do so. It needs to use these to ensure that investment happens and economy and society enjoy the benefits of enhanced digital connectivity.

We welcome the recognition in the consultation paper that “if the UK is to remain a leading digital economy it needs the right digital communications infrastructure in place to meet user demand, support economic growth, build a digital society and allow new technology to flourish.” We would merely add that, in the twenty-first century, an economy that is not a leading *digital* economy will not be a leading economy, period.

We note also that, at paragraphs 5.3-5.5, the consultation paper quotes the view of the World Economic Forum that “current industry economics constrain investment in telecommunications infrastructure”; and goes on that “Europe’s digital health requires many things, but without infrastructure investment, it is difficult to see rapid digital growth taking

off”; and that “low investment in telecommunications puts at risk not only future consumer benefits but also the [European] region’s overall competitiveness.”

At the same time, we welcome the fact that the consultation paper acknowledges that the UK has a “competitive mobile telecommunications market with extensive indoor and outdoor 4G services being rolled out to 98% of the population by 2017 at the latest”. This has, of course been achieved to date almost entirely by the private sector. It has done so while ensuring that UK consumers enjoy consistently cheaper mobile broadband prices than the EU average. We note, too, that the paper acknowledges that the “industry faces continued requirements to invest against a backdrop of flat-lining or declining revenues in voice and messaging services and newer services proving hard to monetise.”

Factors such as technology, physical geography, and population density – all of which affect the economics of infrastructure investment - are largely outwith Government’s control. However, Government policy and regulation to encourage digital infrastructure investment must be seen in the above context, because Government does have a number of policy levers at its disposal that can encourage such investment.

Amongst these policy levers is appropriate reform of the Electronic Communications Code. We welcome the fact that the consultation paper acknowledges that: “stakeholders have emphasised...the importance of the Electronic Communications Code, which has applied since 1984”. While the acknowledgement is welcome, we would reiterate our disappointment that there has been no progress on reforming the Code, despite the law Commission having reported some nineteen months ago. Mobile operators regard it as vital that existing disincentives to investment – especially in the form of ransom rents in excess of alternative use value – are removed. This applies generally, but is a particularly acute problem in rural areas where there may be limited alternative sites available from a technical, i.e. radio planning, standpoint.

Nor do we believe that the business rating systems throughout the UK are fit for purpose as far as they apply to telecoms. Business rates account for a significant proportion of operating costs for mobile telecommunications base stations – circa 20-25% for ground-based masts, rising to circa 37-38% for small cells. This is a significant barrier to infrastructure deployment, and we believe a wholly different approach that is easier to administer is required. Rather than the current, complex structure, we would prefer to see a far simpler approach, such as a flat rate assessment for sites of a particular type, regardless of the precise detail of what equipment is installed on each individual type.

Many aspects of the current system fail to incentivise digital infrastructure deployment; fail to promote growth, especially in rural areas; distort the market as between different types of telecommunications provider; and place disproportionate burden on certain types of installation. In particular, the current system:

- Fails to support the deployment of telecommunications equipment that is essential to the promotion of economic growth, because it discourages investment by making the level of future rates bills unpredictable.
- Does not reflect changes in technology.
- Runs counter to the encouragement of site sharing, even though this is expressly encouraged in planning policy and regulation.
- Places a disproportionate burden on small cell and Wi-Fi installations.
- Distorts the market through differential treatment of different telecommunications providers.

Planning policy and regulation also remains a barrier to telecoms infrastructure deployment. We welcomed the extensions of Permitted Development Rights that came into force in Northern Ireland in spring 2013, in England in summer 2013, and in Scotland in summer 2014, though in each case, we would have preferred a greater degree of reform. We also welcomed the Welsh Assembly Government's 2013 consultation on this issue, and look forward to the outcome.

Mobile operators also face relatively high costs for backhaul and for electricity, which also act as a barrier to rollout, especially in rural areas.

Local authorities and local communities can also do more to promote connectivity, by helping identify suitable sites, and making their own property available. However, a minority of local planning authorities have actively hindered the deployment of telecoms infrastructure: A number continue to refuse allowing base stations on their own land or buildings, despite this being contrary to national planning policy.

3. ANSWERS TO SPECIFIC QUESTIONS IN THE CONSULTATION PAPER

Q4 Is an ongoing disparity of broadband services inevitable? If so, should this be addressed and how might this be done most effectively?

Despite the very widespread availability of mobile broadband noted in the paper (i.e. 98% of the population having indoor 4G services by the end of 2017) it is unlikely that market forces alone will be able to provide coverage in the remotest rural areas of the UK where there is very low population density – hence the need for the Mobile Infrastructure Project. A disparity in broadband services is likely to exacerbate the rural/urban divide, compounding the difficulty such areas already face as a result of poorer physical transport links. This could be mitigated by Government introducing appropriate reform of the Electronic Communications Code, reducing the burden of business rates in such areas, and addressing the relatively high costs for backhaul and for electricity, which also act as a barrier to rollout, especially in rural areas.

Q25 Which current or draft legislation might prevent or facilitate the emergence of any of the scenarios?

As outlined above, failure to undertake appropriate reform of the Electronic Communications Code, reduce the burden of business rates, or address the relatively high costs for backhaul and for electricity will tend to prevent the emergence of all of the scenarios, by acting as a barrier to rollout.

In a later section of the consultation paper (Section 4) we note the widely-held view that much of the expansion of mobile networks and/or Wi-Fi to cope with increased demand for data traffic in urban areas is likely to require the use of small or pico cell infrastructure utilising buildings or street furniture. Business rates represent a particular barrier to the deployment of small cells, because although rateable values for small cells are lower in absolute terms they represent a much higher proportion of operating costs than for macro cellular sites. Typically, business rates comprise circa 20-25% of operating expenditure for macro sites, but circa 37-38% of operating expenditure for small cell sites¹. We have

¹ As an illustrative example, see Table 3.3 in Economic Impacts of Mobile Communications in Scotland - <http://www.scotland.gov.uk/Publications/2014/03/6913>

addressed this issue in more detail in our response to The HMT discussion paper on the Administration of Business Rates in England, issued in April this year. If this issue is not addressed, it will hamper the deployment of small cell technologies and hence will restrict connectivity.

Q35 Are there any changes to legislation other than the Communications Act 2003 that would incentivise the provision of communications infrastructure?

Paragraph 4.36 of the consultation paper refers to the extension to Permitted Development Rights for mobile telecommunications that came into force in August 2013, in England. The new regulations were welcome, will have eased the rollout of 4G services, and represented a move in the right direction. However, we believe that the reforms did not go nearly far enough, in particular in relation to PD Rights for new ground-based masts. Taller masts will provide greater coverage. And while much of the work to roll out 4G superfast mobile broadband is focussing on upgrading existing infrastructure, some new sites will be needed, but the planning system does not sufficiently facilitate this. New sites will be needed primarily for four reasons.

- First, some new sites will be needed in rural areas, to provide coverage for example in delivering the Government's Mobile Infrastructure Project (MIP).
- Secondly, some new sites will always be needed to replace existing sites where an existing base station is no longer available. This may occur when the land or structure on which a base station is sited is being redeveloped, for example, and the mobile operator receives a notice to quit the site. In such circumstances, a new site will be needed to maintain services to customers in the area. In addition, all existing infrastructure will eventually become redundant due to age and will need replacing.
- Thirdly, some new sites may also be needed as part of the consolidation of networks, where existing sites are removed and consolidated onto a single new structure. Generally, rather than increasing the number of sites over the past few years, mobile operators have been or are in the process of such network consolidation. Where they have already done so, this has resulted in a reduction in the number of their sites by up to 30%.
- Finally, in urban areas, some new sites will be required to increase network capacity. Many of the new urban sites are likely to be street works installations, or small cells, such as those mounted on the front of buildings. Fewer would be large, free-standing 'masts'. In recent years, because of the rapid uptake of smartphones and other Internet-enabled mobile devices, the greatest growth in traffic on mobile networks has been in data, i.e. Internet activity, rather than in text or voice traffic, and the former requires much more capacity than the latter. The number of additional ground-based base stations that might be required depends on how many consumers take up 4G services, and how quickly. If consumer demand is slow to rise, fewer new sites will be needed. However, if consumer demand increases more rapidly, it is vital that the planning system does not prevent operators from responding to such demand.

Planning policy and regulation will thus remain a barrier to telecoms infrastructure deployment, both in the short term and also over the timeframe covered by the consultation paper.

We noted the statement in paragraph 4.36 of the consultation paper that the "Department of Communities and Local Government is consolidating existing permitted rights, including the new freedoms introduced in 2013 for fixed and mobile telecommunications operators, with

new regulations in place by April 2015". A consolidation of Part 24 of the General Permitted Development Order (Development By Telecommunications Code System Operators) was originally announced by DCLG in October 2013, as part of the 'Red Tape Challenge'. We welcomed that announcement, as Part 24 has been amended several times, and it is widely regarded as lacking clarity by planning officers and developers alike, and the MOA agreed to work with officials and with representatives of the Planning Officers Society to help draft the new consolidated order. However, we were disappointed to be informed, in March 2014, that work on the consolidation of Part 24 had effectively been 'put on the back burner', due to other priorities within DCLG. Recent contact with DCLG indicates that this position has not changed. We remain of the view that clarification and consolidation of Part 24 of the GPDO should go ahead. While welcome, such consolidation would not, as we understand it, entail any new Permitted Development Rights, such as those for new masts referred to above.

We agree, too, with the suggestion in paragraph 4.37 that some public sector sites should be made available at low rentals on an open access basis to encourage the further rollout of networks and infrastructure upgrades.

As outlined above, we also believe that many aspects of the current business rating system fail to incentivise digital infrastructure deployment; fail to promote growth, especially in rural areas; distort the market as between different types of telecommunications provider; and place disproportionate burden on certain types of installation. We have responded in detail on this issue to the HMT review of the administration of business rates mentioned in paragraph 4.38 of the paper.

Q43. What role might local bodies in have facilitating the future delivery of digital communications infrastructure?

Local authorities and other local bodies can help to promote connectivity, by helping operators to identify suitable sites for telecommunications infrastructure, and making their own property available for such sites, examples of which are cited at paragraph 5.35 of the consultation paper. Local planning authorities can also help by entering into meaningful pre-application discussion with telecoms operators wishing to deploy infrastructure, and many are happy to do so. However, a minority of local planning authorities have actively hindered the deployment of telecoms infrastructure. A number continue to refuse allowing base stations on their own land or buildings, despite this being contrary to national planning policy; others appear regularly to turn down telecoms planning applications against officer advice; while some charge excessive fees for pre-application discussion.

Q44 How can councils maximise the digital communications infrastructure in their local area to support their work on economic regeneration?

Please see our response to Q43.