



EE Consultation Response to DCMS Digital Communications Infrastructure Strategy

EE Submission

October 2014

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About EE

EE is the largest and most advanced digital communications company in Britain, delivering mobile and fixed communications services to consumers, businesses, government and the wholesale market. EE has approximately 15,000 employees and 520 retail stores, and serves more than 30 million customers across its mobile, fixed and wholesale businesses. Today we employ more than 500 apprentices and plan to extend this to 1300 apprentices by the end of 2015.

EE runs the UK's biggest, fastest and most reliable mobile network, pioneering the UK's first superfast 4G mobile service in October 2012. EE's 4G coverage today reaches more than 70% of the UK population, whilst 2G coverage reaches 99% of the population and 3G reaches 98%. EE's superfast fibre broadband service covers 54% of the UK population, and ADSL broadband service covers 98.7% of the population.

In August 2014 the independent network analysts Rootmetrics named EE as the number one overall mobile network in the UK for the second time, following comprehensive independent testing. Rootmetrics' study is the most thorough independent, customer-centric mobile network testing ever undertaken in the UK, with the findings used to underpin a recent call quality report from Ofcom.

The awards follow EE's announcement that it is investing more than £275 million during 2014 in making phone calls better for consumers, through a comprehensive upgrade of 2G equipment, increased capacity on 3G sites to support 50% more calls and trials of services including 4G voice (VoLTE) and WiFi calling. EE has also recently emphasised its focus on improving coverage in rural areas by bringing EE 4G to 3.5 million additional people across more than 2,500 villages and small towns.

General comments

As a telecommunications provider we welcome the opportunity to comment on this strategy paper and the acknowledgement by government of the importance of digital communications infrastructure to the long term economic growth and job creation in the UK. Even looking at the economic impact of mobile networks in isolation a modern infrastructure is important. Capital Economics for example has, stated that “existing literature suggests that the total consumer surplus of mobile broadband was £7½ billion in 2013, [and] the introduction of 4G LTE services could readily increase this benefit by £2 billion per annum.”¹

However, whilst the UK mobile industry has delivered excellent coverage and lower prices than the EU average, the current climate does not encourage medium-long term investment.

In their response to the government’s strategy document the Mobile Operators Association (MOA) noted that “Government can influence the ...climate to incentivise ...infrastructure deployment, and it has a number of policy and regulatory levers to do so, whilst adding 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.” EE contributed to both the MOA and Broadband Stakeholder Group (BSG) responses to this consultation, and share their view that a strong digital economy is an integral part to a successful 21st Century economy.

Government holds several policy levers that can influence the roll out of communication networks in the UK. These levers include timely and relevant reform of the Electronic Communications Code to support the upgrading of current equipment to the latest technology in rural communities, the introduction of a business rates regime that facilitates investment in small cell technology and ensuring that the Telecoms Single Market package that is currently being negotiated in Brussels does not undermine incentives to invest and innovate. These public policy issues are key to supporting further investment in network connectivity that will then support the delivery of innovative new services.

¹ 2014 Capital Economics paper for EE on Mobile Networks and the UK Economy

Answers to Specific Questions

Q2. What potential opportunities are there for Government to leverage its combined buying power to support policy objectives?

As para 1.18 noted “there are a number of significant public sector networks, or networks serving the public sector... [with] the Emergency Service Mobile Communications Programme [replacing] the current network provision from 2016.” Issues such as population coverage and network reliability are at the heart of these government programmes, and so whilst government is a purchaser of services it should also create clarity within government for regulatory reform to the Electronic Communications Code (ECC).

More broadly, the government’s commitment to open up the procurement process for the provision of goods and services to central government should, in the telecoms space, lead to a revolution in how government services are designed and offered whilst also helping improve productivity amongst the public sector. The use of mobile telephony brings with it substantial economic benefits. It increases productivity by permitting greater and easier communication between consumers and businesses, facilitating greater mobility for consumers and workers, and improving the efficient use of time.

In work for EE Capital Economic have estimated that 4G LTE could eventually deliver productivity gains worth 0.5 – 0.7 per cent of gross domestic product – a gain that if seen in the public sector would lead to a step change in the efficiency of public services.

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

Whilst EE is on course to provide 4G coverage to 98% of the UK population by the end of 2015, as the Mobile Operators Association noted in its response to this consultation “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.” In recognition of this, the current government introduced the Mobile Infrastructure Project and committed £150 million of tax payers money to provide coverage in rural not spots, alongside continuing the previous government’s commitment to roll out fixed broadband via BDUK. However, the success of such projects will be dependent on the reform of the Electronic Communications Code, reducing the burden from business rates and reducing the cost of backhaul from fixed incumbents. If these areas are not reformed there is risk that the current disparity between the availability of broadband services in urban areas over rural areas will continue and lead to a greater digital divide.

Q6. Which countries should be our benchmarks on communications infrastructure to ensure that businesses remain in the UK and continue to invest?

Whilst league tables are important, it is important not to become distracted by where a country places as rankings do not always take account of local conditions. As the Broadband Stakeholder Group, of which EE is a member, commented in their submission “the Government must be not careful not to become beholden to league tables. Rather, it should seek to ensure that the UK’s own market operates as efficiently as possible – it may be that we have a lower average speed than elsewhere but this is not unduly concerning if the market is operating efficiently.”

Q24. Do you expect commercial providers to deliver future infrastructure and meet demand on a purely commercial basis, or is some form of public intervention likely? If public intervention is likely how might that work with the commercial provision of infrastructure? What form might that intervention take?

As the consultation has recognised the communications sector has seen a sustained decline in revenues over the last 5 years, with the result that the level of return on investment unsustainable over the medium to long term. To deliver the scale of investment required to both maintain existing networks, complete the roll out of 4G, and then bring forward the next technology to UK businesses and consumers will require substantial investment.

Against this background EE believes that one of the challenges faced by communication providers is the lack of regulatory certainty or policy stability. Investment decisions by global businesses are driven by the rate of return on capital employed, which in turn is impacted by the regulatory regime.

In 2003 the European Telecoms Framework was transposed into UK law via the Communications Act. This act brought together a number of previously disparate organisations and created the UK’s National Regulatory Authority, Ofcom. The Framework was delivered in the UK by Ofcom and this created certainty for all communications companies on the environment in which they operated. The overall outcome was that by 2013 the UK had one of the most competitive communications markets in the world and Ofcom’s Annual Communications Market Report highlighted that in real terms the average bundle of communications goods were 50% cheaper than a decade earlier. Today, EE and other communications companies, face regulatory or legislative proposals from:

- the European Commission outside the Framework which are then amended by the European Parliament – for example, the most recent Telecoms Single Market Proposals (TSM)
- the UK Government – for example the Telecoms Consumer Action Plan (TCAP) or the National Roaming proposals from the current DCMS Secretary of State

- the UK Parliament – for example the child safety measures proposed by Claire Perry MP and championed by the Mother's Union

As a result of now facing regulatory pressures from three different arenas it is difficult for EE to plan long term investments.

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

The UK mobile telecoms sector currently faces pressure in the UK from an unreformed Electronic Communications Code, on-going uncertainty around the outcome of the Annual Licence Fee consultation and discussions with Ofcom on Passive Infrastructure Sharing. At the EU level the impact of the Telecoms Single Market / Connected Continent proposals could be far ranging, in particular with the focus now on abolishing roaming by 2016 and a legislative approach to Net Neutrality. This regulatory and legislative uncertainty could undermine investment decisions and thereby setback the further investment and roll out in high-speed mobile broadband.

Mobile

Whilst we do not have a view on the broadcast or home scenarios it is important to note that total traffic over our mobile network has grown by 66%² in the last year and we are expecting total traffic over our network to continue to grow in the years ahead. This growth in traffic will be accompanied by a shift in the debate away from population coverage – the most recent spectrum auction included a 98% population coverage obligation by 2017 – to geographic coverage considerations. The current government has focused on improving mobile coverage on the UK's trunk road and rail network, and with the development of the internet of things users will demand ever greater levels of connectivity whether they are at home, at work or out in the country. To deliver this connectivity will require large scale investment and a regulatory regime that encourages Passive Infrastructure Sharing and delivers a reformed ECC and a sensible settlement to the Annual Licence Fee discussions currently underway.

Q27 How might efficient investment in communications infrastructure be supported, for example, by changes in the regulatory framework?

As mentioned previously in our response regulatory and policy stability are key to supporting and delivering investment in communications infrastructure. We welcome Ofcom's intention to consider to facilitating easier Passive Infrastructure sharing through the Business Connectivity Market Review, and have responded to their consultation. To summarise our submission it is clear that passive remedies such as Local Loop Unbundling have transformed the residential broadband market and driven competition and take-up. In our view the ability to access or lease ducts and dark fibre capacity from Openreach for the purposes of businesses connectivity is likely to provide substantial long

² EE Mobile Living Index, August 2014

term benefits for consumer in the UK through increased competition and innovation.

Q28 Are there any further measures necessary to incentivise the rollout of future mobile infrastructure in currently underserved areas?

Ofcom's annual Communications Market reviews³ have highlighted the competitive nature of the UK communications sector, and how the pricing of an average mobile bundle has halved over the last decade making it ever easier for UK citizens to get online. At the same time the UK saw the roll out of 3G mobile services in the mid 2000s, and since our launch of 4G in 2012 the roll out of high speed mobile 4G. UK government policy has continued to support the roll out of fixed and mobile broadband, with over £2 billion of tax payer money committed to roll out fibre broadband and improve mobile coverage in the final 10%.

Business Rates

The Department of Business and HM Treasury are currently reviewing the Business Rates Regime. EE would like to see a regime that encouraged site sharing amongst the different mobile networks and the deployment of non-macro cell solutions to further coverage.

Business rates are charged on most non-domestic properties, including commercial. EE pays business rates on its offices, shops and network installations such as mobile phone masts and street cabinets. The Valuation Office (VOA) is responsible for setting business rates in England and Wales, whilst the Land Property Service in Northern Ireland and the local assessor in Scotland have a similar role. Billing and collection is the responsibility of local authorities who are funded by the tax, but receipts are pooled centrally by HM Treasury.

The Need for Change

The current business rates regime fails to support the deployment of telecommunications equipment that is essential to the promotion of economic growth and does not encourage site sharing. Whilst site sharing is expressly encouraged in planning policy and regulation, the current rate regime places a disproportionate burden on small cell and Wi-Fi installations. Finally, the current regime distorts the market through differential treatment of different telecommunications providers.

Proposed Avenues for Reform

EE would like to see a reformed Business Rate regime that:

- Encouraged site sharing
- Rated small cell and Wi-Fi installations at reduced or zero rate to encourage further investment
- Applied the same charging regime to all fibre installations

³ http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr14/UK_5.pdf

These changes would help facilitate network investment and roll out in both urban and rural communities.

Alongside a reform Business Rate regime there are two key policy areas which require further government intervention if the UK is to gain the infrastructure needed to support a knowledge economy: reform of the Electronic Communications Code and more sustainable spectrum Annual Licence Fees.

Electronic Communications Code

The Electronic Communications Code (ECC) is over 30 years old and should be reformed to enable mobile networks to continue to invest in better mobile infrastructure, particularly in rural areas. The Code governs the rights of operators to access and maintain sites and has been under review since 2011. DCMS now needs to consider how to take forward these recommendations, which with a few amendments, would provide a modern legal system for mobile infrastructure.

Why it matters

Currently the Code offers no protection from unscrupulous landowners who have the power to discourage investment in areas which are, more often than not, already loss making. In 2011, the Law Commission started work on recommendations about how to make the Code fit for the 21st century, publishing its recommendations in February 2013.

By making a few small enhancements to the Law Commission's proposals, the Government has the chance to improve the case for investment in rural areas and promote the roll out of mobile services. A recent analysis commissioned by DCMS found that reform to the existing system would boost GDP, create jobs and reduce customer pricing.

DCMS is still considering the Law Commission's recommendations. We hope that the Government will see the Law Commission's work through and introduce legislation before the 2015 Election.

Specific reforms to the Electronic Communications Code

The following specific policy reforms would modernise the code and help improve the economic case for the rollout of mobile services in rural areas and provision of a critical piece of national infrastructure:

Reform	What	Why
Site-sharing	Ensure operators are able to share sites with other operators at a reasonable cost	This would improve competition and choice in partial not-spots
Upgrading	Ensure operators are able to upgrade sites on a frequency neutral basis, at no extra cost and with no reference to the visual impact of the upgrade	Gives customers access to the latest technology as soon as possible. Removing the visual reference also ensures that the legislation is technology neutral.
Site access	Ensure operators are always able to get immediate	Immediate access will allow operators to fix issues and

	access to their sites to maintain or repair them	restore service to customers as quickly as possible
Market value	Reform the definition of market value to ensure a fair price based on other uses of the land	Analysis for DCMS found that moving towards an energy market model could boost GDP by £500m, create jobs and reduce customer pricing. Rent reform would vastly improve the case for investing in rural areas and extend coverage.

Annual Licence Fees

Mobile airwaves are either bought or 'rented' from the Government by mobile network operators (MNOs). In 2013, MNOs collectively paid £65 million in rent for the use of 900 and 1800 MHz airwaves, used for 2G, 3G and 4G services. This payment is known as the spectrum Annual Licence Fee (ALF) and is a model commonly used across Europe.

The level of ALFs is overseen by DCMS and determined by Ofcom. The previous Government directed Ofcom to review the ALFs for radio spectrum that had previously been acquired to ensure that they reflect full market value based on the outcome of the most recent spectrum auction. In October 2013, Ofcom published a consultation on the fees and recommended a fourfold increase, from £65 million to £309 million pa. Following consideration of responses, Ofcom published a revised consultation in July 2014 which revised down the proposed increase to £247 million pa.

Even at this revised level, an increase on this scale would have a profound impact on all MNOs, with negative implications for economic growth, jobs and investment in mobile coverage, and may lead to higher consumer prices. The proposed increases in ALFs are excessive and risk undermining investment in the UK, and thereby harming the ability to create the infrastructure required to support future innovation and job creation.

Q31 Are there changes to the EU Framework that the UK might seek to encourage more competition in UK markets?

The 2002 EU Framework and its implementation into UK through the Communications Act 2003 provided a stable regulatory framework in which investment decisions could be made within a clear framework with clear route of appeal. This clear structure should be maintained, and where change is required then clear impact assessments and economic analysis should be conducted before changes are brought forward within a principles based framework.

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

As previously mentioned reform of the Electronic Communications Code, a sensible outcome to the Annual Licence Fee discussions and a revised Business Rates regime would incentivise further investment in upgrading existing equipment and rolling out new technologies, such as 4G.