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Which? Response to the Statement of Strategic Priorities for telecommunications, the management of radio spectrum and postal services

Summary

In today's world, there is a growing need for consumers to be connected wherever they are, with increasing reliance on both broadband and mobile connectivity. However consumers' ability to access the connectivity they need, and engage with the market, is often not as easy as it should be.

We welcome the publication of this draft Strategic Statement of Priorities (SSP), which Ofcom must have regard to when exercising its regulatory functions. While we welcome the proposals we are concerned that these appear to be largely incremental and are not centred on what consumers need in terms of connectivity.

It is essential that government and Ofcom's policy priorities in this area are aligned to ensure there is a joined up approach to the key issues and a shared future vision for the sector. We believe that there needs to be an overarching vision and strategy for connectivity as a whole (i.e. for broadband and mobile) which is shared by Government, Ofcom and industry. The strategy must take full consideration of consumers' needs and must be published and written in a clear and transparent way to enable stakeholders and consumers to easily understand it and judge the quality of the plans.

On the whole, Which? agrees with the strategic priorities identified in the Statement. We believe that these should go some way to address a number of issues relating to the consumer experience in this market. However, in some areas of the SSP, the government has not gone far enough in providing sufficient clarity:

- **Mobile Coverage:** Coverage obligations are a key lever to improve coverage but Ofcom's current proposals do not go far enough - additional measures are required. We agree the costs and benefits of rural roaming should be considered. However, this is only one alternative option, and will only help in partial not-spots. **Government must work with Ofcom and the industry to promptly publish a clear plan**, setting out the steps that will be taken by each party, timescales and milestones to ensure the Government's ambition of 95% geographic mobile coverage by 2022 is achieved. The plan must make clear that coverage must be delivered using 4G technology.
- **Broadband Coverage:** There must be clarity on **how the broadband Universal Service Obligation (USO) will work alongside other policy priorities**, particularly the 'outside-in' strategy for full-fibre delivery. This must also be communicated to those consumers who are able to obtain a broadband connection through the USO.

- **Data Portability:** Which? agrees that consumers must have the right data, information and support to aid their engagement in the sector. However, **research must be undertaken to better understand consumers' attitudes towards and awareness of data portability to ensure consumers are able to fully benefit from it.** Ofcom must continue to find opportunities, such as the Boost Your Broadband campaign, to provide consumers with information about the best type of connection for their needs.
- **Switching:** we agree that **switching across the telecoms sector must be Gaining Provider Led (GPL).** The switching process must be made as easy as possible for consumers. This issue will be particularly important given that full fibre connections will be delivered by competing infrastructure providers. Ofcom must set out a timeline for implementation.
- **Performance Scorecard:** We agree that the quality of service must be improved in the telecommunications sector. The proposed performance scorecard could be useful in achieving this by giving the necessary information to consumers. However careful consideration needs to be given to ensure the metrics are relevant. These must be based on research and accurately reflect the key factors that influence consumer decisions in the telecommunications sector.

Introduction

Which? welcomes the opportunity to respond to the draft SSP for telecommunications, the management of radio spectrum and postal services. Despite consumers' increasing reliance on both broadband and mobile connectivity we know that across the UK they can struggle to access good quality connections. As well as causing frustration, poor connections lead to social exclusion - missing out on contact with family and friends, feelings of isolation and fears over safety.

“a small area of our estate where we live is called a black area for signal...people often call me and can't get through” [Which? Conversation participant]¹

It is critical that our infrastructure improves to ensure that nobody, regardless of where they live, work or travel, is excluded from the opportunities a connected world brings.

We are broadly supportive of the priorities identified in the SSP. However, while we welcome the proposals, we are concerned that these appear to be largely incremental and are not centred on what consumers need in terms of connectivity.

It is essential that government and Ofcom's policy priorities in this area are aligned to ensure there is a joined up approach to the key issues and a shared future vision for the sector. We believe that there needs to be an overarching vision and strategy for connectivity as a whole (i.e. for broadband and mobile) which is shared by Government, Ofcom and industry. The strategy must take full consideration of consumers' needs and must be published and written in a clear and transparent way to enable stakeholders and consumers to easily understand it and judge the quality of the plans.

¹ <https://conversation.which.co.uk/technology/mobile-phone-coverage-service-ofcom/#>

Clarity must be provided on how the various initiatives will interact and work alongside each other. For example, at present there is little clarity as to the specific actions government and Ofcom will take to ensure alignment between the roll-out of the Universal Service Obligation (USO) and the outside-in approach to the delivery of full fibre. As part of this strategy, clarity must also be provided on where it is for Ofcom to take action and where it is for government.

Additionally we do not believe that the SSP provides sufficient detail in some areas. In particular, how the government's commitment to extend mobile coverage to 95% of the UK's geography by 2022 will be delivered, and what technology it will be delivered with e.g 4G. Without a cohesive strategy, in which roles, responsibilities and timescales are clearly defined, consumers will continue to lose out on the benefits that good quality connections bring.

In the rest of our response we consider the details of the priorities for mobile and broadband connections, before addressing the cross-cutting priorities for the sector.

Mobile

Government must publish a clear plan on how it will deliver its commitment of 95% geographic mobile coverage by 2022

Mobile phones are an increasingly important part of people's everyday lives. Lack of a good quality mobile connection has a negative impact on consumers and causes both social and economic exclusion.

In 2017 government stated its ambition of achieving 95% geographic mobile coverage across the UK by 2022. However, it has not set out how it will deliver this. Government must work with Ofcom and industry to set out a clear plan, without delay, of the steps that will be taken to achieve this ambition.

There is also a major omission from this stated ambition in that government has not set out the quality measure to be attached to this coverage level. Which? believes that all consumers should have access to good quality (4G) mobile coverage from all operators wherever they live, work and travel.

Which? agrees with the government that the 700MHz spectrum auction is a vital opportunity to improve coverage across the UK, particularly in rural areas. However, Which? is concerned that Ofcom's proposals are overly cautious and have not given sufficient regard to the consumer perspective.² While we acknowledge that the spectrum auction and associated coverage obligations are only one part of the picture to delivering improvements in mobile coverage, we consider that Ofcom should go further to make the most of this key opportunity. We have therefore called on Ofcom to reassess the design of the coverage obligation for the spectrum auction.

² <https://about-which.s3.amazonaws.com/policy/media/documents/5c911852e35fa-190312%20Which%20response%20to%20award%20of%20spectrum%20bands.pdf>

We note the advice that Ofcom provided to government in September 2018, setting out further measures to improve coverage beyond the coverage obligations.³ This included the option of rural roaming to improve coverage. We support the government asking Ofcom to consider the costs and benefits of rural roaming. However, we note that undertaking this assessment is not currently included in Ofcom's 'Proposed Annual Plan 2019/20'⁴ and therefore there is significant uncertainty as to when this work will be carried out. Government should be more specific on the timeline for this given the 2022 deadline.

If rural roaming is implemented, it will only be able to tackle partial not spots. Therefore, government and Ofcom must also assess the other options that Ofcom set out as ways to improve mobile coverage, as well as any other potential solutions that have since been identified. It is only by developing a clear plan, with detailed activities (including assessing each of the options available to improve coverage), timescales and milestones, that the ambition of 95% geographic coverage by 2022 can hope to be met.

More needs to be done to improve road and rail mobile coverage

We agree with government that mobile coverage on the road and rail networks should be a priority area. Coverage remains poor, and as the National Infrastructure Commission noted in 2016, "the railway network must rapidly improve connectivity".⁵ Three years on, action appears to have been limited, while the NIC called for the infrastructure to be in place on main rail routes by 2025. More needs to be done, and quickly, to ensure that this timeline can be met. Without a clear plan for coverage improvements, consumers will continue to lose out, with mobile coverage not meeting their needs or expectations.

Broadband

Better coverage and better quality broadband for consumers across the UK are issues that Which? has campaigned on for a number of years. We welcome the steps that have been taken to ensure wider coverage - such as through the BDUK programme and the broadband USO. We are also pleased that action has been taken to provide consumers with clearer information about their broadband choices, for example the updated broadband voluntary code and changes to the rules around advertising speeds.

There must be clarity for consumers over how the outside-in delivery of full fibre interacts with other policies such as the broadband USO

Which? welcomes the government's full-fibre ambition - for consumers across the UK to have access to gigabit capable connections by 2033. As part of this, we consider that the outside-in approach to deployment set out by the government is a key strategy to ensure that consumers in the most hard to reach parts of the UK are not left behind. However, we are concerned how this policy interacts with the broadband USO.

³ https://www.ofcom.org.uk/data/assets/pdf_file/0017/120455/advice-government-improving-mobile-coverage.pdf

⁴ <https://www.ofcom.org.uk/consultations-and-statements/category-1/annual-plan-2019-20>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577906/CONNECTED_FUTURE_ACCESSIBLE.pdf

Those consumers who are most likely to benefit from the outside-in strategy will more than likely overlap with those who are eligible for the broadband USO. Therefore, it is essential that as part of the USO implementation, Ofcom considers how to inform consumers that in the coming years they could be eligible to receive a gigabit connection through public subsidy. This will be particularly important in those cases where the cost of providing the USO connection exceeds the £3,400 cost threshold and the consumer has to choose whether to pay the excess costs to receive a connection. While some consumers may see the USO as a stop-gap, for others, particularly where they will incur costs themselves, they may prefer to wait to receive a connection through the government's outside-in funding approach. Government must ensure clarity on how the various initiatives will interact and work alongside each other in order to ensure a coherent and efficient approach.

Cross cutting issues in telecommunications

Which? welcomes the government's commitment to safeguarding the interests of telecoms consumers by ensuring they are better informed and protected. We broadly agree with the strategic priorities identified by government to address the challenges that consumers experience in navigating this market.

There is potential for data to lead to better consumer outcomes in the sector

Which? believes that Ofcom must make the most of the powers it was given through the Digital Economy Act 2017 to improve the availability of address-level data on broadband and mobile coverage. This will enable third parties to find new ways to engage consumers.

In addition, we agree that data portability holds great promise, but its potential is heavily influenced by consumer behaviour and concerns - for example in the banking sector, our research in September 2017 found that over half of the population say they are fairly or very unlikely to share their financial data, even if it meant that the products and services offered were more suited to them.

Ofcom must undertake consumer research to ensure that consumers are able to fully benefit from data portability, including through its use by third party intermediaries. Alongside privacy concerns and a lack of consumer awareness, security of their data is a key concern for consumers in relation to data portability. These key obstacles must be overcome if the wider benefits of data portability are to be realised.

Which? agrees that Ofcom should engage with the Smart Data review. This review must be informed by consumer research on both the current barriers to switching and consumer responses to new proposals. Alongside this, government must consider regulating to set common standards for data portability in key sectors, including telecoms, to ensure that innovative developers are not defeated by inconsistent approaches amongst incumbent companies.

More must be done to identify how best to engage consumers in the market

Which? agrees that Ofcom should give further consideration to how better data and information could benefit consumers, including those who are vulnerable. We partnered with

Ofcom on its 'Boost Your Broadband' campaign which aimed to educate consumers on the types of broadband products available to them and encourage upgrading to superfast products where appropriate for their needs. We consider that there are likely to be further opportunities to help consumers engage in this market including identifying what further information can help consumers make informed choices. We would welcome the chance to work with Ofcom again on this issue.

As part of encouraging consumer engagement, Ofcom must expedite its decision on end-of-contract and annual best tariff information. We believe that the proposed introduction of end-of-contract and annual best tariff notifications are an important step in helping to encourage consumer engagement.⁶

Switching should be Gaining Provider Led to make it easier for consumers

Which? agrees that the switching process is a priority area. For a number of years, Which? has been calling for Gaining Provider Led (GPL) switching across telecoms markets.⁷ We want to see switching made as easy and transparent as possible for consumers, both when switching across broadband infrastructure providers (i.e. cross platform switching), but also for triple play switching.

We welcomed the changes through the Digital Economy Act 2017 that made explicit Ofcom's power to introduce GPL switching across the telecoms market. Ofcom must now make use of this power. Furthermore, the new European Electronic Communications Code makes it clear that broadband switching should be GPL.

Given the ambition for rapid growth in full fibre broadband coverage over the next ten to fifteen years and the policy to have competing full fibre networks, GPL switching will become even more important to ensure ongoing investment in new infrastructure and effective competition. It is imperative that Ofcom looks again at GPL switching without delay and that it is properly implemented through regulation, rather than any form of voluntary arrangement with the providers.

Quality of service measures and information must be relevant and accessible to consumers

Ofcom's Quality of Service Reports are a valuable tool in understanding the experience consumers are having in the communications market. Which? welcomed the introduction of this report in 2017, hoping that it would encourage providers to improve service, as well as helping consumers to choose providers based service quality as well as price. Ofcom should review the metrics that are included in the report and ensure that it remains relevant and accessible to consumers.

We note the SSP also states that Ofcom should work with the UK Regulators Network to develop performance scorecards for the sector. As highlighted in our response to the

⁶ <https://about-which.s3.amazonaws.com/policy/media/documents/5c519576d752b-End%20of%20contract%20and%20annual%20best%20tariff%20information%20consultation.pdf>

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0026/58391/which.pdf

Modernising Consumer Markets Green Paper,⁸ we are concerned the proposals to publish performance data do not appear to be based on consumer research. Any data published should be done in an open way so that third parties such as ourselves can communicate it to consumers in the most useful and user-friendly ways. Performance data must also be based on consumer research into the key factors that influence consumer decisions in the sector.

Ofcom should take forward the Competition and Markets Authority's (CMA) recommendations in relation to the 'loyalty penalty'

Which? agrees with government and would like to see Ofcom taking forward the recommendations made by the CMA in its response to the super-complaint on the 'loyalty penalty' in relation to broadband and mobile. As we stated in our response⁹ to the CMA's investigation, we consider that intervention is warranted and necessary where price discrimination and lack of consumer engagement is the result of:

- companies making engagement unnecessarily difficult;
- vulnerable customers being unable to fully engage;
- companies exploiting consumers' behavioural biases; and/or
- consumers being unaware that company "loyalty" is not always rewarded with lower fees and charges.

These cases significantly reduce the extent to which markets deliver the full benefits of competition to consumers and they undermine trust in markets more generally.

Ofcom needs to tackle unfair practices in the Mobile Sector

Related to the 'loyalty penalty', Ofcom must take action on the issue of mobile handset charges. The current practice of continuing to charge for the handset after it has been paid off must come to an end.

Since 2014, Which? has been calling for transparent mobile handset charges on customer bills and for these charges to be dropped automatically when the handset is paid off. We only partly agree with government, that the 'ideal outcome' would be to 'move customers on bundled contracts onto fairer tariffs when their contract ends'. Instead, Which? believes the best approach for consumers is a combination of Ofcom's proposed reforms¹⁰:

- **Mandating further transparency measures**, with a clear breakdown of cost elements at the beginning and end of the customer's contract **and** as part of their monthly bills.
- **Handset charges must be automatically dropped** when the handset is paid off. This 'handset discount' approach has less risk of unintended consequences than the other options identified by Ofcom as 'fairer default tariffs' in its consultation.¹¹

⁸ <https://about-which.s3.amazonaws.com/policy/media/documents/5bdb769f19ad8-Which%20Consumer%20Green%20Paper%20consultation%20response%20FINAL.doc>

⁹ https://about-which.s3.amazonaws.com/policy/media/documents/5bc754f516126-CMA_sub_loyalty%20penalty_Which.pdf

¹⁰ [https://about-which.s3.amazonaws.com/policy/media/documents/5be2ff9f05237-5be2fb1a9f838-181105_Mobile%20Handsets%20Consultation_FINAL%20\(1\).pdf](https://about-which.s3.amazonaws.com/policy/media/documents/5be2ff9f05237-5be2fb1a9f838-181105_Mobile%20Handsets%20Consultation_FINAL%20(1).pdf)

¹¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0019/121708/consultation-consumers-mobile-handsets.pdf

We consider that these interventions will help consumers understand their current contract and the cost savings available if they switch, thereby making it easier for them to engage. It is crucial that Ofcom implements the remedies as soon as possible, so that consumers stop paying unfair charges.

Conclusion

Which? welcomes the publication of this SSP for telecommunications, the management of radio spectrum and postal services. Ensuring consumers have access to good quality connections at home, at work and when on the move is critical for enabling consumers to take advantage of the benefits a connected world brings.

On the whole, we agree with the priorities set out in the SSP. However, we are concerned that these appear to be largely incremental and are not centred on what consumers need in terms of connectivity. Successful delivery of improved connectivity for consumers will require absolute clarity of roles and responsibilities between government and Ofcom. It is essential that government and Ofcom's policy priorities in this area are aligned and there must be an overarching vision and strategy for connectivity as a whole (i.e. for broadband and mobile) which is shared by Government, Ofcom and industry. The strategy must take full consideration of consumers' needs and must be published and written in a clear and transparent way to enable stakeholders and consumers to easily understand it and judge the quality of the plans.

The SSP does not go far enough in outlining a comprehensive plan for how the differing initiatives will work effectively alongside each other to deliver good quality connections to consumers within a reasonable timescale. This is particularly true in the case of mobile coverage, where government have had a clear ambition to extend mobile coverage to 95% of the UK's geography by 2022 for some time. However, there is currently no overarching strategy for how that will be delivered, or ambition for the quality of that coverage. We therefore urge the government to work with Ofcom to set out a clear plan without delay.

We are supportive of the priorities set out to help further the interests of consumers. Which? believes that more must be done to help support consumer engagement in this sector. Access to better quality data could play a key role in this. Furthermore, Ofcom must introduce GPL switching in broadband, as this will make the process easier for consumers, as well as support the full-fibre switchover. We continue to welcome the opportunity to work with Ofcom to ensure that this market works well for consumers and are supportive of its proposals to date on issues such as mobile handset charges and end-of-contract notifications.

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