

**Consultation: “Statement of Strategic Priorities (‘SSP’) for telecommunications, the management of the radio spectrum, and postal services”**

**Response**

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**Summary**

Despite decades in the sector which included writing consultation responses regularly, I have never responded directly before. I do now because this document makes a hugely positive contribution to the sector, and I want to make clear my support for it. By not producing a “War and Peace” consultation and requesting brevity from respondents too – a very “inclusive” strategy from DCMS is clear. I feel my time is being respected and DCMS want to hear from me as a citizen. Ofcom should be encouraged to do the same (though I accept this is not always possible). Key observations are:

1. What does “Ofcom must have regard to,” mean (Ministerial forward at page 3) in practice, and how do we measure if “regard” has been had if not by evidence and actions? It is too early to know.
2. Concerning Ofcom’s “heavy-weight” consultations, which concluded on 12<sup>th</sup> March, will Ofcom now have regard to the SSP, and act to amend their 700MHz and 3.6-3.8GHz auction to note the requirement at paragraph 39 “**...to identify opportunities for spectrum sharing in the mobile bands and the extent to which spectrum sharing policies are increasing the utilisation of spectrum...**” throughout all the UK’s Nations by introducing Dynamic Spectrum Access? If they do not I see no way that the stated strategic priorities of geographic mobile coverage extension to 95% of the UK by 2022 and addressing not-spots, can be delivered, especially if litigation might be looming.
3. The focus on customer satisfaction and ongoing cyber measures is to be applauded.
4. It is not clear that Ofcom needs additional powers regarding “cyber compliance,” though this does not mean that the area is unimportant – simply that others already have it and industry need to act anyway to ensure their own survival.

We live in “interesting times.” The extent to which this SSP become part of Ofcom’s own strategy rather than just taken account of is unknown at this time. We are sailing in uncharted waters.

**Comments – Section 1**

The Government’s desire to proceed “*...at a pace,*” (paragraph 11) is applauded. On the evidence so far, the Government will need to intervene concerning spectrum policy. The “Outside in” approach (paragraph 13) must apply to spectrum as well as to fibre. In the remote rural areas being left behind the spectrum is typically fallow anyway, so its use generates both social and economic benefits otherwise denied by the current “inside out” auction model. I am not at all sure why I read this week of Vodafone’s consideration of legal action against Ofcom regarding the upcoming 700MHz auction. This can only cause pain and delay... but DSA could both boost Operator ARPU, make more efficient use of the spectrum (a Statutory duty arguably not being fulfilled without its use?), and sharply improve coverage quickly, the important policy goal everybody wants. Working together makes more sense.

Stable and Long-term Regulation combined with regulatory forbearance is essential (paragraph 22). I am at a loss to understand how Ofcom's plan to *manually* process every single 700MHz, and 3.6-3.8GHz request for fallow spectrum, in conjunction with the MNOs delivers such "forbearance." Neither does it seem appropriate because:

- 1 Fully automated DSA is perfectly possible, and rapidly deployable – especially in the remoter "outside in" regions in our Nations. Indeed, I note that the 5G Rural First DCMS project has as project partners the very spectrum database providers Ofcom itself uses.
- 2 The current structure of the 3.6-3.8GHz auction (Ofcom's clear intent stated in their consultation) ignores DSA. Ofcom do appear to be listening to feedback from voices like mine that DSA needs to be included – and a failure to do so in this band makes certain that mobile coverage won't be delivered to 95% of the UK by 2022. Today Ofcom accepts that somewhere between 72-74% of the geography of Scotland does not have adequate coverage – after 30+ years under the "business as usual" regulatory framework. With auctions not scheduled until the summer of 2020, and three years "exclusivity" for the auction winners, it will be the summer of 2023 already and the target set by Government missed... This is a reasonably foreseeable outcome and so best endeavours should be used by Ofcom to avoid it.
3. Change that does not damage the Mobile Network Operators ("MNO's") is possible. It is widely understood that additional investment given the uncertainties caused by BREXIT etc. will be difficult to obtain. Put bluntly, markets (and sub-markets) of exceptionally regulatorily complicated and capped revenue opportunity in our small Nations do not represent the most attractive return on capital for investors. I have some sympathy for MNO's.

To help MNO's, instead of offering them full control of all the spectrum they bid for (business as normal), why not simply exclude from the auction the remotest areas of the UK and allow sharing there – for example all islands in the UK of below a certain population thresh-hold? This would have the impact of increasing MNO Average Revenue per User ("ARPU") by saving them from building in areas they did not wish to build to anyway ("Outside-in zones"). Simple – and these remote areas are the easiest to organise from a DSA perspective too.

The consultation specifically stresses the importance of "regulatory forbearance" (paragraph 22). It is only discussed in relation to incentivise the roll-out of full fibre networks. In light of the comments above, it would seem appropriate in all areas – provided there is also a significant improvement in levels of customer satisfaction with the sector. Regulation is a poor surrogate for competition and can completely skew investment decisions.

Concerning the "outside in" approach, my concern is that it is already known, according to Ofcom's own data, that the average UK household is already using circa 20Mbps. There is ample evidence that the 10Mbps threshold is too low – a point suggested by the House of Lords during the original debate. This is supported by the original USO threshold – very soon 128Kbps became laughably obsolete. The same is already evident regarding 10Mbps. When looking over the period of years covered by this SSP, "decent broadband" is not 10Mbps.

Ofcom could address this simply by committing to review the "decent broadband" number every year and adjust it based on the findings of their own Annual Review until the point when the number does not increase for a period of 5 consecutive years, and such a request to them could potentially form part of any SSP. This will keep our networks both "economically capable and socially acceptable," yet involve nobody in significant amounts of additional work. In a Gigabit society it is not difficult to increase speeds from such a low base. This all helps to keep the pressure up to

achieve the longer term aim of gigabit capable and bottleneck free networks by 2033. The notion of a Gigabit capable network that is not also bottleneck free is pointless.

My particular interest is in mobile and 5G connectivity. For the reasons already set out above I do not believe it is possible for geographic mobile coverage to be extended to cover 95% of the UK by 2022. If we are to avoid “not-spots” and geographic unfairness between the Nations of the UK it would also be better to make the target 95% of each of the UK’s Nations, and include a statement to this effect in the SSP.

The statement (paragraph 30) ***“the Government believes that the 700MHz spectrum, which Ofcom has proposed auctioning on a combinatorial basis with the 3.6-3.8GHz spectrum presents a vital opportunity to materially improve mobile coverage across the UK, particularly in rural areas and on the UK’s major roads – and this should be the key priority of the auction.”*** The method of a “traditional” auction as Ofcom currently propose cannot achieve this aim in time for 2022 for the reasons already set out.

On the evidence (and I have been directly involved) I believe Ofcom should be given credit for listening, even before their consultation period closed. However, the real test will be if Ofcom actually take any action and change their plans. There is (as yet) no evidence they intend to, as they seem to believe that 3.6GHz-3.8GHz sharing is not important. Perhaps this SSP will change their minds? Certainly, if the Government’s aspiration is for the UK to be a world leader in 5G, this cannot be achieved without DSA in the band – not Ofcom’s current plan.

Even if this is only limited to the UK’s smaller islands, what has the UK to lose by exploiting a technology that maximises spectrum utilisation in remoter areas in particular? This is entirely in line with paragraph 35 (the Government desire “...to maximise the economic and social value for the UK from its (spectrum’s) use,” and 36, the need for shared spectrum as a “strategic priority.” The notion that Ofcom should report on opportunities for spectrum sharing in the mobile bands “as a minimum” on a geographic basis (set out in paragraph 39), would certainly help – and there is no reason why this should not begin with the 3.6-3.8GHz band since the licence conditions could easily be altered (now) to accommodate both sharing (and even reporting) since they have yet to be released.

## **Comments – Section 2**

There are some reasons for concern at customer satisfaction levels. Coverage is at least partly responsible for this – so the kinds of change I suggest in my response to Section 1 could go far to improving satisfaction levels since they are “Coverage enhancing.” With this come a whole host of additional economic, environmental, congestion reduction, and social benefits to some of our most deprived rural areas.

As DCMS note at the end of Section 1, we are moving to a blurring between fixed and mobile networks and old thinking, including spectrum thinking, has no place in the new world to come. We could well see new “micro operators,” especially in the mmWave 5G bands – no MNO (or anyone) could afford to fund the kind of build programme needed for example, to provide Nation-wide network coverage at, say 26GHz – this would require somewhere in the order of 6 million sites. Though I accept this is not the way in which 26GHz would be ultimately deployed, the point that network densification will be needed and is essential - still stands.

DCMS's comments that ***“Ofcom should continue to take all opportunities to improve the customer experience in the telecoms sector, particularly for vulnerable customers, including those with disabilities,”*** (paragraph 59) should be particularly applauded. Though industry is leading much of the investment, Corporate Social Responsibility remains something that is important – and expected – by citizens.

### **Comments – Section 3**

The proposed T-BEST programme set out at paragraph 62 is a wise and sensible suggestion, for without trust our best endeavours to assume 5G leadership will be pointless. It remains unclear if Ofcom need additional powers to ensure compliance – for no company could in their right mind ignore this vital work anyway.

### **Comments – Section 4**

No comments regarding Postal Services.

### **Conclusions**

It is too early to know what impact this SSP will have and how matters will play out. If Ofcom does take due regard of the SSP then the first sign of this could well be the inclusion of spectrum sharing in the auctions being planned for the summer of 2020. On the evidence Ofcom are listening, but do not yet appear to be planning to alter their policy - yet. The effect of this would be the failure to meet one of the SSP's aims. Neither in fairness to Ofcom do they need to alter course yet as the consultation only ended on 12<sup>th</sup> March 2019.

Proposals regarding consumers and the need for cyber vigilance are fully supported.

We live in interesting times...

**Response of: David Happy**

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