

ISPA response to DCMS's Statement of Strategic Priorities to Ofcom

1. About ISPA

ISPA welcomes the opportunity to respond to the Statement of Strategic Priorities (SSP) to Ofcom, particularly given the ongoing engagement of ISPA and its membership with DCMS and Ofcom on many of the issues raised.

ISPA is the trade association for providers of internet services in the UK, we have over 200 members, 90% of which are SMEs. Our members cover the whole spectrum of access provision using FTTP, FTTC, wireless, satellite and hybrid solutions at a wholesale and retail level, and all play a critical role in delivering broadband and internet services across the UK to consumers and businesses.

2. Introduction

Much of the content within the SSP from DCMS is welcomed by the industry and seen as a clear indication to push forward with the ambitions and policies within the Future Telecoms Infrastructure Review (FTIR). This is particularly welcome given little of this is reflected in Ofcom's Annual Plan 2019-20.

However, ISPA must express some concern at the risk of reducing the independent nature of Ofcom as the regulator. While it may be appropriate for the Government of the day to set out its high-level priorities, it should leave the analysis and implementation of policies to Ofcom, who should consider the evidence objectively. The independence of Ofcom underwrites a great deal of business and investor confidence which relies on long-term and stable regulation. It is important that this is not lost to short-term political considerations.

In relation to the content of the SSP, ISPA notes the wide-ranging asks from DCMS to Ofcom across infrastructure roll out and competition, consumer policy and cyber security. It is noted that when taken in the context of SSPs in other sectors this represents a much higher volume of priorities, many of which could conflict with one another. This can be seen in relation to the inherent trade-offs, for example, between promoting infrastructure competition and accepting the short-term impact on consumer pricing this could bring, whilst also advocating price caps for vulnerable consumers. This is compounded by a clear lack of prioritisation within the SSP.

ISPA would like to highlight areas where further engagement with industry would be beneficial to gain a better understanding of the market. This relates particularly to the Government's drive to ensure rural premises are included in the first stages of roll out and plans to further consider solutions to enable infrastructure switching.

Consumer outcomes are important to all of ISPA's members, and work is being done throughout the industry to protect the most vulnerable in particular. ISPA would further urge DCMS and Ofcom to consider their approach to consumer protection in a wider context, considering the performance of the industry in comparison to other markets such as the energy and water markets for example. Above all, Ofcom should work to ensure that all interventions and policy decisions are necessary and proportionate to target the consumers at risk of experiencing harm.

Finally, as the industry moves forward, clarity is particularly important and ISPA outlines below where this is needed from Ofcom and DCMS, particularly in the cyber space where a cross regulatory working group could bring the many bodies together with industry to ensure a more joined-up approach.

3. Infrastructure

ISPA welcomes the priorities outlined by Government to deliver on the ambitions of the FTIR and will look to work closely with Government and Ofcom as these policies develop further. The SSP highlights the importance of “stable and long-term regulation that incentivises network investment and ensures fair and effective competition between new and existing network operators”. ISPA’s membership would agree with this statement and note the importance of Ofcom ensuring that regulation is appropriately applied, especially to areas considered to be “potentially competitive” where there is a concern that removing all regulation too soon could undermine the long-lasting competitiveness of an area. Long-term certainty is particularly important to the broadband industry, given the lengthy timelines for delivery of next generation infrastructure.

1.1 Outside in

ISPA’s membership is keen to further understand how the Government seeks to implement its “Outside In” approach to deployment and looks forward to continuing to work closely with DCMS to ensure “no areas are systematically left behind”. How commercially viable and non-commercially viable areas are designated will be particularly important to the progression of this policy and how it impacts wider roll out and competition. ISPA considers that discussions should include, but not be limited to, rural areas, given that these issues arise in other locations such as high streets and business parks. Further transparency over the timetable for this policy and its implementation is necessary.

Furthermore, the SSP outlines the intention from Government for “effective alignment between the USO programme” and other state aid programmes such as Outside In. ISPA’s members share this objective and are particularly keen to avoid a single premise being revisited multiple times to provide incremental improvements in service when this could be delivered under a single programme. The industry would like to express concerns over the mechanism whereby any premise eligible for the USO is descoped if it will be connected through a state aid project within the next 12 months. This timeline is too short to adequately take account of the multiple-year delivery timetables that a scale fibre solution, for example, would take to complete.

This could lead to a situation whereby those premises designated within a state aid area that will not receive connection within the next 12 months, could request a USO connection instead. This could lead to a number of different, and inefficient, outcomes. These include the service being delivered at 10-30mbps which is later overbuilt by another provider under a different state aid programme, or the premise being connected with a 30+mbps connection which then removes them from scope of a higher capability state aid programme and they will no longer be able to take advantage of a fibre connection. Not only does this produce inefficiencies for providers, but may undermine existing business cases as descoped areas may impact cross subsidy mechanisms.

To ensure that that the design of the USO does not detrimentally effect other state aid programmes such as Outside In, the 12 month clause could be removed, or a solution found where there is an expectation that the designated Universal Service Provider looks to utilise the infrastructure or any provider that has the state aid contract in an area to mitigate overbuild. These conflicts could have a dramatic impact on the long-term delivery of full fibre solutions to those in the hardest to reach areas and must, therefore, be appropriately addressed to ensure the Government is able to deliver on its ambitions set out in the FTIR.

1.2 Access to infrastructure

ISPA would like to highlight the need for a broader understanding of passive infrastructure in the SSP which largely refers to the use of ducts and poles. It should be noted, that in addition to this the use of sub-sea cabling is particularly important for providers looking to connect remote island communities, such as those off the coast of Scotland. This is particularly pressing as this is an example where there is no dark fibre solution, and without access to this passive infrastructure the alternative – in this case laying new sub-sea cables - would clearly be unviable.

We would also like to see more details on the review of the Access to Infrastructure Regulations 2016 which was mentioned in the FTIR and would like to see Ofcom and Government work with industry on this review to make the regulations fit-for-purpose.

1.3 Switching

ISPA also notes the DCMS's support for further work to be done by Ofcom to facilitate a switching process to allow for "easy, reliable and transparent" switching between two infrastructure providers. Clearly this issue will only increase in importance as alternative networks are built up across the country. This has already been considered at a EU level, where the European Electronic Communications Code sets the expectation that switching will be gaining provider-led. Further work should be done in this regard to understand more fully how this could be applied to the USO to ensure that any premises that are passed by another network to the Universal Service Provider are easily able to switch.

As stated in the SSP, this is a concern at both a retail and a wholesale level, with a real risk of market failure if not fully addressed. It is especially important to give consumers an informed choice, and any switching mechanism created needs to be clear and fair to consumers.

Further work must be done by Ofcom and Government to better understand the convergence of the market, especially around bundles, before taking any action. ISPA members agree that this process must be industry-led, with a recognition that this process will take time. However, a clear signal is needed from Ofcom to facilitate this properly. A suitable framework is needed from Ofcom to allow industry to drive this forward in a constructive way, with full buy-in from the regulator, towards a tangible solution. Further work in this area could make use of ISPA's breadth of membership as a forum to bring the market together.

1.4 Data

The SSP details the importance of good address level information collected by Ofcom and urges the regulator to improve this data; ISPA would echo this instruction. The SSP states that consumers

could benefit from better information at home and at work particularly, as a result, and inline with the DCMS' call for better data and information, ISPA would like to call on Ofcom to include large businesses in its data collection, and be more transparent about the data represented in the reports such as Connected Nations. This inconsistency may have a wider economic impact as well as having implications for the eligibility of properties under the Universal Service Obligation or for Government's other policies around "outside-in".

ISPA would like to reiterate that data collected by Ofcom under the Digital Economy Act should only be used for the purposes it was collected for, and not shared beyond this strict remit. The indications that third-party intermediaries should be given access to a "range of reliable data" must therefore be considered only within these constraints and fully take account of the implications this could have. Broader sharing of data could potentially undermine market confidence, and impact competition by enabling anti-competitive behaviours.

4. Consumer Policy

ISPA welcomes work in this area and has engaged widely on topics including out-of-contract notifications and loyalty penalties. Whilst ISPA is supportive of efforts to improve consumer experience and understands the need to protect vulnerable customers in particular, it would like to underline the importance of using consistent and accurate definitions of vulnerability to ensure that interventions in this area are appropriately targeted.

ISPA would also expect large enterprise and clearly identifiable business customers to be carved out of all consumer protection regulations as such customers do not require additional protection due to their strong bargaining power and often bespoke terms and conditions.

1.5 Loyalty Penalty

Regarding the loyalty penalty there is, naturally, a clear need to engage with vulnerable customers to provide support and help them switch and ISPA members are working hard to ensure that appropriate help is offered to those in need of it.

Perceived 'loyalty penalties' are often the result of introductory offers used by the industry to ensure the market remains dynamic. This allows the market to remain price competitive for consumers, and any interventions in this area must take account of the potential for consumers to become less engaged in the market and end up paying more.

Therefore, there is a clear need for a loyalty penalty to be considered with far greater context, and with a wider appreciation of the existing choice in the market for consumers which many already engage with. Alongside this, there is a need to avoid conflating loyalty with ill-informed or unengaged customers. For example, loyalty to a provider does not necessarily mean that a customer is not content with their service, especially as in the broadband sector there are a range of non-price issues that the customer may value (e.g. performance, service quality, reliability, billing, technical support, customer support, additional features). This should be addressed in this and further consumer policy going forward, and kept front of mind when considering future interventions in this area.

1.6 Consumer Advocacy

The SSP cites the Government's work around consumer advocacy arrangements for the telecoms sector, through the Department for Business Energy and Industrial Strategy Consumer Green Paper. ISPA responded to the Green Paper Consultation in 2018, and would like to reiterate that the role of a consumer advocate is already largely fulfilled by Ofcom and the Communications Consumer Panel.

Ofcom has a statutory duty to further consumer interest in the sector, which it has been working increasingly to do as seen in the recent Annual Plan for 2019/20. Further to this, the Communications Consumer Panel continues to have considerable influence, advising on issues to inform Ofcom's policymaking in this area.

ISPA feels that Government and Ofcom should look to utilise this existing tool and ensure the panel is working to its full potential rather than shift the function to a different or new body where there would be a greater chance of duplication and confusion. This could be done through expanding the Consumer Panel to introduce advisory industry and interest groups to better feed into and provide insights to the Panel.

1.7 Complaints data

The SSP encourages Ofcom to improve Quality of Service reports by including data on consumer complaints ISPA's members work consistently to improve their customer service and several of our members have informed us that they log any expression of dissatisfaction as a complaint in their systems to ensure a high-quality service. This can result in a high volume of internal complaints, although a significant proportion of these would not officially be classified as a complaint. By requiring this data to be published Ofcom could be incentivise industry to only pursue formal complaints as part of their complaints procedure to reduce these public records, and as such cause detriment to the customer service experience.

5. Cyber Security

Regarding Ofcom's role in securing networks against cyber threats, ISPA members would like to note that the picture often remains unclear as to the overlapping roles and remits of various public bodies, including central government, NCSC and Ofcom. In light of this, ISPA would encourage the formation of a cross-regulatory working group for the telecommunications industry. ISPA would be happy to play a role in this going forward as a key way of reducing confusion and enabling a more joined-up and cooperative approach to cyber security.

Furthermore, there is some confusion, particularly around the implementation of the NIS Directive, for which Ofcom is the Competent Authority for Telecoms, as to what constitutes guidance and what is mandatory in the cyber space. As companies are keen to understand and act on their obligations to secure their networks, ISPA's membership would encourage Ofcom to engage more extensively across the industry, especially around incoming initiatives such as TBEST.

With cyber threats becoming increasingly broad and dynamic, the industry would urge Government and Ofcom to take a more internationalist approach to ensure policy interventions are consistent with trusted partners across the globe to ensure that ISPs that run global networks do not face conflicting or overlapping regulatory requirements.

6. Conclusion

ISPA welcomes this first Statement of Strategic Priorities to Ofcom under the Digital Economy Act 2017, especially the direction offered to Ofcom to take forward the main proponents of the FTIR. Whilst the broad outlines are there, further detail and timelines are needed, and much will depend on how Ofcom responds to implement these workstreams. Greater understanding of, and work with the telecoms industry is clearly necessary to achieve the objectives set out in the SSP. This is particularly acute in industry-led workstreams, such as switching, where Ofcom's role must be to facilitate the process.

Regarding consumer issues ISPA's membership is keen to stress the industry's commitment to enhancing consumer outcomes, whilst encouraging a proportionate approach from the regulator. Instead of using extra resource in forming a new consumer advocate, ISPA's membership would instead highlight the possibility to amend the existing mechanisms within the Ofcom Consumer Panel.

Finally, ISPA urges Ofcom to clarify the various obligations on businesses and its role in cyber security, particularly where it fits into the current cyber regulatory environment split across Government departments and bodies through a cross-regulatory work stream.

ISPA would recommend wider engagement from both DCMS and Ofcom on all of these points to further understand the needs of the market to support it rolling out next-generation digital infrastructure across the country.