



SKY'S RESPONSE TO THE DCMS FUTURE TELECOMS INFRASTRUCTURE REVIEW CALL FOR EVIDENCE

Introduction

1. Sky welcomes the opportunity to comment on the Government's Statement of Strategic Priorities ("the SSP").
2. In the main, Sky is supportive of the aims set out in the SSP. In particular, we share the Government's vision of an ambitious digital infrastructure policy that delivers widespread access to world class connectivity, underpinning positive economic outcomes in the UK. This is a crucial policy area that warrants appropriate regulatory measures to ensure these positive outcomes are delivered both now, and in the long term.
3. Within the SSP, the Government sets out some specific priorities in relation to furthering the interests of telecoms consumers. This is predicated on the basis that *"the consumer experience in the telecoms sector is lagging behind that of other essential services"*.
4. Sky is sceptical of this assertion, given that, in general, the telecoms sector is a highly competitive one which delivers strongly in terms of choice, prices, investment, innovation, and product differentiation. Benefits in this market have traditionally been driven not by the introduction of additional detailed and prescriptive consumer protection regulation, but by pro-competitive measures that liberalised the market and allowed competitors to respond effectively to consumers' needs. Moreover, levels of customer dissatisfaction that do exist are driven in large part by underlying network quality issues, rather than dissatisfaction with customer service standards or similar. We set out this view in more detail below.
5. Sky recognises the legislative framework under which the Secretary of State may issue a statement of strategic priorities, and notes that Ofcom must have regard to this statement when exercising relevant functions. Notwithstanding this, it remains the case that Ofcom, as the independent regulator with relevant sectoral expertise, remains best placed to determine the specifics of regulation to deliver in line with its core duties under the Communications Act. Such an approach is critical for ensuring continued regulatory certainty, allowing operators to invest with confidence.

Sky supports Government's approach to ensuring world class digital infrastructure

6. In section 1 of the SSP, Government sets out its proposed strategic priorities to deliver its connectivity ambitions. These include:
 - a. supporting market entry and expansion by alternative networks operators through easy access to Openreach's ducts and poles
 - b. a set of regulatory changes aimed at incentivising network investment and ensuring fair and effective competition between new and existing network operators;
 - c. an 'outside in' approach to full fibre deployment; and
 - d. a switchover process to enable consumer migration to full fibre services.

7. As noted above, Sky is in the main supportive of the Government's objectives and strategic priorities in this area. As the UK's second largest broadband provider, Sky can play a significant role in encouraging investment in new networks, ultimately helping to bring forward the Government's target of achieving nationwide full fibre network coverage by 2033.
8. Through Sky's sizeable customer base, its trusted and respected brand, and our expertise in customer service and management, marketing and sales, we are well positioned to drive significant demand and customer volumes to new ultrafast networks. This will be of fundamental importance to the investment case for full fibre networks.
9. Network builders and policymakers should recognise that attracting large numbers of end users on new networks as early as possible will improve returns and cash flow, thus reducing the investment risk of full fibre considerably. It is therefore crucial that retail providers are given strong incentives to accelerate demand for the new networks amongst consumers and business.

Regulatory framework

10. Sky notes that Government's specific recommendations on regulatory approaches broadly reflect proposals set out in Ofcom's July 2018 document, "*Regulation to support investment in full-fibre broadband*". These include a commitment to regulation only where and to the extent necessary to address competition concerns; a geographically differentiated approach to wholesale regulation; and the application of a 'fair bet' principle over an extended timescale.
11. Ofcom is already progressing many of these issues. Most notably, it has recently begun consulting on its future approach to geographic markets. Sky is concerned, however, at a potential divergence between Ofcom's approach and the Government's aims as set out in the SSP in relation to geographically differentiated regulation. Specifically, DCMS states that "*for areas where there is actual or prospective effective competition between networks, the Government would not anticipate the need for regulation as competitive pressures should shape investment and pricing decisions*" [emphasis added].
12. Ofcom's proposed geographic market definitions mean that a large percentage (around 70%) of the UK will be deemed to be potentially competitive when it conducts the single market review later this year. Ofcom considers that areas where there are at least three competing ultrafast networks could be competitive.
13. The significance of this broad interpretation is closely linked to the remedies ultimately applied in potentially competitive areas. If regulation that currently protects consumers is removed entirely in *potentially* competitive areas, as proposed in the SSP, the wide market definition proposed by Ofcom could result in higher prices for significant numbers of UK consumers who may not receive any offsetting benefits from investment and market entry.
14. In any event, pre-emptive deregulation as suggested in the SSP could be counter-productive to the promotion of FTTP if it were to result in weaker retail competition and / or higher retail prices for consumers. As we have already highlighted above, large retailers such as Sky have an important role to play in providing the large subscribers bases necessary for new network investments to be viable. Further, there is a wide body of evidence showing that consumers on average have a low willingness to pay for more speed. Clearly, deregulation could result in weaker retailers and higher retail prices for existing broadband services – both of which could make FTTP investment less likely, not more so.
15. Sky instead supports Ofcom current approach – it proposes to assess the state of (and scope for) infrastructure competition on an area-by-area basis and to consider varying

remedies according to whether an area is effectively competitive, potentially competitive or non-competitive, when conducting its single market review. Crucially, regulation would only be withdrawn entirely in regions of the UK in which there is *effective* network competition, rather than the potential for it.

Switchover process

16. One of the strategic priorities set out in the SSP is for a switchover process to enable customer migration to full fibre services. Sky considers that such a migration is vital to ensuring that full fibre investment by existing operators is incentivised and profitable in the long-run.
17. In particular, it is essential for the economic viability of the full fibre investment made by incumbents that the period of parallel running of old and new networks is minimised. This will ensure that the full scope and scale economies of the new network are unlocked – the substantial fixed and common costs of telecoms networks necessitate high volumes of end users and the removal of duplicated assets – and all end users benefit from the superior network.
18. First and foremost, the most effective means by which any period of parallel running of old and new networks is minimised will be through accelerating demand led migration. This is best achieved by FTTP networks operators offering the attractive wholesale terms to large retailers that are necessary in order for them to drive consumer demand to the new networks. Given relatively low average willingness to pay for more speed and the large one-off costs and disruption for consumers associated with migrating to FTTP, this is of paramount importance.
19. Sky also favours a “cut-over” model – whereby after this period of demand-led migration to FTTP, premises are eventually forcibly migrated from the legacy copper network to the full fibre network.
20. Retail providers will play a critical role in a broadband switchover. Sky in particular has the necessary operational, marketing and customer service expertise to execute large customer programmes of this type, as demonstrated by our key role in the successful completion of the television Digital Switchover programme.

Government should favour promoting competition in order to deliver good outcomes for consumers

21. In section 2 of the SSP, Government sets out its proposed strategic priorities in relation to current and future telecoms consumers. These include:
 - a. Helping consumers navigate the communications market by giving them the right data, information and support to boost their engagement;
 - b. Removing ‘barriers’ that consumers face to switching products and services, and ensuring that all consumers get better outcomes, even if they are not actively searching for the best deal all of the time;
 - c. Tackling harmful industry practices and improving the support available to vulnerable consumers; and
 - d. Improving the overall quality of service for telecoms consumers.
22. Sky is well placed to comment on these issues given that, fundamentally, they are about serving consumers’ interests. Sky has a strong track record in delivering first class service to

consumers and engaging with them, and we put our customers at the heart of everything we do. Our commitment to first class service is reflected in outcomes such as the high 'net promoter scores' given to Sky by our customers, and the fact that Sky consistently generates significantly fewer complaints to Ofcom than its rivals across broadband, telephony and pay TV services.

23. Sky wholeheartedly agrees with the principle that rests at the core of Government's objectives – that consumers should be empowered to take full advantage of the choice available, to shop around with confidence, and ultimately secure the best deals for their needs.
24. However, we are concerned that the SSP's proposals are based on a view that consumer outcomes in the telecoms sector currently are particularly negative. While improvements can no doubt always be made, the evidence does not suggest that telecoms consumers are materially disadvantaged.

The consumer experience in telecoms

25. These strategic priorities are proposed on the basis that "*the consumer experience in the telecoms sector is lagging behind that of other essential services*". In support of this assertion, the SSP references a number of data points, including the low position of telecoms in the Institute of Customer Service Satisfaction Index, recent Ofcom research on consumer engagement, and the supercomplaint brought by Citizens Advice to the CMA.
26. As noted, Sky is sceptical of the notion that the consumer experience in the telecoms sector is significantly inferior to those of other sectors, particularly to the extent that would justify more intrusive regulation being favoured over an approach that seeks to deliver good outcomes through promoting competition.
27. In particular, Sky does not consider that the ICS reports can be reasonably relied upon in support of consumer experience. In the first instance, the report does not compare like for like. In telecoms, service quality often relies on activities of the end user (such as placing their router in the right place). Additionally, customer service interaction may only happen when something has gone wrong (unlike, say, when shopping at John Lewis). Finally, to the extent there are poor customer satisfaction outcomes at large CPs this is driven in large part by underlying network quality issues that other sectors don't have to contend with. To understand customer satisfaction it is necessary to distinguish underlying 'product' issues ("my broadband stopped") from genuine 'customer service' issues ("the customer service agent was not helpful"). While providers can and do compete on customer service, they typically have much less control over product quality and are reliant on Openreach (plus Ofcom intervention) to drive improvements.
28. In fact, Ofcom research suggests that the telecoms sectors are highly competitive and consistently deliver innovation and positive outcomes for consumers, with high levels of consumer satisfaction¹.

The 'loyalty penalty' in broadband

29. The SSP makes a number of statements and proposals related to the so-called 'loyalty penalty' – the difference in prices paid between those on the best deals and those (often out of contract) paying higher monthly fees. The implicit assumption underpinning these

¹ Ofcom data show satisfaction in these sectors is high – 91% for mobile, 84% for bundles and 80% for broadband. 'Comparing service quality 2017, Ofcom, May 2018: https://www.ofcom.org.uk/__data/assets/pdf_file/0023/113639/full-report.pdf.

statements in the SSP is that being in contract is good for consumers, and being out of contract is bad for them.

30. This assumption overlooks a fundamental feature of the UK communications sectors, which is that many consumers prefer the flexibility of remaining out of contract to agreeing a new contract commitment when switching or in exchange for a discount given by their current provider.
31. Many customers who remain out of contract are simply making a conscious choice to maintain flexibility to trade up and down (or leave) at a time that is convenient to them and/or do not want to spend time shopping around or thinking about changing – for example, many consumers actively opt out of receiving marketing communications from their suppliers precisely because they do not want to be troubled by it.
32. Ofcom’s recent consumer research on engagement supports this view. The research illustrates the extent to which satisfaction and/or the terms of supply lead consumers to stay with their current provider. This research shows that the four biggest reasons (and seven of the top ten reasons) why out-of-contract customers do not look for a new deal relate to satisfaction with their current services, their positive opinion of their current provider and the deal they are on.²
33. The fact that different consumers pay different prices and make different choices on the trade-off between price and flexibility points to a market that provides customers with a broad range of choice and is working well.
34. There are other tangible benefits that can be realised by loyal customers which are not available to those customers who switch providers to take up introductory offers. For example, last year Sky launched a loyalty scheme (Sky VIP) which is the UK’s first tenure-based rewards programme (i.e., the longer you stay with Sky, the greater the rewards) and one that customers qualify for irrespective of product holding or spend.
35. Over 2.1 million customers have signed up for Sky VIP so far – with almost 70% of them having redeemed at least one reward such as a free or discounted upgrades, service activation or content. Rewards that customers receive through this scheme represent clear benefits for loyal customers.
36. In relation to tackling the loyalty penalty, Government states that it wishes to “*ensure that all consumers get better outcomes, even if they are not actively searching for the best deal all of the time*” and encourages Ofcom to explore the CMA’s recommendations, which include potential pricing interventions such as targeted safeguard caps to protect vulnerable consumers.
37. Clearly any interventions considered by the Ofcom must be targeted at a specific problem and proportionate. Ensuring that any proposed interventions are proportionate requires careful consideration of their potential costs and benefits. There is little doubt that designing appropriate remedies in this area is not straightforward, as many types of intervention have the potential to create costs that outweigh any benefits delivered.
38. Ofcom is already making use of (or is considering making use of) a broad suite of remedies where consumer harm is identified in the communication sector. For example:

² Slide 28, Critical Research, Consumer Engagement 2018, January – April 2018: https://www.ofcom.org.uk/data/assets/pdf_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf (“Ofcom Quantitative Research”).

- (a) Ofcom's review of landline-only pricing resulted in BT's landline-only customers having their bills reduced by between £5 and £7 per month³;
 - (b) the Ofcom Best Tariff Consultation is focussing on how to engage more customers when they reach the end of their minimum contract period through enhanced disclosure requirements;
 - (c) Ofcom's mobile handsets consultation is considering two types of intervention: (i) enhanced disclosure; and/or (ii) the introduction of fairer default tariffs that would apply at the end of the minimum contract period⁴; and
 - (d) Ofcom's recent changes to its 'general conditions of entitlement' require communications providers to have policies and procedures in place to ensure vulnerable customers are treated fairly.⁵ The requirements also place an obligation on providers to explain how the impact and effectiveness of the policies and procedures are monitored and evaluated.
39. It is right for Ofcom to take the lead on these matters, being well equipped to take account of sector specific differences and nuances that can have a material bearing on what remedies are appropriate.
40. Sky considers that many of the lessons learned in the recent FCA/CMA paper on the optimum design of remedies design are highly pertinent for sectors that are characterised by high levels of product differentiation, innovation and competition, such as the communications sector. Among other things, that paper recognises two points that Sky considers are particularly salient:
- (e) consumers need to stay in control and make their own robust decisions.⁶ Engagement and shopping around remedies are therefore more likely to be effective and minimise the risk of unwelcome and unexpected outcomes; and
 - (f) more intrusive regulation, such as price regulation and other outcome-control remedies risk overriding market signals and therefore reducing or removing the benefits and innovation which competition can bring.⁷

Vulnerable customers

41. The SSP sets out a number of proposals for further work aimed at supporting vulnerable customers.
42. Sky agrees with the importance DCMS attaches to this issue. At Sky we strive to deliver consistent, quality service for all our customers. We do this by empowering customers and

³ Ofcom press release, 'Charges cut for up to a million BT landline-only customers', 27 October 2017: <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/charges-cut-million-bt-customers>

⁴ 'Helping consumers to get better deals in communications markets: mobile handsets', Ofcom, 26 September 2018: https://www.ofcom.org.uk/data/assets/pdf_file/0019/121708/consultation-consumers-mobile-handsets.pdf

⁵ See Conditions C5.2-C5.5, 'General Conditions of Entitlement (Unofficial Consolidated Version)', 30 July 2018: https://www.ofcom.org.uk/data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf.

⁶ Page 3. 'Helping people get a better deal: Learning lessons about consumer facing remedies', FCA/CMA, October 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744521/U_KCN_consumer_remedies_project_-_lessons_learned_report.pdf.

⁷ Page 38, *ibid*.

being flexible and responsive; this means that specific requests for assistance by vulnerable customers are managed on a case by case basis, in large part through our dedicated and specially-trained 'Accessibility' team.

43. Defining vulnerability is not simple. Sky adopts a broad definition of 'vulnerable consumer' which encompasses not only those who have a disability, are elderly, on a low income or are under 18 but also recognises the dynamic nature of vulnerability. This means special assistance can also be provided to consumers who, for example, have language barriers or who are subject to criminal activity or harassment, or are subject to life-changing events such as bereavement, critical illness or bankruptcy.
44. Sky looks forward to engaging with Ofcom on the proposals for vulnerable customers set out in the SSP.

Sky

March 2019