



Department for  
Digital, Culture,  
Media & Sport

# **Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services**

**Government response to consultation**  
July 2019

## Ministerial foreword



The Government's July 2018 Future Telecoms Infrastructure Review (FTIR) set out its digital connectivity ambitions: gigabit broadband connections to 15 million premises by 2025 and nationwide coverage by 2033; and a 5G signal for the majority of the country by 2027, in addition to the UK becoming a world leader in 5G.

In February 2019, the Government consulted on its draft Statement of Strategic Priorities (SSP). This reflected the conclusions of the FTIR, in addition to setting out priorities and desired outcomes in a number of other areas, including consumer policy, postal services, and the security and resilience of telecoms networks.

When the Government published its consultation, I was pleased to highlight the progress being made to deliver its connectivity ambitions. In the four months since the launch of the consultation, I'm delighted to say that progress shows no signs of flagging.

The Government continues to push ahead with ambitious policy and funding programmes and initiatives to facilitate more investment, competition and urgency in full fibre and 5G markets. In May, for example, we launched the £200 million Rural Gigabit Connectivity (RGC) programme, which is the first step in our 'outside in' strategy, and will see gigabit-enabled full fibre broadband reach some of the most remote parts of the UK.

There have been encouraging signs from industry too. Mobile operators are pressing ahead with 5G launches, meaning greater choice and better consumer outcomes. In relation to full fibre, there have been a steady stream of announcements by network builders, in addition to further positive statements on deployment to 2025, which if met should make telling contributions to the Government's deployment aspirations. According to Ofcom's Spring 2019 update to its annual Connected Nations, 300,000 more premises can now access full-fibre broadband in the four months since the December 2018 Connected Nations was published. This means that 7% of the UK now has access to full fibre, a 3% rise compared to Spring 2018.

However, despite recent progress, we know that more needs to be done if we're to catch up with other countries on full fibre and deliver the connectivity homes and businesses need.

Ofcom has an absolutely key role here. Not only does it need to ensure the right regulatory conditions are in place so that investment and competition are promoted, it must do so whilst ensuring consumers are protected and networks are secure and resilient. The purpose of this Statement of Strategic Priorities (SSP) is to help Ofcom in its delivery function by being clear about the Government's strategic priorities and desired outcomes in a number of key areas. As a world class regulator with a strong track record, Ofcom is well placed to make the right decisions, at the right times, and in the right places, to deliver the Government's connectivity ambitions.

The consultation elicited a number of responses from a large and diverse range of respondents, including industry, consumer bodies, local councils, and bodies representing rural interests. This has given the Government a wide range of detailed, often competing views, to reflect on. I would like to thank all respondents for taking the time and effort to

respond. Alongside publication of this Government response to the consultation, I am now laying the SSP in Parliament.

A handwritten signature in black ink, appearing to read 'Jeremy Wright', with a stylized, cursive script.

**The Rt Hon Jeremy Wright MP**

Secretary of State for Digital, Culture, Media and Sport

## Introduction

The Government's consultation on its draft Statement of Strategic Priorities for telecommunications, the management of radio spectrum and postal services<sup>1</sup> sought views from respondents on two questions:

- whether they agreed with the Government's strategic priorities and desired policy outcomes for telecommunications, the management of radio spectrum and postal services; and
- whether they agreed that the SSP set out clearly the role of Ofcom in contributing to the Government's strategic priorities and desired outcomes

The consultation ran from 15 February to 27 March 2019, in accordance with the requirements of section 2C of the Communications Act 2003.

We received over 70 responses in total. The vast majority were from telecoms companies, trade bodies, consumer groups, individuals and local government.

For each section of the draft SSP, we set out a summary of responses followed by the Government response including, where relevant, how the Government will change the draft SSP having taken into consideration respondents' views. We also provide an indication of the number of responses and the strength of feeling in support of any particular position. In order to illustrate a point, some respondents may be named individually.

Respondents occasionally provided views on subject matter not directly relevant to the consultation, or only tangentially relevant. Nonetheless, these views are also reflected.

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<sup>1</sup> <https://www.gov.uk/government/consultations/public-consultation-on-the-statement-of-strategic-priorities>

## **General observations on the SSP**

Overall, most respondents broadly supported many of the Government's strategic priorities and desired outcomes. There was particularly strong - but not always unequivocal - support from rural and consumer bodies, alternative network builders, regional bodies, and those with an interest in neutral host infrastructure. The larger telecoms companies ("telcos"), although often supportive, had more mixed views in some areas.

Fewer respondents directly addressed the second consultation question. However, those who did respond broadly agreed that the SSP set out Ofcom's role in contributing to the strategic priorities and desired outcomes.

A small but not insignificant number of respondents had high-level observations on some other aspects of the SSP, as set out below.

### *Ofcom independence*

There were some concerns that the SSP was too detailed in parts. Respondents who took this line argued variously that the SSP sat uneasily with provisions in EU and domestic law; that it went too far into the means by which certain ends might best be achieved; and that it was for the independent regulator to make decisions in line with its statutory duties. Some also argued that any real or perceived encroachment into Ofcom's independence could impact on levels of investment.

However, the vast majority of respondents did not comment on any interference with Ofcom's independence - and indeed some respondents (either explicitly in their responses, or implicitly) wanted the SSP to be more prescriptive. Respondents who expressed these views sometimes stated or implied that a more detailed approach - and a clearer description of Ofcom's role - might in fact enhance the investment environment by offering greater regulatory certainty, especially to those investing in new networks.

Ofcom itself made no observations on any interference with its independence.

### *Prioritisation of strategic priorities and related observations*

A small number of respondents, representing a range of interest groups, argued that the SSP could have been clearer in setting out the trade-offs Ofcom might need to manage in delivering the Government's strategic priorities. This was particularly where respondents thought the strategic priorities had the potential to undermine one another. One respondent, for example, argued that the Government's strategic priorities in relation to telecoms consumers might conflict with its overarching aim of promoting investment in fibre networks.

However, the majority of respondents did not express any clear desire for prioritisation of the strategic priorities.

## **Government response**

The Communications Act 2003 (as amended by the Digital Economy Act 2017) sets out the legislative framework for the Statement of Strategic Priorities. Under section 2B, Ofcom is required to “have regard” to the statement when carrying out its functions in relation to telecommunications, the management of radio spectrum and postal services. This flexibility for Ofcom to respond to the SSP reflects the legislative position that already exists in the energy and water sectors.

The Government does not agree that its strategic priorities in relation to telecoms consumers conflicts with its objective to promote investment in gigabit capable broadband networks. Having competitive telecoms markets, with well-informed consumers who are able to switch services, should support not deter investment. It is the investment in new networks that will, in turn, improve consumer outcomes, in terms of choice, service quality, and innovation. To move millions of consumers onto gigabit capable networks will require consumers to trust their providers, understand how best to engage with the market and switch from their current copper based products. The strategic objectives outlined in Section 2 of the SSP aim to address these issues.

More broadly, the Government does not consider that the SSP should be more prescriptive about how potential trade-offs between different strategic priorities should be resolved. These are ultimately matters for the independent regulator to determine. It is for the Government to set out its strategic priorities in the SSP, and for Ofcom to consider these when carrying out its functions. In many cases – for example, the Government’s ambition to achieve 95% geographic mobile coverage – the scale and timeframe are very clear. Ofcom is expected to plan its activities and manage its resources within the constraints of its statutory responsibilities to help the Government deliver to its timetable.

Ofcom’s 2019/20 Annual Plan has been developed with regard to the Government’s strategic priorities in the draft SSP. The Government welcomes this. In addition, Ofcom is required under law to report on what it has done in response to the SSP, once it has been laid in Parliament and then designated.

## **Section 1: World-class digital infrastructure**

### **1.1 Full fibre connectivity**

Overall, there was strong consensus that the Government's full fibre targets are best delivered by promoting competition and commercial investment where possible, and intervening only where necessary.

There was also broad endorsement from a number of interest groups - including consumer and rural bodies, and alternative network providers - for many or all of the strategic priorities which supported this overarching aim.

### **1.2 Effective access to passive infrastructure in telecoms and utilities**

#### **Summary of responses**

##### *Duct and pole access*

There was strong consensus from a number of respondents across both the fixed and mobile sectors that effective duct and pole access (DPA) was critical to network deployment. The alternative network providers (altnets) in particular were keen to emphasise that without fair and open access to Openreach's ducts and poles, the Government's rollout ambitions would not be achieved. Mobile operators, including the four Mobile Network Operators (MNOs), generally agreed - and often strongly - that DPA was fundamental to 5G rollout. The importance of effective DPA was also recognised by other stakeholders, such as the Scottish Government and local bodies.

Citing issues with the operation of the current DPA product, some of the altnets wanted Ofcom to take a much more active role in its take up and development. There were a number of detailed suggestions on how the product could be improved or changed. For example, there was a suggestion that it might be refreshed on at least an annual basis and that the differences between the product used by Openreach and that used by other fibre builders needed to be clearly explained to Ofcom. The trade body for a number of the alternative network operators (the Independent Networks Cooperative Association (INCA)) argued that a number of operators had expressed a clear need for "equivalence of inputs" between themselves and Openreach, a requirement which would go further than the "no undue discrimination" condition currently being applied. One of the altnets argued that in order to avoid bottlenecks, network builders should be allowed to carry out network adjustments and retrospectively recoup costs from Openreach.

Openreach DPA customers were unanimous that enforcing workable duct and pole mechanisms would require rigorous and close monitoring by Ofcom, and that all options should be considered to ensure compliance where remedies were not fully implemented. Some respondents (for example, Talktalk) suggested that Ofcom needed to set Openreach Key Performance Indicators (KPIs) and targets and assess Openreach's performance against them. Toob argued that a compensation structure needed to be put in place by Ofcom so that Openreach offered the product effectively. The same respondent highlighted that by the time any non-compliance action was taken against Openreach, fibre builders might have slowed down or stopped build. This view also shared by Airband.

In its response, Openreach agreed on the importance of making a success of the DPA remedy. It pointed out that it had launched a new offer in April 2019, and that there would be a revised offer in Autumn 2019, to align with Ofcom's Physical Infrastructure Market Review (PIMR) proposals and reflect customer feedback on the current offer. BT agreed that Openreach needed to be fully compliant with regulatory requirements.

A small number of respondents said they would like to see more detail on the review of the Access to Infrastructure Regulations.

### *Dark fibre*

Although a number of respondents welcomed the reference to dark fibre, they did not necessarily agree on where, how and when it should be made available.

A small number of stakeholders on the fixed side argued that there was demand for a dark fibre remedy both in the 'leased line' (business) market and in order to roll out full fibre in hard to reach rural areas. They argued that accessing dark fibre could deliver full fibre more cheaply than utilising a DPA solution. Conversely, other stakeholders (including Cityfibre and BT) argued that dark fibre should only be considered once there was greater clarity on how the DPA product was working. This would allow time to consider take-up of the DPA product and where competition was emerging.

There were strong - but not necessarily uniform - views on dark fibre access from mobile operators and trade bodies, many of whom drew a link between access and 5G deployment. Vodafone and tech UK, respectively, argued that Ofcom needed to mandate dark fibre access, or at least consider its merits. Vodafone saw no reason why the regulatory regime could not allow DPA for new (residential) users alongside dark fibre access for the sharing of enterprise and cell site fibre. Three took a slightly different view, arguing that DPA might allow for the possibility of infrastructure investment leading to new networks which might be able to offer dark fibre services on better terms than those currently available.

A small number of respondents (including the Internet Service Providers Association (ISPA) and the Broadband Stakeholder Group (BSG)) argued for dark fibre solutions for subsea cables, which they thought were important for roll out to more remote parts of the UK. At the moment, there were no access obligations for subsea cabling which hadn't been put in place through the support of state aid schemes.

### *Other utilities*

Respondents almost unanimously supported the Government's view that access to telecoms infrastructure could be complemented by access to infrastructure owned by both other utilities and transport infrastructure providers such as Network Rail. In one case, this support was caveated with the observation that both the access and the economics to such sharing could be challenging. There was also a view that these solutions had already been looked at in the mid to late 1990s and there was not much value in looking at them again.

### **Government response**

The Government agrees with respondents who emphasise the importance of an effective and scalable DPA remedy for gigabit capable broadband and 5G deployment. The Government would encourage the sector to use Openreach's DPA product at scale to test its efficiency and ability to adapt to large numbers of requests. The Government remains of the view both that ensuring a workable ducts and poles remedy will require rigorous monitoring by Ofcom; and that if the evidence shows Openreach is not implementing the remedy properly, and responding to feedback from those who are using the product, then all options should be considered to ensure compliance.

Discussions about the use of DPA are ongoing, with the Office of the Telecommunications



Adjudicator (OTA) facilitating engagement between Openreach and those looking to use the network.

The SSP states that dark fibre access and other options to support competitive rollout should be considered where DPA access is “not available or effective”. The Government agrees with respondents who argue that a case can be made for dark fibre in circumstances where, for example, it is clear that there is no prospect of network competition. It is for Ofcom to consider the options in these circumstances.

The Government has suggested that Ofcom works collaboratively with other regulators, including through the UK Regulators Network (UKRN), to ensure opportunities for passive infrastructure sharing with other utilities are explored and barriers addressed. The Government believes this remains a strategic priority.

The Government intends to carry out a review of the Communications (Access to Infrastructure) Regulations 2016 to assess if there are improvements that could be made to further boost investment in infrastructure.

### **1.3 Stable and long term regulation that encourages network investment**

#### **Summary of responses**

There was strong backing – from both fixed and wireless respondents, and others representing a number of interest groups – for fair and effective competition between existing network providers and the need to address anti-competitive behaviour.

In order to instil greater confidence that anti-competitive behaviour would be addressed, some respondents - especially a number of altnets - wanted this section to be made stronger and for Ofcom to have a much more clearly defined role. Some were content for Government to ask Ofcom to set out how it might go about performing this role, while others wanted Government to be more forthright on what they thought the role should involve.

A small number of respondents, notably a couple of the larger communications service providers (CSPs), disagreed with the Government’s view that promoting investment should be prioritised over interventions to reduce retail prices in the near term. These respondents generally disputed the premise that a reduction in retail prices was inconsistent with fibre investment.

Both fixed and wireless stakeholders had a number of comments on each of the desired outcomes under the stable and long term regulation strategic priority.

#### Greater regulatory stability and clarity through at least five year reviews

Most respondents who commented on this welcomed a move to five year market review periods. For example, INCA stated that such a move was broadly welcomed by its members. However, some qualified this support by arguing for some flexibility in the regulatory system to adjust for new market or technology developments, while a smaller number favoured three year periods for the same reasons.

#### Regulation only where and to the extent necessary and recognition of the differences in local market conditions

A number of respondents endorsed the Government’s geographically differentiated approach to wholesale regulation. However, some of these respondents (including Sky, Talktalk, and Gigaclear) had concerns with the suggestion that Ofcom need not regulate where there was

prospective competition between networks. A further subset of these respondents argued that any such deregulation would entail higher retail prices and a smaller market share, which in turn might reduce the number of customers who could potentially migrate from Openreach to competing networks (and therefore make for a less dynamic market). Conversely, BT argued that if Ofcom de-regulated investors would only face market risk, as opposed to both market and regulatory risks. Furthermore, the prospect of competition would have the effect of disciplining network providers' access terms.

#### Greater clarity regarding the application of the “fair bet” principle

Those who responded generally acknowledged the importance of the “fair bet” principle, with a number arguing that it should be extended to all infrastructure providers, not just BT/Openreach. For BT, the fair bet principle entailed an upfront commitment from Ofcom to allow returns which were the legitimate reward for risk.

#### Greater transparency of Openreach's build plans

For alternative network providers in particular, transparency of Openreach's build plans was key to fibre roll-out. Several mentioned – and welcomed – Openreach's recent commitment to provide a 12-month forward view of locations where it is intending to build full fibre broadband. There were a number of different views on potential further requirements on Openreach to share its build or investment plans - for example, around the regularity with which they should be refreshed, or the time period they should cover. Openreach argued that it was not possible for it to give reliable information on its longer-term build plans.

#### Commercial risk-sharing and co-investment arrangements

A number of respondents thought it sensible that Ofcom help facilitate commercial risk-sharing and co-investment arrangements. According to one network builder, that risk-sharing could be vertical (between network builders and ISPs) and horizontal (between network builders) and suggested that innovative arrangements are being, and would be, seen. Some stakeholders said that Ofcom should set out its approach and principles to its work in this area.

### **Government response**

The Government accepts that, in some circumstances, it might be possible to both maintain current retail prices and promote investment in full fibre networks. The wording in the SSP does not preclude this possibility. However, the Government's view is that promoting investment in gigabit capable broadband should be prioritised over interventions to further reduce retail prices in the near term, if this is necessary to ensure that the UK's broadband infrastructure is fit for the 21st century. As set out in the FTIR, we would expect to see incremental revenue generated from more valuable services to pay for the large-scale investment in new networks. At the same time, a range of fibre products and pricing will be important to encourage migration of customers from copper networks and so recover the costs of the new networks.

In the draft SSP, the Government was clear that a fair and effective market was critical to full fibre build, and that it expects Ofcom to be vigilant and use its powers to facilitate that. The Government agrees with those stakeholders who argued that the language in the draft SSP could emphasise the importance of Ofcom's role being proactive and it has adjusted the wording to reflect this.

The Government maintains the view that regulatory stability and clarity is best achieved through five year market review periods. The Government is consulting on the implementation of the European Electronic Communications Code (EECC) soon. Article 67 of the EECC sets out how regularly the regulator must review markets, increasing maximum review cycles from three to five years.

We are grateful for stakeholder views on the Government's position that where there is prospective effective competition between networks, it would not anticipate the need for regulation as competitive pressures should shape investment and pricing decisions. Ofcom has consulted on this issue in the consultation it published in March 2019<sup>2</sup>. In potentially competitive areas, Ofcom noted that removing regulatory requirements on BT would give a very strong incentive for rival network investment but that it could be damaging to retail competition and consumers in the short term. Ofcom's initial view is that regulated access to these services is likely to play an important role from 2021 as rival network providers deploy their own networks. As a result, Ofcom proposes to set a charge control on BT/Openreach for their 40/10 products, but not for higher speed products enabled by full fibre deployment. The Government agrees that this is a sensible approach.

The Government agrees with respondents who suggest that the "fair bet" principle might be extended to firms other than Openreach, should those firms become subject to regulated returns, and notes that the SSP does not restrict application of the "fair bet" principle to Openreach alone.

The Government welcomes Openreach's recent voluntary announcements on its build plans to the end of 2021. Article 22 of the EECC introduces new powers, which could be assigned to Ofcom or another authority, to conduct a forecast of future network reach (considering very high capacity networks (VHCNs) specifically) and to make non-confidential information included in the forecast directly accessible to the market. This will further increase the transparency of Openreach's build plans, as well as the build plans of other network providers.

The Government welcomes views of respondents who highlight the potential of sharing the risks and gains from network deployment. Article 79 of the EECC provides a mechanism for Ofcom to make commitments proposed by an SMP provider in relation to network access or co-investment agreements binding, and consider these in lieu of some or all SMP obligations in the relevant market. This is designed to incentivise commercial access and co-investment agreements by improving regulatory predictability.

## 1.4 An outside-in approach to deployment

### Summary of responses

A number of respondents, especially bodies representing rural interests, warmly welcomed the outside-in approach to deployment and supported the commitment to work with Ofcom to ensure effective alignment between the Universal Service Obligation (USO) programme and the Government's longer-term connectivity ambitions. A number of rural bodies took the opportunity to emphasise the importance of the rural economy and the need for better connectivity.

However, a sizeable subset of respondents took the opportunity to flag risks and issues with the broadband Universal Service Order (USO) design. These mainly reiterated the concerns that were raised during Government consultations on the USO in 2017 and 2018. As such, we do not intend to cover them in any detail here. Government set out its final decisions on the USO in March 2018 and laid the necessary legislation<sup>3</sup> in Parliament to enable Ofcom to implement the USO by 2020, in line with the Government's commitment.

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<sup>2</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/promoting-investment-competition-fibre-networks-approach-remedies>

<sup>3</sup> <http://www.legislation.gov.uk/uksi/2018/445/contents/made>

A number of stakeholders (for example, BSG) wanted greater clarity on how the USO would interact with outside in and BDUK-run programmes, including the Local Full Fibre Network (LFFN) programme. Talktalk raised concerns around duplication of subsidy in certain areas and funding of stray assets, and emphasised the need for close alignment of Ofcom regulation and DCMS policy making.

#### **Government response**

The Government reiterates its commitment to work with Ofcom to ensure that there is effective alignment between the USO, existing public funded broadband programmes and its longer term connectivity ambitions.

The USO is designed to act as a safety net to ensure everyone can access a minimum level of connectivity. The design for the USO was set out in secondary legislation in March 2018, following a public consultation.

However, the Government recognises that take-up and use of broadband changes over time, which is why the USO legislation enables Government to direct Ofcom to carry out reviews of the USO, so that it keeps pace with changing needs. Any review would look not just at the minimum download speed but all aspects of the USO specification. There is also a formal requirement for the Government to direct Ofcom to undertake a review of the USO when superfast broadband has been taken up by 75% of UK premises.

## **1.5 Switchover process**

### **Summary of responses**

Respondents provided comments on both switching from copper to fibre and switching off the copper network.

Several respondents agreed that switchover should be led by industry, working closely with Ofcom and Government to ensure the process was consistent with policy and regulatory goals. Openreach said that coordination from Government and Ofcom was also needed to bring industry along with it.

However, a number of respondents, especially the altnets, wanted to see a more proactive role from the regulator.

On the migration of consumers from copper to fibre networks, a number of the altnets had observations on Gaining Provider Led (GPL) cross-platform switching in particular. Cityfibre wanted Ofcom to take a leading role on a GPL solution, on the basis that an industry led switching solution was unlikely to emerge. It also noted EECC measures in this area, and wanted a workable GPL solution in advance of its transposition into domestic law. Gigaclear argued that a losing provider led process presented a number of risks and that in order to deliver FTIR ambitions, DCMS should instruct Ofcom to review cross platform switching as a priority. More generally, Gigaclear suggested that switchover in rural areas could facilitate more competitive entry level full fibre prices. There were also views that Ofcom needed to bottom out switching scenarios to ensure good consumer outcomes (Talktalk); and that industry processes for switching, including across platforms, needed to be improved (toob).

On switch off, Cityfibre argued that, following a recent Openreach consultation on switch off, there needed to be stronger policy guidance and regulatory oversight to ensure that customer

migration processes were competitive, neutral and non-discriminatory. Gigaclear, who suggested that copper switch off could begin in rural areas first, agreed that there was potential for Ofcom to take a more leading role (for example, in relation to “must-offer” obligations).

More generally, like several other respondents, Sky argued that any period of parallel running of the old and new networks needed to be minimised, and advocated demand led migration as the most effective way of doing this. However, they noted that the migration of customers to fibre would largely depend on attractive wholesale terms.

There were mixed views on the possibility of entry level products at prices similar to those on copper networks. Talktalk welcomed this reference but Gigaclear argued that for wholly rural operators - who, unlike Openreach, cannot cross-subsidise more expensive delivery areas with less expensive delivery areas - this would be much more difficult.

### **Government response**

The Government maintains its view that switchover should be led by industry, working closely with Ofcom and Government to ensure policy and regulatory conditions are met. Article 81 of the EECC, will require Ofcom to ensure that migration from copper to fibre networks follows a clear, transparent process and meets conditions to safeguard competition and the interests of consumers.

The Government maintains its view that it would expect fibre networks to have suitable entry level products at prices similar to those on copper networks.

## **1.6 Mobile and 5G connectivity**

### **Summary of responses**

There were divided views on the Government’s position that the key priority in the 700 MHz auction should be improving mobile coverage across the UK, particularly in rural areas and on the UK’s major roads. The Government’s position that Ofcom consider the costs and benefits of mobile roaming and keep open the option of requiring roaming in future auctions, was also met with a divided response.

There was very strong support for improving mobile coverage generally, and rural roaming in particular, from a number of stakeholders, especially consumer and rural bodies. There was also support from devolved government and local bodies (for example, the Scottish Government and North Yorkshire County Council). Support for the Government’s 95% mobile coverage manifesto commitment, although widespread, was not always unequivocal. Which?, for example, pointed out that there was no clear plan to achieve the target and neither was there a clear commitment to good quality 4G coverage. There was also some concern about the way Government measured coverage where it was noted that geographic coverage can miss where people ‘live, work, and travel.’ Ordnance Survey highlighted the need for accurate geospatial data to help inform Government, Ofcom and the MNOs and the 95% target.

The Country and Land Association (CLA) argued that the ability to roam onto a network in hard to reach areas was a necessity. The Countryside Alliance said poor connectivity in rural areas impacted on economic development. Which? pointed to the social exclusion felt by those without a good mobile connection and the British Chamber of Commerce (BCC) highlighted the detrimental impact on businesses of total not spots. The Advanced Technology Wireless Group (AWTG) argued that the ability to roam would be crucial for 5G use cases, and suggested roaming arrangements which encouraged the upgrading of existing 3G only

sites to 4G and 5G, to maximise consumer access to all technology layers outside urban areas.

On the whole, the MNOs were against mobile roaming and had misgivings about Ofcom's December 2018 spectrum auction proposals. Those misgivings included the prominence of coverage obligations and the sub-obligations around outdoor coverage to 140,000 additional premises and building additional transmitters.

The MNOs offered a number of reasons why they were against roaming, including:

- a poorer customer experience;
- it would not address total not spots;
- it was difficult and time-consuming to establish;
- that it would be a disincentive to competition and investment (because networks wouldn't be able to differentiate themselves).

Some considered that "partial not spots" (where one or more MNOs are present, but all four are not) were best addressed by sharing passive infrastructure and that "total not spots" could be addressed by industry through a Shared Rural Network (SRN). tech UK argued both that roaming could discourage investment and, in practice, may prove difficult to identify enduring partial not-spots.

Whilst conceding that more needed to be done to improve rural coverage, Mobile UK argued that any interventions designed to meet overall coverage targets must make economic and technical sense. The Wireless Infrastructure Group (WIG), who also supported renewed focus on rural mobile connectivity, nonetheless warned that a poorly designed roaming solution could undermine the fair bet principle by limiting returns for a potentially high risk solution, and potentially worsen coverage.

On 5G, the main questions that arose concerned the clarity of the Government's aims. In particular, there were questions on what the 'majority of the country' means for the public specifically (Rural Service Network) and how the Government aimed to make the UK a 'world leader in 5G'. Three, for example, felt the need for reform of the existing regulatory landscape to allow for the UK to meet this ambition. Rural groups also expressed concerns about once again being left behind as new technologies became available.

### **Government response**

The Government welcomes the proposals set out in Ofcom's consultation on awarding the 700 MHz and 3.6-3.8 GHz spectrum bands as the default approach to delivering against our target of 95% geographic mobile coverage. In the meantime, the Government continues to consider other possible options to improve mobile coverage across the UK.

With regard to 5G, the Government is committed to creating a policy and regulatory environment that ensures the UK is amongst the first countries to make use of 5G technology.

## **1.7 Spectrum management**

### **Summary of responses**

The MNOs expressed mixed views on a number of matters, including the priorities that should drive the efficient use of spectrum and Ofcom's current approach to spectrum sharing. O2 supported the Government's key objectives of ensuring efficient use of spectrum and the

emphasis on ensuring effective spectrum utilisation. Three said that the text in the draft SSP on spectrum sharing should be maintained. Two of the MNOs had misgivings with Ofcom's current approach to spectrum sharing - suggesting it was too prescriptive, and that it diluted current spectrum holdings - and favoured a market based approach to sharing. Vodafone, however, supported Ofcom's approach.

The Government's openness to exploring new spectrum management techniques to encourage efficient use of spectrum, such as trading and leasing, was welcomed by many respondents. However, a number of respondents - including Mobile UK - argued that spectrum sharing was not a solution to be enforced on operators, highlighting that Ofcom's current practice incentivises operators to ensure efficient use of spectrum. They also noted that sharing is not a 'cure-all' for improving rural coverage. Others commented that the Government's ambitions for innovative spectrum management should be maximising societal and economic gain, suggesting that more users does not equate to more efficient use.

Wider industry responses presented a range of views on spectrum sharing. Federated Wireless supported Dynamic Spectrum Access and said that the technology was available now. Huawei was broadly supportive of shared spectrum models via local licensing for new users and use cases, provided they did not impede the rollout of national 5G networks. Talktalk agreed that Ofcom could support spectrum sharing through flexible licensing models. Arqiva, Qualcomm and Nominet were amongst those who were supportive of new 'use it or lose it' powers in the EECC. Nominet suggested that such conditions should be designed in a way to promote sharing in line with the Government's ambitions for the efficient use of spectrum. WIG focused on alternative approaches to spectrum sharing or roaming such as neutral host infrastructure, specifically the neutral host multi-operator model. Neutral host policies were also supported by tech UK and Arqiva.

There were mixed views on the Government's proposition that there should be greater liquidity in the spectrum market. For example, BT did not agree but Tech UK and Qualcomm did. Huawei argued that any arrangements for new users to lease spectrum should be market-led and in locations where access is agreed by operators and does not result in interference.

In the draft SSP, the Government proposed that Ofcom should report on the utilisation of spectrum in mobile bands. tech UK said they supported Ofcom reporting on the utilisation of mobile spectrum, especially its recent proposals for third parties to apply to utilise mobile spectrum where operators have not and will not be deploying. There was strong support for Ofcom being required to report on geographic spectrum use throughout the responses.

Respondents generally agreed that releasing public sector spectrum should be a priority. Huawei identified opportunities for release of public sector spectrum for commercial use. Qualcomm are one of a number of stakeholders that urged DCMS and Government to go beyond the EECC, specifically to release the required 1 GHz of spectrum in the 26 GHz band as soon as possible.

### **Government response**

Government maintains its key objectives in relation to the efficient use of spectrum, and views flexible, shared spectrum models, and the release of additional public sector spectrum as important to achieving these objectives. The Government therefore welcomes Ofcom's recent consultation<sup>4</sup> on spectrum sharing and flexible licensing practices.

The Government is now considering how the European Electronic Communications Code (EECC) will be transposed into UK legislation, working closely with Ofcom to ensure that spectrum is used efficiently and 5G roll-out is facilitated. The Government is consulting on the transposition of the EECC into UK law.

## **1.8 Convergence between full fibre and 5G networks**

### **Summary of responses**

Of the comparatively small number of respondents who made observations on convergence, there was widespread agreement that connectivity needed to be looked at in a converged manner.

INCA, for example, noted that some of its members were making contributions both in terms of network build and network management. BT said that customers were largely technology agnostic and wanted a fast, reliable connection, regardless of how it was delivered. techUK said that it supported the Government's call for network and mobile operators to work with local authorities and other relevant parties to design infrastructure architecture that can meet the requirements of 5G rollout.

### **Government response**

The Government expects to see a more converged telecoms sector. Fixed fibre networks and 5G are complementary technologies, and 5G will require dense fibre networks. In some places, 5G may provide a more cost-effective way of providing ultra-fast connectivity to homes and businesses.

We welcome Ofcom's recent activity to encourage investment in full fibre networks, including remedies to provide access to Openreach's dark fibre network between exchanges with no network competition, and unrestricted access to Openreach's duct and pole network.

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<sup>4</sup> Enabling Opportunities for Innovation, December 2018



## Section 2: Telecoms consumers

### General comments

Overall, consumer bodies supported the Government's strategic priorities. Consumer bodies agreed with the premise that the consumer experience in the telecoms sector lagged behind other essential services and in most cases supplemented the Government's evidence identifying consumer detriment with evidence of their own.

Conversely, the larger telcos, both fixed and mobile, either dismissed, or were sceptical of, any assertion that the consumer experience in telecoms was comparatively poorer than in other sectors. There was a suggestion that the Institute of Customer Service report could not be relied upon, and Ofcom's 2018 Quality of Service report was cited as evidence that mobile customers in particular were satisfied with their service overall (even if broadband customers were not).

Several telcos warned against an overly interventionist approach that might both affect investment and customer service, and determine market outcomes instead of promoting competition. Interventions needed to be proportionate and targeted.

There were also views that:

- customer satisfaction with the mobile sector would be significantly higher if it was not bundled with fixed broadband;
- consumers already had a high degree of protection through a combination of domestic legislation and Ofcom regulation; and
- the initiatives set out in the SSP gold plate what the EU has already set out in the EECC

However, broad disagreement on the Government's general direction of travel was by no means the unanimous industry view. For example, one major CSP argued that for too long the sector had exploited customer inertia and loyalty for profit making purposes. One of the altnets supported the greater focus on demand-side issues and supported a number of the strategic priorities, especially those around clearer information.

#### **Government response**

The Government believes there is evidence that the consumer experience in the telecoms sector needs to be improved. The Government wants that to be driven primarily by trusted markets working effectively so that consumers benefit from strong competition and take advantage of the best offers.

The Government is clear that where markets are not working effectively, intervention should be considered. However, it agrees that interventions in this area need to be clear, proportionate and targeted, to both support improved consumer outcomes and investment.

### 2.1 Addressing unfair business practices

#### **Summary of responses**

Consumer bodies were unequivocal about the prevalence, unreasonableness and effects of the 'loyalty penalty' in both the mobile and fixed markets.

On mobile handset pricing, Which? and Citizens Advice favoured a combination of further transparency measures and automatic handset discounting at the end of the minimum contract period. Citizens Advice welcomed moves towards implementation of legislation if Ofcom considered its current powers insufficient to take meaningful action to deal with the issue.

On the loyalty penalty in the broadband market, Citizens Advice welcomed the position taken in the SSP, that Ofcom should take into account the CMA's recommendations, including potential pricing interventions such as targeted safeguard caps to protect vulnerable consumers. Citizens Advice was clear that Ofcom must ensure its review of broadband pricing practices takes into consideration the disproportionate impact on vulnerable consumers.

Several telcos in both the mobile and broadband markets were clear in their opposition to the possibility of any migration on to default tariffs at the end of contract periods. They argued that prohibiting price differentiation might have the effect of undermining customer engagement, reward inertia and affect competition in markets. There was also a view that some customers preferred the flexibility of not being in contract.

One MNO (O2) pointed out that it had already introduced split bills, with one bill for a device plan and one for an airtime plan.

In terms of interventions, there was a strong view amongst the telcos that the focus needed to be on maintaining innovation and differentiation, and giving consumers' choice at the end of their contracts. The customer should be in control and engagement could be catalysed through better data and switching mechanisms. BT, for example, argued that whilst there was a legitimate debate around equal engagement opportunities versus equal outcomes, it was best to focus on the former. There were also strong views that the Government should not preempt Ofcom's own research and conclusions on price interventions in the market.

## 2.2 Access to better data and information

### **Summary of responses**

The vast majority of respondents agreed that consumers should be able to fully engage in the market to benefit from competition and choice. However, there was disagreement on how this might best be achieved.

Which? broadly agreed with the Government's strategic priorities in this space. It agreed on the usefulness of performance scorecards, in addition to recommending that the metrics in Ofcom's Quality of Service reports needed to remain relevant and accessible to consumers. UKCTA argued that better address-level broadband data was needed for all businesses (and their premises), and INCA fully supported access to reliable data for consumers about networks and service capabilities. The Communications Consumer Panel argued that consumers needed accurate, accessible and easily comparable information that did not overwhelm them with detail. It also supported prominent, plain English information on things like contract length and early termination charges; and for information on other matters like pricing and customer service levels to be available without the need for undue searching.

uSwitch expressed support for third-party access to address-level broadband data. In its view, data-sharing on a voluntary basis was desirable but other options should remain available in the event that an agreement was not reached.

On the whole, telcos were not supportive of the SSP's desired outcomes on improved information provision. Their arguments centred on:

- an imbalance of costs and benefits - and in particular unnecessary burdens on providers
- the current availability of good quality data
- the extent to which data could be compared,
- and the possibility of unintended consequences (for example, requiring complaints data to be published might lead to unintended consequences like CPs not investigating all issues, but only those that fell into the category of a complaint).

On smart data and data portability, there was support from a number of respondents. The Ombudsman Services, in addition to arguing that provision of more information to consumers was insufficient in itself, welcomed the Smart Data Review and agreed that data portability had a potentially transformative effect. The Communications Consumer Panel identified better information on usage as an improvement that could be easily made by CSPs. However, the Panel also said there were risks and benefits around portability, and that data had to be handled in a way that put the consumer in control, did not compromise the security of their personal information, and was transferable.

However, there were views from industry:

- that smart data solutions should be industry-led in order to foster innovation (and that Government and Ofcom should only play a convening role),
- that there might be security risks around releasing consumer data directly to a third party,
- that there were potential cost implications,
- and questions about the need for a data portability initiative when most broadband packages were unlimited in their use.

Several MNOs were keen to point out the investment they had made and innovation they had introduced in their own product set to improve customer access to data in order to, for example, help their customers control usage and spending.

Nonetheless, one MNO was more supportive and suggested Government could get the CMA to look at the impact of open banking on consumer engagement.

On the advertising of broadband speeds, one CSP (Talktalk) argued that Ofcom-led work looking at how product sets are described to consumers should build on previous investigations, and should be undertaken in collaboration with CSPs to ensure outputs were workable. Cityfibre was clear that current advertising rules and wider sources of information did not enable informed consumer choices. They argued that an assessment of the potential challenges was the best place to start, and emphasised the urgency of the work. In its response, the ASA described the evidence it used to come to its decision that the word “fibre” was unlikely to mislead the average consumer.

### 2.3 Improving consumer switching

#### **Summary of responses**

There were fewer stakeholders who provided views in this area. In addition to strong support from the altnets (see above, section 1.5), there was support from a number of other respondents.

Which?, for example, agreed that cross-platform switching needed to be Gaining Provider Led (GPL) and wanted Ofcom to look at GPL again without delay and implement it through regulation rather than relying on voluntary arrangements. uSwitch said that Ofcom needed to

ensure that future switching processes were clear, easy and reliable, and expected a cross-platform switching process to be GPL to ensure a seamless switching experience.

#### 2.4 Supporting telecoms consumers, including the most vulnerable

##### **Summary of responses**

Several telcos emphasised the importance of a positive experience for their customers and welcomed recent initiatives such as text to switch and end of contract notifications.

Citizens Advice wanted a strong, adequately resourced independent consumer advocate and argued that it could help strengthen the regulator and help it take action. Citizens Advice also recommended that Government set out its intention to legislate for the creation of a consumer advocate and to call on Ofcom to prepare for and facilitate its creation. Citizens Advice Scotland affirmed the need for independence and adequate resourcing, but also argued that for truly effective consumer advocacy arrangements, there needed to be a dedicated advocate for Scotland. The Consumer Council for Northern Ireland supported the inclusion of consumer advocacy in the SSP but strongly believed there was a need for a statutory consumer advocate in Northern Ireland. The Communications Consumer Panel, meanwhile, said that the Government should reinforce the benefits of the Panel model with any new framework that may emerge. It also argued for a statutory underpinning.

Two trade bodies (ISPA and Mobile UK) did not agree with the creation of a new advocate. ISPA argued that the role of a consumer advocate was already largely fulfilled by Ofcom and the Communications Consumer Panel. ISPA's recommendation was to utilise and stretch this existing arrangement before setting up a new body that might cause duplication and confusion. Mobile UK agreed that the existing arrangements seemed to be sufficient.

Citizens Advice welcomed the recommendation that Ofcom work to identify where learning from other sectors and regulators could benefit vulnerable telecoms consumers. They also argued that regulators should agree minimum standards of support for people with mental health problems.

There was near unanimity amongst industry stakeholders that more needed to be done for vulnerable consumers. However, in doing so, several stakeholders emphasised the need for a consistent and accurate definition of vulnerability to ensure interventions were properly targeted. Sky stated that they already adopted a broad definition, encompassing not just the disabled and elderly (for example) but those who have language barriers or are subject to bereavement, critical illness or bankruptcy.

##### **Government response**

On **unfair business practices**, the Government believes that a well-functioning competitive market should not depend on disengaged or vulnerable consumers paying a significant loyalty penalty. Consumers that are well-informed and shop around get the best deals, but all consumers should expect to get reasonable outcomes, even if they are not always actively searching for the best deal. The Government reiterates the position set out in the SSP that Ofcom should take action to protect all customers, particularly the most vulnerable, and that the Government will consider legislating if this proves to be necessary.

On **better information provision**, the Government remains of the view that the data and information available to consumers in the telecoms sector needs to be improved and that data portability could have a potentially transformative effect on consumer outcomes in the sector, particularly for the vulnerable and less engaged.

On **improving consumer switching**, the Government agrees with respondents who highlighted the need for easy, reliable switching, including between networks, in order to boost competition and choice.

On **supporting telecoms consumers**, the Government welcomes the support that stakeholders have expressed for recent Government and Ofcom reforms to ensure better support for telecoms consumers, as well as the recognition that more needs to be done to support the most vulnerable in particular. Vulnerable consumers are an area of focus for the Government's new Consumer Forum.

Finally, the Government notes the views expressed about a new consumer advocate and intends to consult on options in Summer 2019.

## **Section 3. Secure and resilient telecoms infrastructure**

### **Summary of responses**

In general, respondents were positive about strengthening Ofcom's capabilities to perform an enhanced cyber security role and the strategic priorities set out in the draft SSP related to this. However, one trade association (UKCTA) cautioned against the fragmentation of Ofcom's role by expanding its remit to cover cyber security.

The majority of larger telcos were positive about the Government's approach to regulatory regimes and the supply chain review. There were also views from one supplier that Government should provide clarity on the standards expected from industry players. A few respondents highlighted the need for greater collaboration, both domestically and internationally, and encouraged working groups across industry, Ofcom and Government to ensure that priorities around cybersecurity and critical infrastructure were aligned.

Consumer bodies welcomed Government and Ofcom's commitment to network resilience with the Communications Consumer Panel highlighting the need for increasing consumer trust online.

Several MNOs in particular welcomed the Government's Supply Chain Review and looked forward to its findings. There were also appeals for evidence based outcomes. One of the MNOs made the general observation that costs of additional security measures would ultimately fall on the consumer.

#### **Government response**

The Government welcomes the feedback provided and notes that most respondents were supportive of the approach set out in the draft SSP, as well as Ofcom's role in ensuring the security and resilience of the UK's telecoms infrastructure. Government will continue to work with Ofcom to ensure the security and resilience of the UK's telecoms networks are maintained to the highest standards.

The Government is undertaking a thorough, evidence-based and hard-headed review of the telecoms supply chain to ensure the secure and resilient roll-out of new networks. For the avoidance of doubt, the UK is not considering any options that would put at risk our national security communications, within the UK and with our closest allies. It will report to Parliament in due course.

The SSP has been amended to reflect the possibility of new Ofcom powers in the light of the Supply Chain Review.

## Section 4. Postal Services

### Summary of responses

A small group of stakeholders provided views regarding postal services, including a mixture of industry associations, consumer bodies and Royal Mail.

All supported Ofcom's role in monitoring standards within the postal sector and agreed that the sustainability of the postal Universal Service Obligation (USO) should be maintained as a priority. Royal Mail went further to advocate for greater financial sustainability of the USO. This view was shared by Citizens Advice. Royal Mail considered that greater flexibility on the part of Ofcom, in allowing it to compete for business, could strengthen its financial sustainability whilst Citizens Advice stressed the importance of responsible planning and investment on the part of Royal Mail.

Some industry associations and consumer advocacy groups felt that there should be further oversight of quality of service within rural areas. The Countryside Alliance emphasised the importance of a reliable, affordable and accessible postal service to rural communities and the preservation of a 6 days a week service. They also went further to call for parcel deliveries to be included in the USO. The Technology Enabled Care Services Association made a call for services to rural areas to be included in future reviews of the postal sector.

An accessible postal service for vulnerable consumers was also cited as an area of importance by the Consumer Council, who believed that Ofcom should continue to ensure that postal services remain affordable and in particular ensure that breaches to price caps should not occur. The Communications Consumer Panel also considered that Ofcom should develop a holistic view of the vulnerable consumer so that accessibility for this group can be better understood.

#### **Government response**

The Government continues to support the role of Ofcom in monitoring the performance of the postal Universal Service Obligation (USO).

The Government agrees that this is pivotal in ensuring the universal postal service remains accessible, reliable and affordable to all - including vulnerable consumers.

The Government maintains its view that the primary objective for Ofcom is to secure the provision of a financially sustainable and efficient universal postal service in the UK.

## **Other comments**

### **Barrier Busters & infrastructure deployment**

A small number of respondents commented on ease of infrastructure deployment, often in relation to the Government's strategic priority to make it easier and cheaper to deploy mobile infrastructure (section 1.6 above). In doing so, some respondents commended or endorsed the work of the DCMS Barrier Busters team.

On full fibre, two of the altnets provided detailed views. One argued that the Government's proposal around access to land where there is an unresponsive or absentee landlord did not address a market failure where there was an existing gigabit connection or the prospect of one. Cityfibre argued that Openreach had inherited a number of wayleaves which Openreach would not share, thereby rendering duct and pole access (DPA) unusable.

In relation to digital infrastructure more generally, BT argued that a better deployment environment needed to be created - one which reflected the importance of delivering good digital connectivity to all parts of the country - and suggested two ways in which it could be delivered. It also suggested that Ofcom could move more into the space of supporting initiatives that reduced deployment risk and cost.

In its consultation response, the National Farmers Union (NFU) highlighted different interpretations of the valuation method of sites used to host communications infrastructure.

#### **Government response**

The Government will continue to work with infrastructure providers, local authorities, landowners and other stakeholders to deliver a regulatory and legislative environment that encourages investment and supports fast deployment.