

## Airband Community Internet Ltd Response to DCMS Consultation on Statement of Strategic Priorities

### Summary

We are concerned that this SSP does not go far enough or allow any practical action to effectively manage Openreach's anti-competitive practises.

We recommend that the SSP:

1. Includes timeframes and definitions around Ofcom's role and responsibilities
2. Requires Ofcom to proactively monitor Openreach's build plans for signs of strategic overbuild
3. Empowers Ofcom to place an obligation on Openreach to share its build plans with Ofcom
4. Requires Ofcom to identify ways to sanction Openreach if there is repeated anti-competitive behaviour identified by points 3 and 4 above
5. Requires Ofcom to put in place a fast-track appeals process to hear and vote on Openreach's anti-competitive behaviour within PIA

### Consultation questions

1. Do you agree with the Government's strategic priorities and desired policy outcomes for telecommunications, the management of radio spectrum and postal services?
  2. Does this document set out clearly the role of Ofcom in contributing to the Government's strategic priorities and desired outcomes?
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1. We agree with the Government's strategic priorities and desired policy outcomes, except for the recommendations around voice-only services in Section 1.5, paragraph 27.  
Voice-only services are an additional service that a fibre network provider may choose to offer, but should not be obligated to include, similar to firewalls and email services. Voice is not relevant where there is mobile coverage or wifi to mobile handoff. As fibre networks roll out, choice of mobile, wifi calling or VOIP will be available to the majority. For those who cannot receive mobile coverage or broadband sufficient to enable a voice service, we agree they should have a voice service provision, but propose that this should be a Universal Service Obligation not a general condition for all network providers.
  2. Clarity around the path to achieving 15 million homes passed by 2025 is required, including success measures and objectives. This document should go further to define the role of Ofcom and provide specific and measurable targets/objectives to allow the Government to achieve the desired outcome.

### Defining Ofcom's role

This SSP requires Ofcom to deliver against the remit but does not set any clear objectives or measures around the activities specified:

- a) Although the SSP states (para 17) that "if the pole and duct remedies ... are not being fully implemented by Openreach, then all options should be considered to ensure compliance", in reality any consideration of options, and then implementation of measures would take time, and this delay could realistically be sufficient as to stop smaller network operators roll out, or at the least delay their delivery plans substantially. This is a form of anti-competitive practise. This could be avoided by considering options and defining measures ahead of time, and Ofcom taking an active role in monitoring the progress and practises of Openreach's pole and duct remedies. Remedial plans to be put in place at early stages in the process should delays and problems arise.
- b) The SSP (para 18) states that 'there should be other options to support competitive network deployment' and 'the Government encouraged Ofcom to consider regulatory options ... in a way that does not undermine the case for operators ...' but gives no detail on how this will be achieved, and in what timeframe.
- c) The SSP (para 19) states that 'The Government would like Ofcom to work collaboratively with other regulators, ... to ensure opportunities for passive infrastructure sharing with other utilities are explored and barriers addressed.' but gives no timeframe for this, nor details of how this will be achieved, and indeed whether Ofcom will be obligated to demonstrate evidence of this collaboration.
- d) The SSP (para 21) states 'we expect Ofcom to be vigilant and use its full range of powers to address any anti-competitive behaviour.' There are no descriptions around how they are expected to be vigilant, or how this is measured, and no timeframes around when they will address this behaviour if it is discovered.

Historically, the information from Openreach has been patchy and late, the tools not fit for purpose and the means of contacting Openreach to request guidance or provide feedback has been ineffective and frustrating. The requirement for Openreach to launch a duct and pole product by a specific date means the delivery date is the only measure of success. However, the product could be unfit for purpose, additional metrics for success such as take up rates and ease of access should be included in the overall assessment against achieving the requirement.

There does not appear to be any incentive for Openreach to invest fully in this policy. They have the scale to move areas in order to overbuild and remove regional competitors. This SSP could go much further in clarifying and defining the role of Ofcom in monitoring and eliminating the anti-competitive behaviour of poorly delivered duct and pole access product, anti-competitive wholesale pricing and aggressive overbuilding.

We recommend that Ofcom is empowered to:

- a. Set up an independent 'clearing house' for all Openreach (and other operators') PIA assets. Operators should be obliged to update the clearing house on changes every 6 months. This would protect alternative operator plans from Openreach visibility and thwart any overbuild opportunities, whilst stimulating wholesale use of public infrastructure.
- b. Apply penalties for breaching provision of the pole and duct product, at a level that incentivises Openreach to develop and offer the product effectively. This could relate to the PIA costs Openreach place on network providers, as they clearly see this as a reasonable expectation.
- c. Apply penalties for strategic overbuilding and other anti-competitive practises at a level that encourages Openreach to comply
- d. Require Openreach to declare all differences between the product and procedures they use internally, and those offered to new network providers. To allow an independent assessment of whether there is 'undue discrimination'.
- e. Demand fibre build plans from Openreach in order to monitor systematic overbuild.
- f. Take an active role in the development and takeup of Openreach's duct and pole product to make sure it meets requirements in a timely manner

#### Openreach's anti-competitive behaviour

The biggest risk to the delivery of the Government's objective detailed in the SSP is Openreach's behaviour, which stifles competition. Unless Ofcom are empowered to take action against this behaviour, the aims and objectives of this SSP are compromised. Their strategic overbuilding not only curtails new network operators delivering to new areas, it forces competitors out of the market, reducing consumer choice and undermining the Government aims of creating a pro-competitive and pro-investment environment.

The following are examples of Openreach's anti-competitive behaviour:

- We have been affected by Openreach's anti-competitive practises in the form of new ducts/fibre laid in areas not included or mentioned in their OMR, whilst they were in default in deployment of other publicly funded projects.
- We have experienced Openreach condemning poles on the day our engineers are rolling out fibre, despite us having reserved those poles 3 months previously.
- Openreach are not giving a clear indication of time for build as part of their community engagement within community fibre partnerships, leading communities to believe they will be receiving a fibre service sooner than they actually will, effectively shutting out other providers and limiting customer choice.

Suggested actions to mitigate this risk:

- Openreach should declare, to Ofcom, their long-term plans (3 years) as well as their 6-month (general) and 3-month (specific) plans to roll out. Ofcom should hold them responsible, and apply penalties, for anything more than a 10% change to these plans. This is in line with Openreach requirements for other suppliers, so they clearly see this as a reasonable expectation. This would allow Ofcom to clearly identify trends in Openreach switching plans and intervention areas and address any indication of overbuilding and anti-competitive practises.
- Extend the suspension of business rates for fibre investors beyond 2021, for the first fibre investors in a geographical region. This would incentivise network operator's delivery in areas with no current fibre provision whilst simultaneously discouraging overbuild.

Additional suggestions to encourage a pro-competitive environment:

1. Revised whistle-blower policy within Openreach to put some responsibility on employees to raise to Ofcom if they see any anti-competitive behaviour.
2. Escalation process for complaints to /Openreach to be referred to a non-Openreach ombudsman, who can make quicker decisions (they don't all need to be referred to Ofcom).