

**BCS, The Chartered Institute for IT  
Inquiry Response**

**Ofcom**  
**Strategic Review of Digital Communications 2015**  
7<sup>th</sup> October 2015

## **BCS, The Chartered Institute for IT**

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## BCS Response to Ofcom

### Strategic Review of Digital Communications 2015

**Overarching Issue: Should competition policy remain at the core of good availability outcomes for most consumers, complemented by targeted intervention as required?**

*Question 1: Do stakeholders agree that promoting effective and sustainable competition remains an appropriate strategy to deliver efficient investment and widespread availability of services for the majority of consumers, whilst noting the need for complementary public policy action for harder to reach areas across the UK?*

The BCS agrees that promoting effective and sustainable competition remains an appropriate strategy to deliver efficient investment and widespread availability of services for the majority of consumers. However we are concerned that in this volatile market place competition may be reduced as a result of takeovers and/or mergers of key players; e.g. the proposed merger of BT and EE.

*Question 2: Would alternative models deliver better outcomes for consumers in terms of investment, availability and price?*

The BCS is not aware of a credible alternative model at this time.

**Overarching Issue: What more can be done through public policy to deliver truly widespread availability?**

*Question 3: We are interested in stakeholder's views on the likely future challenges for fixed and mobile service availability. Can a 'good' level of availability for particular services be defined? What options are there for policy makers to do more to extend availability to areas that may otherwise not be commercially viable or take longer to cover?*

The BCS recognises the poorer availability for SMEs, Section 7.14, compared with residential and that this is due to continue. We believe this needs to be addressed urgently. There is a need to change from measuring service using theoretical speed and availability to delivered quality of service, including reliability of access and response time; e.g. for digital by default public services.

**Overarching Issue: Does convergence and consolidation in our sectors suggest new approaches or tools are required to deliver effective competition?**

*Question 4: Do different types of convergence and their effect on overall market structures suggest the need to changes in overarching regulatory strategy or specific policies? Are there new competition or wider policy challenges that will emerge as a result? What evidence is available today on such challenges?*

The BCS believes that bundling is as great a threat to consumer choice as it was to the Computer Industry in the 1980s when robust action by US Competition Authorities enabled the micro-computer revolution. Greater convergence (e.g. bundles) should be accompanied by improvement in the ease with which consumers can change suppliers.

*Question 5: Do you think that current regulatory and competition tools are suitable to address competition concerns in concentrated markets with no single firm dominance? If not, what changes do you think should be considered in this regard and why?*

The BCS believes that current regulatory and competition tools are suitable to address competition concerns in concentrated markets but they need to be employed more consistently and frequently.

**Overarching Issue: What model of competition should future regulatory strategy focus on: full end to end networks; passive access to support end to end networks; or active wholesale remedies to deliver downstream competition?**

Question 6: What do you think is the scope for sustainable end-to-end competition in the provision of fixed communications services? Do you think that the potential for competition to vary by geography will change? What might this imply in terms of available regulatory approaches to deliver effective and sustainable competition in future?

The BCS believes that fixed and mobile communications infrastructures are converging and evolving at an increasing pace (note, for example, the plans of various US corporations to provide broadband coverage from high-altitude aerial devices). The potential for both competition and monopoly abuse is simultaneously evolving. While these trends may well vary geographically the need is to revert to regulatory basics and take action on abuse when it happens rather than trying to predict the future.

*Question 7: Do you think that some form of access regulation likely to continue to be needed in the future? If so, do you think we should continue to assess the appropriate form on a case by case basis or is it possible to set out a clear strategic preference for a particular approach (for example, a focus on passive remedies)?*

The BCS believes that some form of access regulation will continue to be needed in the future. However it is more likely to be applied on a case-by-case basis. The pace and direction of change (e.g. software defined networks) is too uncertain for anything else.

*Question 8: Do you agree that full end-to-end infrastructure competition in mobile, where viable, is the best means to secure good consumer outcomes? Would alternatives to our current strategy improve these outcomes, and if so, how?*

The BCS is hopeful that it will be possible to retain full end to end service competition but the trend towards infrastructure sharing (fibre backhaul networks as well as

masts) is likely to continue. Instead of trying, in vain, to re-create (no longer possible to preserve) competing end to end networks the need is to try to prevent monopolies appearing among the growing number of shared infrastructure services.

### **Overarching Issue: Are there new or unresolved competition issues in digital communications services?**

*Question 9: In future, might new mobile competition issues arise that could affect consumer outcomes? If so, what are these concerns, and what might give rise to them?*

The BCS believes that new business models may well emerge but as noted in the response to (Q6) communications architectures, implementation technologies and business models are all in a state of flux as the distinction between fixed and mobile blurs with the transition to an always connected smart world.

*Question 10: Does the bundling of a range of digital communications services, including some which may demonstrate enduring competition problems individually, present new competition challenges? If so, how might these issues be resolved through regulation, and does Ofcom have the necessary tools available?*

The BCS believes that the bundling of a range of digital communications services may well demonstrate enduring competition problems. This is implied in Section 9.122, suppliers may use a dominant market position to assist their entry into new markets. The regulatory tools are available but need to be intelligently applied.

### **Overarching Issue: Where regulation is required to promote competition, how can it best secure both efficient investment and effective competition during periods of significant investment in risky new assets?**

*Question 11: What might be the most appropriate regulatory approaches to the pricing of wholesale access to new and, risky investments in enduring bottlenecks in future?*

The BCS believes the most important approach is to give those who invest in removing bottlenecks reasonable confidence that their risk will not be compounded by regulatory uncertainty, provided they do not abuse any monopoly position they may create.

*Question 12: How might such pricing approaches need to evolve over the longer term? For example, when and how should regulated pricing move from pricing freedom towards more traditional charge controls without undermining incentives for further future investment?*

The BCS believes that previous attempts by regulators to control pricing during periods of change do not have a happy history. Perhaps during periods of rapid change intervention should be confined to preventing abuse by those with dominant power.

**Overarching Issue: Are there changes in competitive outcomes or the overall market context that might suggest the need to update or evolve the current model of fixed access network functional separation?**

*Question 13: Are there any actual or potential sources of discrimination that may undermine effective competition under the current model of functional separation? What is the evidence for such concerns?*

The BCS believes that the Local Loop unbundling and the subsequent operational separation of Openreach have had many consequences; not all of them happy. The main current concern is whether BT is using regulated revenues and/or those from its leased line business to cross subsidise its entry into TV content at the expense of investing in service improvement.

*Question 14: Are there wider concerns relating to good consumer outcomes that may suggest the need for a new regulatory approach to Openreach?*

The BCS believes that suppliers other than BT rely on Openreach investment decisions which are made by the BT Board. Thus BT can dictate the timing of investment and the introduction of good consumer outcomes by all suppliers dependant on Openreach. Delivery time scales are considered to be too long.

*Question 15: Are there specific areas of the current Undertakings and functional separation that require amending in light of market developments since 2005?*

The BCS believes this has already been addressed in its response to Question 13. If functional separation is to continue, the Undertakings must be clarified and enforced in a robust and very public way.

*Question 16: Could structural separation address any concerns more effectively than functional separation? What are the advantages and challenges associated with such an approach?*

The BCS believes that the merger of BT and EE in a converged fixed, mobile and wide utility presents challenges which are of great concern to those of its competitors who are also dependent on its services (and those of MBL) in their own supply chain. There is also a concern that BT currently appears to have neither the cash flow nor the borrowing capacity to fund the investments needed to meet EE's current commitments, the needs of its business customers and/or to provide a good user experience to its new TV customers.

**Overarching Issue: Should Ofcom do more to further support empowerment at each stage of the consumer's decision-making process?**

*Question 17: What do stakeholders think are the greatest risks to continuing effective consumer engagement and empowerment?*

The BCS believes the greatest risks to continuing effective consumer engagement and empowerment is the lack of information on the quality of service (including

response times) to enable them to understand what can reasonably expect to receive from suppliers.

*Question 18: What indicators should Ofcom monitor in order to get an early warning of demand-side issues?*

The BCS believe that Regulators should focus more on identifying and responding to demand side issues when they happen rather than trying to predict the unpredictable.

*Question 19: What options might be considered to address concerns about consumer empowerment at each stage of the decision-making process (access, assess, act)? What more might be required in terms of information provision, switching and measures to help consumers assess the information available to them? What role may Ofcom have to play compared to other stakeholders (including industry)?*

The BCS believes that it has already partially addressed this issue in its response to Question 17. It should be much easier for consumers to make decisions based on current information on quality of service and response times for their likely needs. Ofcom is in a unique position to assemble, assess and publish such information (including from the in-house performance monitoring operations of the operators and others) perhaps in co-operation with others such as the Consumer Association.

**Overarching Issue: What more should Ofcom do to support better quality of service for consumers, in either competitive or less competitive markets?**

*Question 20: Are there examples in competitive or uncompetitive sections of the market where providers are not currently delivering adequate quality of services to consumers? What might be causing such outcomes?*

The BCS believes that the SME sector has a poor experience of reliability, Section 13.14, and SMEs are not offered service level options, Sections 13.38/9. We believe these issues should be addressed as a matter of urgency.

*Question 21: What further options, if any, should Ofcom consider to secure better quality of service in the digital communications sectors?*

The BCS believes that Ofcom must be flexible and maintain an open mind when considering future regulatory strategies in securing better quality of service in the digital communications sectors. The virtuous circle ideal considered in Section 13.48 refers to e-health but this is just one of many IoT applications where reliability and resilience will be critical factors. Over the next ten years these will be of increasing importance but different applications will be subject to different quality of service drivers and constraints.

**Overarching Issue: Are there opportunities for deregulation or simplification that will bring broader benefits whilst avoiding new risks to consumer harm?**

*Question 22: Might there be future opportunities to narrow the focus of ex ante economic regulation whilst still protecting consumers against poorer outcomes?*

The BCS believes a balance is needed. Ex ante regulation usually serves to protect incumbents against change and should be avoided. Ex post regulation can, however, be too little too late with the damaged new entrant dead and buried long before the remedies are applied. Access regulation, specifically, is still needed ex ante.

*Question 23: Where might future network evolutions, including network retirement, offer opportunities for deregulation whilst still supporting good consumer outcomes?*

The BCS believes that recent decisions to allow BT to raise charges because of the cost of maintaining legacy copper networks were a step in the wrong direction. Allowing three to five year fixed contracts in return for sharply discounted prices, in order to remove the risk from investment in new networks and/or upgrades, should be considered.

*Question 24: What are the potential competition and consumer protection implications of the rise of OTT services? Might the adoption of such services enable future deregulation without raising the risk of consumer harm?*

The BCS believes that given the manner in which consumers are moving from fixed to mobile, the added cost of a mandatory PSTN line and the increasing ability to routinely identify the geographic origination of Internet traffic (including VOIP) unless it is actively disguised (as can also be done with PSTN traffic), there is a need to consider radical deregulation.

*Question 25: Are there any areas where you think that regulation could be better targeted or removed in future? What would be the benefit of deregulation as well as the main risks to consumers and how these could be mitigated? Please provide evidence to support your proposals.*

At this time the BCS does not believe there are any other areas where regulation could be better targeted or would benefit from deregulation other than those specifically identified in our response to the questions posed in this document.