

8th October 2015

CWU Response to Ofcom's Strategic Review of Digital Communications

Introduction

1. The Communication Workers Union (CWU) has over 60,000 members in the telecommunications industry working in around twenty companies including BT, Telefonica UK, Virgin Media, Sky and TalkTalk. We are a major stakeholder in the digital communications industry and we bring an important perspective as the largest representative body for workers in the sector.
2. The CWU welcomes Ofcom's Digital Strategic Review and we agree that a broad review is necessary to ensure communications services continue to meet the needs of citizens and consumers. We believe the priority focus for regulation must be on ensuring the right investment incentives are in place for the market to deliver widespread access to high quality broadband services. Ofcom also has an important role to play in identifying the public policy interventions needed to take digital networks to hard to reach areas so that no one is excluded from the digital economy.

Background

3. Ofcom's Strategic Review of Digital Communications is the first strategic assessment of the telecommunications sector in ten years. Following considerable changes over that period, the aim of the review is to make sure digital communications markets continue to work for consumers, citizens and businesses. Ofcom will assess this objective under four broad strategic policy challenges across fixed, mobile and content sectors, as follows:
 - Investment and innovation, delivering widespread availability of services;
 - Sustainable competition, delivering choice, quality and affordable prices;
 - Empowered consumers, able to take advantage of competitive markets; and
 - Targeted regulation where necessary, deregulation elsewhere.

Summary of key points

- It is a serious concern that millions of homes and businesses are still struggling with poor connectivity, given the importance of high speed, reliable internet for full participation in the economy and society.

- The ability to meet rising customer expectations in relation to service availability, quality and resilience will rely on a major programme of investment and a properly resourced workforce to build and maintain network infrastructure to a high standard.
- There should be a shift in Ofcom's focus away from encouraging competitive entry in the pursuit of short term considerations of price and cost cutting, and towards incentivising long term investment.
- Creating the right investment incentives will rest on allowing operators sufficient pricing flexibility and regulatory stability to justify major network extensions and upgrades.
- Investment considerations must take account of the interests of those who work in the industry and the need for decent labour standards, which is essential for delivering a high quality of service.
- Access regulation is likely to be necessary in future to deliver efficient and sustainable competition, but Ofcom should avoid punitive charge controls that deter network investment.
- Public policy interventions to extend reliable broadband across the country should include a universal service obligation (USO) for broadband, and policies to promote the take-up of digital services.
- There are serious risks associated with structural separation of BT Openreach from BT Group, and a decision to pursue this option would jeopardise essential investment in the UK's network infrastructure.
- The increased complexity of services means that Ofcom should do more to empower consumers to make effective choices, including the introduction of detailed price and quality comparison services.
- More regulatory incentives for the market to deliver a better customer experience would help to create a virtuous cycle, leading to higher take-up, more investment and improvements in service quality.

Consultation Questions

The CWU's response is focused on the questions most relevant to the union and its membership.

Q1: 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?

Millions of consumers are excluded from the benefits of competition

4. The CWU recognises that effective competition can help to bring benefits for users including encouraging innovation and greater choice, but we are concerned that gaps in service provision mean that a substantial number of citizens and consumers are not experiencing the benefits of competition. Ofcom reports that 8% of UK premises (c.2.2 million) currently fall below the 10Mbit/s broadband speed threshold required by a typical household to support the most popular online services, and 2% of premises (c.500k) are unable to receive the most basic 2Mbit/s service¹.

¹ Strategic Review of Digital Communications, Ofcom, 16th July 2015, para 1.17, p.4

5. We agree that public policy action has a vital role in extending networks to less economic areas, but we believe the regulatory framework could do more to incentivise the market to invest in upgrading and widening the coverage of their networks. This should involve a shift in Ofcom's priority focus away from encouraging competitive entry in the pursuit of short term considerations of price and cost cutting, and towards enabling long term investment to flourish. We think this is crucial at a time when the UK's economy and society are increasingly reliant on digital networks and services, and when a major programme of investment is needed to upgrade the nation's communications infrastructure.

The focus on driving lower prices through competition creates a barrier to investment

6. The CWU is concerned that intensive competition in profitable areas puts pressure on price and revenues and that this is creating a barrier to long term risk investment in networks, especially in harder to reach areas. The UK has one of the most competitive communication markets in the world, with the highest level of choice and the lowest prices for services amongst the leading EU countries against a number of measures.
7. For example, BT operates a lower proportion of fixed broadband lines than the incumbent provider in any other EU5² market, and single service pricing for fixed broadband is cheaper in the UK than in the other EU5 countries³. The average price of a residential fixed broadband package has fallen by 40% in real terms between 2004 and 2014⁴, and the price of a typical bundle of mobile services has fallen by two thirds in real terms⁵. Total telecoms revenues have fallen by 9.5% during the six years since 2009, while operator reported wholesale revenues have plummeted by 41.5% in the same period⁶. We believe that this reduction in revenues limits the potential for investment in network infrastructure.

Improving coverage and service quality will rely on a major commitment to investment

8. In parallel with falling prices and revenues, we are witnessing growing demand for faster fixed and mobile broadband services and rising expectations in relation to service quality, resilience and availability. In the fixed sector concerns have been raised about the quality of experience for users, and in the mobile sector consumers increasingly expect universal availability of voice and data services.
9. The CWU recognises the importance of addressing these challenges and delivering wider coverage and improving service quality to meet customer needs. However, achieving these important aims will rely on a major commitment to investment in both fixed and mobile networks, with a properly resourced and skilled workforce to build and maintain

² UK, France, Germany, Spain and Italy

³ The European Broadband Scorecard, Ofcom, 5th February 2015, http://stakeholders.ofcom.org.uk/binaries/research/broadband-research/scorecard/2015/European_Broadband_Scorecard_Q1_2015.pdf

⁴ Ofcom, *ibid*, July 2015, para 1.3, p.1

⁵ Ofcom, *ibid*, July 2015, para 1.4, p.2

⁶ Communications Market Report 2015, Ofcom, August 2015, figure 4.27, p.280 http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/CMR_UK_2015.pdf

the network to a high standard. This will depend on a regulatory framework that allows network operators sufficient pricing flexibility and regulatory stability to meet their costs and fully fund improvements to their networks.

Private sector investment could go further with the right regulatory support

10. There has been significant private sector infrastructure investment in recent years in both the fixed and mobile sectors, but this has still not been sufficient to deliver fast, reliable services to all homes and businesses across the country. We believe that by placing a greater priority on incentivising investment and innovation in relevant markets, Ofcom could encourage a bigger commitment to private funding for digital infrastructure delivering better outcomes for citizens and consumers in terms of coverage and quality. This should include ensuring a stable regulatory framework that reduces uncertainty and risk, and avoiding punitive access charge controls that prioritise lower prices at the expense of investment.
11. BT has invested large sums in the UK's digital infrastructure in recent years, extending its fibre broadband network to more than 80% of UK premises. It has spent £27bn on property, plant and equipment in the last 10 years, of which £10bn has come from Openreach. This includes £3.5bn invested in superfast broadband, which will take 20 years to recoup with payback only beginning after 12 years⁷. Approximately £2.5bn of this has been for commercial roll out, and the remaining £1bn has been invested in Broadband Delivery UK projects taking superfast broadband to more remote areas.
12. BT recently announced that it aims to support the Government in delivering a new universal minimum broadband speed of 5-10Mbit/s subject to a supportive regulatory and government policy environment to bring about a commercially viable investment. BT plans to extend superfast broadband coverage beyond the Government's 95% of premises target, and it intends to deploy G.fast broadband technology across the UK with 10 million premises to receive speeds of between 300-500Mbit/s by the end of 2020⁸.
13. In the mobile sector, the four main operators have invested heavily in 4G spectrum with a total of £2.34bn spent on 4G licences in 2013 and they have also entered into an agreement with Government to invest a total of £5bn to improve mobile infrastructure by 2017 with the aim of reducing mobile 'not spots'⁹. However, the deal will still leave 15% of the UK without full mobile coverage for the purposes of downloading data.
14. Virgin Media has announced a £3bn investment programme to improve its fibre optic broadband network, increasing its reach from approximately 44% of premises to 60%, or

⁷ BT urges long term freedom from fibre price controls, 12 June 2012, Guardian, <http://www.theguardian.com/business/2012/jun/12/bt-freedom-fibre-price-controls>

⁸ BT pledges better broadband for UK, BBC News, 22nd September 2015, <http://www.bbc.co.uk/news/technology-34324046>

⁹ Government secures landmark deal for UK mobile phone users, DCMS press release, 18th December 2014, <https://www.gov.uk/government/news/government-secures-landmark-deal-for-uk-mobile-phone-users>

from 13 million to 17 million homes and businesses. This will involve ultrafast broadband, delivering speeds of 300Mbit/s. However, the money will be spent on filling in gaps in its existing network rather than widening the network to rural areas¹⁰.

15. These examples show that private sector investment in networks is significant, but with the exception of BT's £1bn investment in rural broadband and some relatively small, targeted projects from companies such as Gigaclear, private investment is primarily focused on the most commercially viable areas. Therefore, we believe that more needs to be done to incentivise operators to upgrade networks and extend access in less profitable areas. BT's commitment to a new universal minimum speed of 5-10Mbit/s is encouraging, but it is dependent on regulatory and Government support. That is why a regulatory framework that supports long term risk investment is crucial to the ongoing success of network infrastructure projects.

Q3: 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?

16. The CWU believes that public policy initiatives are essential in helping to close the digital divide and extending fast, reliable broadband services to all homes and businesses. Ofcom has an important role to play in identifying these policy measures and working with Government in their implementation. In particular, we believe the Government should introduce a universal service obligation (USO) for broadband, and that it should introduce measures to promote the take-up of digital services. We also believe the Government should extend the Broadband Delivery UK (BDUK) superfast broadband objective beyond 95% of premises, supported by greater public funding where necessary, to reach all homes and businesses within a reasonable period of time.

A broadband universal service obligation

17. We agree with Ofcom that the time has come to review public policy around the USO¹¹, and we believe the growing reliance on broadband services calls for the introduction of a broadband USO of at least 5Mbit/s. The CWU has consistently called for a statutory USO for broadband, given the importance of high speed internet access for economic and social participation. We are encouraged by the Government's commitment, made on 18th March 2015, to look to raise the USO from dial up speeds to 5Mbit/s broadband so that consumers gain a legal right to request installation of 5Mbit/s capable services at an affordable price¹².
18. However, a minimum speed of 5Mbit/s is already looking outdated given Ofcom's estimate that the typical household requires a 10Mbit/s download speed to benefit from the most popular online services. Neither does it reflect the growing demand from users

¹⁰ Virgin Media to invest £3bn in broadband, BBC News, 13th February 2015, <http://www.bbc.co.uk/news/business-31451174>

¹¹ Ofcom, *ibid.* P68, para. 7.34

¹² Digital Communications Infrastructure Strategy, DCMS, 18th March 2015, <https://www.gov.uk/government/publications/the-digital-communications-infrastructure-strategy/the-digital-communications-infrastructure-strategy>

for faster upload speeds. The CWU believes the Government must introduce a broadband USO with a minimum download speed of at least 5Mbit/s and a commitment for this to rise with average speeds as networks develop. The Government should also consider introducing a minimum upload speed under the USO in response to the increase in upstream data traffic driven by the growth in online file sharing.

Encouraging take-up of services

19. The Government should do more to promote take-up and use of digital services amongst the 7.2 million adults still offline and the 9.8 million adults who lack basic online skills¹³. This should include a clear plan for addressing the UK's online skills deficit and a genuine commitment to investing in the training needed to get everyone online. We do not believe the Government's £3 million investment in its Digital Strategy Action 15 is adequate, and it is only a fraction of the estimated £875 million needed to ensure the whole population has basic digital skills by 2020¹⁴.
20. One of the most cost effective ways to improve the nation's digital literacy would be to provide training courses through the UK's social institutions such as the Post Office and local authorities. This would help to promote full participation in the economy and society, boosting growth and job creation. Increased take-up would also help to justify and incentivise private sector investment in communications infrastructure.

A more ambitious plan for Broadband Delivery UK

21. The Government's Broadband Delivery UK (BDUK) programme is progressing well in delivering a fully open wholesale access platform to customers and service providers in rural areas where the market alone would not have invested. However, a greater commitment to public funding through BDUK would allow the private sector to go further and faster in extending high quality, reliable broadband networks to hard to reach areas.
22. It is welcome that BT has recently announced plans to extend broadband coverage beyond the Government's 95% of premises target, which will be made possible by additional funds being made available as a result of 'success dividend' clauses due to take-up exceeding certain levels for publicly funded projects.
23. We believe the Government should set a target through BDUK of extending superfast broadband to all homes and businesses within a reasonable period of time. This should be supported by a public funding commitment to reach the final 5% of premises so that no one is left excluded from the digital economy. This will play an important role in underpinning economic growth, creating jobs, and ensuring the UK remains competitive in the global marketplace.

¹³ Media Literacy, Understanding Digital Capabilities follow-up, September 2013 and March 2014, BBC/Ipsos MediaCT, http://www.bbc.co.uk/learning/overview/assets/digital_capabilities_2014.pdf

¹⁴ 'Technology Manifesto', Policy Exchange, London, 4th June 2014, <http://www.policyexchange.org.uk/images/publications/technology%20manifesto.pdf>

The case for universal broadband access

24. There is no doubt that the social and economic benefits of good quality universal broadband justify the investment needed to make it a reality. It has been estimated that if everyone in the UK was able to go online, it would add another £63 billion to the economy¹⁵. In a study for the Department for Culture, Media and Sport, the availability and take-up of faster broadband speeds is projected to bring long term economic growth, adding around £17 billion to the UK's Gross Value Added¹⁶ (GVA) by 2024¹⁷.
25. The current level of publicly funded broadband interventions is expected to increase GVA by £6.3 billion per annum by 2024, and to return £20 of economic benefit for each £1 of public investment. Faster broadband is forecast to bring a net increase of around 56,000 jobs across the UK by 2024, of which around 20,000 will be attributable to current levels of Government funding¹⁸.

Q6: What do you think is the scope for sustainable end-to-end competition in the provision of fixed communication 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?

26. Given the high cost of replicating a fixed national network infrastructure, we do not believe that full scale end-to-end competition in the fixed market is likely. We believe the economic bottlenecks¹⁹ identified by Ofcom are likely to remain for the foreseeable future, and that the remedies introduced to allow competitors regulated wholesale access to the bottleneck parts of BT's network will continue to be necessary.
27. Although Virgin Media recently announced plans to extend its footprint from around 44% of premises currently to 60% coverage, it is unlikely to go further than this due to the absence of a commercial case to justify the necessary investment. There are other positive developments taking place from providers such as CityFibre deploying fibre to the premise (FTTP) networks in selected cities including Bournemouth, and Gigaclear building FTTP networks in rural communities. However, these projects represent relatively small scale interventions in the context of the national communications network.

¹⁵ This is for everyone, the case for universal digitisation, Booz & Company, 2012, <http://www.go-on.co.uk/wp-content/uploads/2013/12/The-Booz-Report-Nov2012.pdf>

¹⁶ Gross Value Added is a measure of economic output, closely linked to Gross Domestic Product (GVA + taxes on products – subsidies on products = GDP)

¹⁷ UK Broadband impact study, November 2013, SQW, p.2 accessed at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257006/UK_Broadband_Impact_Study_-_Impact_Report_-_Nov_2013_-_Final.pdf

¹⁸ SQW, ibid, November 2013, p.3

¹⁹ In telecoms, bottlenecks typically focus on the control of infrastructure which is uneconomic to replicate.

Q7: Do you think that some form of access regulation is 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)?

28. On the basis that there is unlikely to be an alternative operator to BT with truly national geographic coverage, we believe that some form of access regulation is likely to be necessary in future to deliver efficient and sustainable competition. This will avoid the upward pressure on average costs that comes with the duplication of network assets, maintaining efficiency in the overall national network infrastructure and helping to keep prices low.
29. We believe Ofcom should assess the appropriate form of access regulation on a case by case basis, and that active²⁰ or passive²¹ access remedies will continue to be necessary depending on the network and the level of investment required. However, Ofcom's overall approach should be to avoid punitive access charge controls that do not properly reward network investment. As Ofcom notes, there is a risk that wholesale regulation may undermine dynamic efficiency incentives for the access provider. For example, cost-based access regulation which does not suitably reward network upgrade investment will reduce the incentive for investment²².

Q8: 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?

30. We recognise that end-to-end mobile competition has brought benefits to customers, particularly with regards to lower prices, and the UK now has some of the lowest mobile prices among the EU5 countries²³. However as with fixed networks, we are concerned that low prices for mobile services are restricting the potential for much needed investment. We also note the concerns raised by stakeholders that UK mobile sector profitability is low in comparison with mobile sectors abroad and that as a result, multinational operators may be more likely to invest elsewhere²⁴.
31. The CWU believes that with rising demand for mobile services, low prices and gaps in mobile service provision, a level of consolidation may be necessary to meet the need for significant capital expenditure in mobile networks. We note that a number of mergers have recently taken place in mobile markets across Europe amid claims that Europe is

²⁰ Active access remedies involve a communication provider purchasing wholesale inputs from a network operator, which includes the basic electronics driving the service. Virtual unbundled local access (VULA) and leased lines are examples of active access remedies.

²¹ Passive access remedies do not include the basic electronics driving the service, and involve a communications provider deploying its own network sharing some passive infrastructure. For example a CP using local loop unbundling installs its own equipment in the local exchange.

²² Ofcom, *ibid*, p.86

²³ Ofcom, *ibid*, July 2015, para 4.11, p.26

²⁴ Ofcom, *ibid*, July 2015, para 4.42, p.34

falling behind other global markets and that consolidation is necessary to promote investment.

32. The need for investment is one of the important factors driving BT's proposed acquisition of EE which, if approved, will establish a converged operator with significant fixed and mobile network infrastructure. BT believes this will bring benefits to consumers and will increase its ability to invest against long pay back periods in order to better meet increasing demand for network speeds and data traffic²⁵.

Q11: What might be the most appropriate regulatory approaches to the pricing of wholesale access to new and risky investments in enduring bottlenecks in future?

33. It is important that the right incentives are in place for operators to invest in risky new network assets such as fibre to the premises and fixed fibre backhaul, which promise to meet growing demand for greater network capacity and resilience. As with current generation copper broadband networks, Ofcom should set a stable regulatory framework that reduces uncertainty and risk from long term investments in fibre based networks.
34. The cost of installing new fibre networks is high because of the civil engineering work required which includes planning and routing and creating ducts and channels for cables. Ofcom must be careful not to remove incentives for companies like BT and Virgin Media to invest in this new infrastructure. We recognise there is a need for access based competition in fibre networks, but there has to be a balance on prices for access remedies, including ducts and dark fibre²⁶, that will ensure operators can recover their costs and return a reasonable profit, which can then be reinvested back into the network.

Q13: 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?

35. The UK has the highest level of choice and the lowest prices for services amongst the leading EU countries, indicating that the current model of functional separation has helped to generate and sustain a highly competitive market. As Ofcom recently stated, the creation of BT Openreach as a functionally separate entity from the rest of BT allowed all communications providers to access BT's network on equal terms, and this contributed to one of the most competitive broadband markets among major European economies²⁷.

²⁵ An analysis of the benefits to UK consumers, businesses and citizens from BT's acquisition of EE, A report for BT, Robert Kenny, June 2015.

²⁶ Dark fibre is unused optical fibre which can be leased from a network service provider

²⁷ Ofcom, *ibid*, July 2015, para 1.3

36. An important element of BT's legally binding undertakings on functional separation and equivalence of inputs is a strict obligation for BT Openreach not to discriminate between operators. Whilst we note that some stakeholders have raised concerns about the potential for discrimination to occur²⁸, we do not believe there is any evidence of such behaviour taking place. Where there have been problems in relation to quality of service from BT Openreach, these issues have been experienced by all service providers on an equal basis, including BT Retail.
37. CWU members working in Openreach are required to treat all communications providers using BT's network the same. We note there have been frustrations from customers with regards to missed and rescheduled appointments, but this is an issue of quality rather than discrimination, which as we explore further below, Openreach and its employees are working hard to address. BT's undertakings were carefully designed to ensure that Openreach supplies all its customers on the same terms, at the same price and using the same processes to avoid any discriminatory behaviour. That means BT Retail must be given exactly the same appointment times as Openreach's other customers. The undertakings also include a requirement that Openreach employees are physically based away from the rest of BT to prevent the sharing of sensitive information, and there are no incentives for Openreach employees to prioritise one customer over another²⁹.

Q14: Are there wider concerns relating to good consumer outcomes that may suggest the need for a new regulatory approach to Openreach?

38. We recognise that there have in the past been problems with BT Openreach failing to meet quality of service expectations at the wholesale level in the three year period ending in 2012, but this was largely down to numerous factors outside of Openreach's control, including extreme weather and greater broadband usage. This situation has now considerably improved and BT Openreach is meeting all 60 of the targets set by Ofcom following the 2014 Fixed Access Market Review. It can now offer new customers an appointment within 12 days in 98.5% of cases, versus 67% two years ago and on-time repair has improved by 6% in the last year³⁰. Engineers are also working hard to connect 60,000 new customers a week to fibre based broadband.
39. However, we recognise that improvements can continue to be made and that achieving and maintaining excellence in service quality may involve adjusting the current model of functional separation to create better incentives for Openreach to consistently meet and exceed its key performance targets. Crucially, the ability to deliver a better quality of service will rest on having the scope to invest in a properly resourced and skilled workforce to build and maintain the network to a high standard.

²⁸ Ofcom, *ibid*, July 2015, Figure 31, p.129

²⁹ Ofcom, *ibid*, July 2015, Figure 29, p.118

³⁰ Openreach, *Our Charter, Building Britain's Connected Future*, BT Openreach, 22nd September 2015

Q16: Could structural separation address any concerns identified more effectively than functional separation? What are the advantages and challenges associated with such an approach?

40. We believe there are serious risks associated with structural separation of BT Openreach from BT Group, and that a decision to pursue this option would jeopardise much needed investment in the UK's network infrastructure. We note the growing calls for structural separation from some communications providers, including Sky, Vodafone and TalkTalk who argue that this would give them better access to the national broadband network and a better quality of service, bringing more effective competition. However, it is widely accepted that the market is already highly competitive; and whilst there is room for standards to improve, we believe the concerns raised about access and quality are not supported by evidence.
41. All communications providers can access BT's network on equal terms and Openreach's quality of service levels have improved significantly in recent years. As mentioned above, Openreach is now exceeding all of the key performance indicators set by Ofcom. We believe that structural separation would create uncertainty in the market and undermine the case for future investment. As Ofcom notes, a vertically integrated BT provides Openreach with an 'anchor tenant' in BT Consumer that is prepared to provide guaranteed demand for new network investments³¹. This supports the business case for BT to justify ongoing investment of around £1bn a year in Openreach, making up over 21% of its revenue. It also provides BT Group with a strong case to continue its £500m annual investment in research and development, which supports the creation of innovative new technologies that can be used by Openreach for the benefit of customers, such as G.fast.
42. The current £1bn annual investment in Openreach is unlikely to be forthcoming from competing operators who we believe will have little incentive to invest in a structurally separate network without the ability to negotiate favourable individual terms for network access. As KPMG has noted, under the current system of equal access and price controls a separated Openreach would be unable to create different commercial agreements that guarantee demand for its products. If equality of access requirements were removed and Openreach was able to discriminate between wholesale users, this would benefit larger customers at the expense of smaller ones, and it is likely to make it difficult to co-ordinate major investments in the network³².
43. BT has indicated that it is opposed to structural separation³³, and would likely resist any move in this direction, possibly through legal action. Such a move would create a huge level of uncertainty for BT and the rest of the market, and would almost certainly

³¹ Ofcom, *ibid*, July 2015, figure 32, p.130

³² Delivering Britain's Digital Future: An Economic Impact Study, A report for BT, KPMG, 22nd September 2015

³³ BT's Patterson: Why splitting the company is without merit, the Telegraph, 18th July 2015, <http://www.telegraph.co.uk/finance/newsbysector/epic/btdota/11748496/BTs-Patterson-Why-splitting-the-company-is-without-merit.html>

endanger BT's ongoing investment in Openreach at a crucial time for network build and transformation.

44. Some of BT's competitors argue that Openreach is not investing enough in network infrastructure, but we do not believe the evidence supports this argument. Openreach has invested approximately £1bn in capital expenditure each year over the last five years, whilst its revenue has declined over the same period. As a proportion of revenue Openreach's capital expenditure has increased from 17.6% in 2010 to 21.6% in 2015³⁴. This is at the high end of the 10-20% capex trend for international comparisons identified by WIK-Consult³⁵, and it is significantly higher than the 6-7% of revenues invested on fixed lines by Sky and TalkTalk in each of the last three years.
45. We note that structural separation of the telecoms incumbent has not been carried out anywhere else in the world as a competition remedy, indicating that such a move is not favoured elsewhere. Australia, New Zealand and Singapore are the only other countries to have adopted structural separation in telecoms. However, in all three cases this was done as a requirement made by Governments for major public funding for superfast broadband³⁶. The context and the objectives for structural separation in these countries are therefore very different from the UK perspective where no programme of public funding is being made available to upgrade the network on a national scale.

Q19: 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?

46. We agree that the growing range of communications products and services and the increased complexity of pricing strategies are likely to make it more difficult for consumers to make informed decisions. In response to these changes, we believe it is important that Ofcom introduces new ways to empower consumers to make effective choices and to act on those decisions.
47. It is essential that consumers can make meaningful comparisons between services and we would welcome further initiatives from Ofcom in this area. In particular, we would like to see more detailed comparison services which provide customers with a wider range of data, enabling them to more easily assess the choices available based not only on price but also on quality of service. This should include information regarding broadband download and upload speeds and levels of customer satisfaction.

³⁴ BT Annual Reports and Accounts, 2013 and 2015

³⁵ Competition and investment: an analysis of the drivers of superfast broadband, WIK Consult, study for Ofcom, July 2015, http://stakeholders.ofcom.org.uk/binaries/consultations/dcr_discussion/annexes/Competition_and_investment_fixed.pdf

³⁶ Ofcom, *ibid*, July 2015, para 11.66, p.128

48. We would also endorse stronger obligations on operators to prompt consumers about the end of contracts, so that customers can make a considered and informed choice about the merits of switching to another provider. We note that Ofcom has already introduced changes to make it easier for customers to switch services for fixed voice and broadband on the Openreach and KCOM networks. We would also strongly favour Ofcom investigating other improvements to switching processes for bundled voice, broadband and subscription pay TV services, as well as mobile services. We support an approach whereby the same switching processes apply across each of these services.
49. The CWU would also urge Ofcom to closely monitor access to communication services for low income households, and to investigate ways of addressing barriers to take-up among these households. We welcome Ofcom's work to raise greater awareness of the most affordable deals³⁷ and we urge Ofcom to encourage providers to make such deals available and ensure that customers are aware of them.

Q21: What further options, if any, should Ofcom consider to secure better quality of service in the digital communications sectors?

50. Although general consumer satisfaction with communications networks is high, we recognise there are still some problems with service quality, particularly in relation to retail customer service where satisfaction is between 67% and 80% across the sector³⁸. We also note the problems highlighted by Ofcom in relation to blocked or dropped mobile calls, and inconsistent broadband speeds. With regards to customer service at the wholesale level, we know there have been problems with Openreach's provisioning and repair but as noted earlier, we understand things have improved and that BT has committed to further raise standards of reliability, transparency and customer choice.
51. The CWU and our members fully appreciate the importance of high service standards and meeting customer needs, especially at a time of growing demand for faster fixed and mobile broadband services and rising expectations in relation to service quality, resilience and availability. CWU members in BT Openreach work extremely hard to meet the strict quality of service targets set by Ofcom in the provisioning and repair of copper access lines following its 2014 Fixed Access Market Review.
52. BT's frontline staff will also be relied upon to deliver the improvements in quality demanded by customers and planned by the company. This includes a commitment to significantly increase the speed of service delivery and improve on-time installations for business customers, and an aim to improve on the rising standards already set by Ofcom for consumers and SME customers³⁹. Openreach's new 'View my Engineer' service will also put consumers in phone contact with their engineer ahead of an appointment.

³⁷ Ofcom Annual Plan 2015/16, 26 March 2015, http://www.ofcom.org.uk/content/about/annual-reports-plans/ann-plans/Annual_Plan_Statement.pdf

³⁸ Ofcom, *ibid*, July 2015, Figure 37, p.148

³⁹ Openreach, *Our Charter, Building Britain's Connected Future*, BT Openreach, 22nd September 2015

The importance of decent labour standards in delivering high quality service

53. Achieving commitments to improving service quality will rely on a properly resourced, motivated and skilled workforce capable of building and maintaining the network to a high standard and dealing effectively with customers. That is why we believe it is essential that regulation takes account of the interests of those who work in the industry and the need for decent labour standards. This must include access to good terms and conditions of employment, training in new technologies and processes, and a commitment to minimum standards of health and safety.
54. The ability to maintain good pay and conditions is particularly important in recruiting, retaining and motivating the people needed to deliver a world class network for the UK. There is a connection between pay and conditions and quality of service, with numerous studies showing that workers who are properly valued and earning decent rates of pay are more motivated and committed to their role⁴⁰. The ability to invest in workforce training is also important for delivering good outcomes for citizens and consumers. Rapid fault repair and effective fault management for example - a key component of network resilience - relies on a skilled workforce. Ofcom must ensure that the regulatory framework allows communications providers to justify sufficient investment in a well trained, properly rewarded workforce to achieve customers' expectations.

The connection between price, investment and quality of service

55. As noted earlier, we believe that pressure on price creates a barrier to investment. This raises the question, highlighted by Ofcom, of whether greater network investment and availability means customers will need to pay more⁴¹. The CWU believes it is inevitable that price rises will be necessary for some services to fund the level of investment needed to upgrade and extend the UK's national communications infrastructure. We have already seen moves in this direction, with BT increasing its landline rental and call charges from September 2015, citing its multi-billion pound investment in superfast broadband⁴². Sky has also increased its broadband prices recently, which commentators believe could be the result of its need to cater for rising data demands due to the increasing popularity of video streaming services⁴³.
56. Equally though, we recognise that maintaining affordability of services is an important objective and must remain a priority for Ofcom. Given the dramatic drop in prices for both fixed and mobile services over the last decade, which has seen household spend on

⁴⁰ For instance, a June 2014 Living Wage Commission report (Work that Pays) showed that the Living Wage can open the door to productivity increases for businesses as a result of employees contributing higher levels of effort and an openness to changing job roles

⁴¹ Ofcom, *ibid*, July 2015, para 1.19, p.5

⁴² BT increase charges: how to escape the £12 price rise, the Telegraph, 28th July 2015, <http://www.telegraph.co.uk/finance/personalfinance/household-bills/11767153/BT-increases-charges-how-to-escape-the-12-price-rise.html>

⁴³ Sky's unlimited broadband rises to £10 a month, Uswitch, 7th July 2015, http://www.uswitch.com/broadband/news/2015/07/sky_s_unlimited_broadband_rises_to_10_a_month/

communications services decrease from 4.0% to 3.5% over the same period⁴⁴, we believe services are affordable for most users. This is supported by Ofcom's own research which has found that the majority of consumers are unlikely to face affordability issues for communications services⁴⁵.

57. We think customers are likely to be both willing and able to pay more for services if they see a corresponding benefit. Ofcom's research shows that responsiveness to faults and performance are the most important factors for businesses when choosing a communications provider. Although price is the most important factor for residential consumers in selecting a provider, they also rank performance and customer service highly⁴⁶. Furthermore, we believe consumers generally recognise the connection between price and service quality. A recent survey suggests that consumers are willing to pay for better broadband access, with a 100Mbit/s connection speed adding 8 percent to the value of a home⁴⁷.
58. Access to high quality content is also likely to see more customers prepared to pay higher prices for more reliable, faster broadband services. That is why Ofcom must ensure there is fair and effective competition in the pay TV sector so that network operators including BT and Virgin Media have wholesale access to Sky's premium film and sport content at a reasonable commercial rate. This will help drive demand for fibre based broadband which will in turn help to justify new infrastructure investment. There is currently little regulation in pay TV where Sky dominates with a 64% market share, whilst there is intensive regulation in telecoms, where BT retail has a 33% share of the market⁴⁸. Ofcom's approach to competition in communications networks appears to be inconsistent with its approach to pay TV content, and we believe Ofcom should examine this carefully to ensure its principles are being applied evenly across the communications sector as a whole.

The importance of ensuring profits are reinvested back into networks and services

59. Ofcom highlights the possibility that revenue generated from price rises may not be directed into additional investment⁴⁹, and we recognise there is a risk that profits from higher prices may be diverted to shareholders instead of being reinvested into services. We believe that the best way to ensure operators continue to commit significant capital expenditure in the UK's digital infrastructure, is to incentivise investment through

⁴⁴ Ofcom, *ibid*, July 2015, para 4.9, p.25

⁴⁵ Results of research into consumer views on the importance of communications services and their affordability, Ofcom, 22nd July 2014,

http://stakeholders.ofcom.org.uk/binaries/research/affordability/affordability_report.pdf

⁴⁶ Ofcom, *ibid*, July 2015, Figure 35, p.146

⁴⁷ UK house buyers 'would pay 14k more for a property with 100Mb broadband, 28th August 2015, uSwitch.com,

http://www.uswitch.com/broadband/news/2015/08/uk_house_buyers_would_pay_14k_more_for_a_property_with_100mb_broadband/

⁴⁸ BT's Patterson: Why splitting the company is without merit, the Telegraph, 18th July 2015,

<http://www.telegraph.co.uk/finance/newsbysector/epic/btdota/11748496/BTs-Patterson-Why-splitting-the-company-is-without-merit.html>

⁴⁹ Ofcom, July 2015, *ibid*, para 1.85, p.18

regulatory stability and the potential for an adequate return on risk investment. The willingness of BT's shareholders to support large scale investment in fibre broadband with no prospect of a return for twelve or thirteen years demonstrates that this is possible if the potential rewards reflect the level of risk.

60. Ofcom may also be able to encourage more investment by incentivising operators to meet and exceed minimum quality of service targets. An arrangement is already in place for Openreach where regulatory incentives aim to prevent the service falling below a set level for provision and repair, and financial penalties of up to 10% of turnover apply if this is not adhered to. There may be scope to adjust this model to raise targets and drive better quality of service at Openreach, but this would have to rely on a framework that genuinely gives Openreach the ability to fully fund the additional resources it will need to achieve those targets.
61. We support the view that Ofcom should take a more proactive approach to incentivising the market to deliver an improved customer experience across the board, and that this will create a virtuous cycle where more reliable networks lead to higher take-up, more investment and better quality of service.

For further information on the view of the CWU contact:

Dave Ward
General Secretary
Communication Workers Union
150 The Broadway
London
SW19 1RX

Email: dward@cwu.org
Telephone: (+44) 0208 971 7251

8th October 2015