Response to the Strategic Review of Digital Communications Discussion Document

About ISPA

The Internet Services Providers' Association (ISPA) is the trade association for companies involved in the provision of Internet Services in the UK with around 200 members from across the sector.

Introduction

ISPA welcomes the opportunity to respond to the Ofcom's Discussion document on the Strategic Review of Digital Communications. Ten years on from the previous review, now is the right time to consider how Ofcom can best support the industry in developing a futureproof communications landscape that provides consumer and businesses across the UK with the infrastructure and services they require.

The communications sector is the key enabler for the economy and society - be it through communications, data, delivery of content, payment processing and more besides - it is crucial that the right conditions are in place so this can develop further. The future of UK businesses and the knowledge-based, connected and innovative economy the UK needs is dependent on the communications sector.

The review is running alongside other important areas of work facing the sector, including further government funded and industry rollout of broadband and an ambitious programme of work in Europe to further expand and develop the Digital Single Market to remove barriers to digital goods and services. It is important that a joined up approach is taken by regulators and government to get this right.

Our members compete on a commercial basis in a highly competitive market. It is for this reason that ISPA's response offers a broad high-level industry view that is complemented by individual company responses.

The Review

The communications sector is fast-moving and dynamic, making it difficult to accurately forecast the changes likely to take place. As identified in the discussion document, since the previous review, the communications landscape has changed dramatically: the use of over-the-top applications is increasing, the role of service providers is changing and services are increasingly delivered in bundles. Communications Services Providers (CSPs) have evolved dramatically with significant investment from ISPA members leading to average broadband speeds increasing from 5Mbps to more than 20Mbps resulting in superfast broadband being available to more than three quarters of the country, all whilst prices have continued to fall.

Notwithstanding the difficulty in accurately forecasting future developments and trends, it is likely that future markets will be based on a number of key demand-side themes, including: an even greater reliance on communications services by consumers and business; greater IP content delivery and on-demand content consumption; technological innovation, connected devices and 'smart' cities; greater use and consumption of data; faster 'ultrafast connectivity'; more-and-more services delivered online by default, including government services; wider use of OTT services; and more broadband rollout in rural and urban areas.

Despite the positive outcomes and trends of the past ten years, and to ensure that future trends can be delivered, from a demand perspective, the review should be used to identify and address issues that are holding back the sector. One priority area to address is how to ensure the regulatory environment promotes long term investment in UK infrastructure rather than focus merely on short term consumer pricing. The UK needs industry to deliver high quality superfast connectivity and the review must prioritise the promotion of investment in infrastructure so that the high quality services the UK needs can be rolled out and paid for through realistic pricing.

Below we comment more specifically on four key themes of the discussion document.

Competition & Investment

ISPA agrees with Ofcom that promoting effective and sustainable competition remains an appropriate strategy to deliver efficient investment and widespread availability of services for the majority of consumers. As a principle, we believe that competition should be encouraged as far upstream as possible. Due to the increasing convergence of communications services, it may also be necessary to adopt a broader view that looks across markets when identifying bottlenecks and assessing the level of competition. We further believe that, on a general level, Ofcom should not be concerned about the development of regional markets or the duplication of assets as these are generally a result of fully-costed investment decisions by providers.

Another element that Ofcom should consider when assessing markets is the emergence of over the top services and we believe that this development provides an opportunity for deregulation where newly emerging services are directly competing against established services already subject to regulation.

Public intervention and a Universal Service Obligation

To a large degree the rollout of communications network is privately funded and we believe that the role of Government and Ofcom in these competitive parts of the market should be focused on

enhancing competition and reducing barriers to investment. However, there are some areas of the UK where a commercial rollout of communications infrastructure is not commercially viable and public policy action may be needed. This public policy action should take two major forms:

1. There should be a clear focus on simplifying the regulatory framework around rolling out communications infrastructure in the UK (not just in areas where the market does not deliver).

2. There should be limited public funding where there is no commercial case for rolling out infrastructure

In both cases, we believe that Ofcom can play an effective role by advising Government and Parliament on the most appropriate measures to take and ensuring that any public funding interventions take clear account of any direct and indirect effects on competition both locally and nationally.

ISPA also notes Ofcom's statement that "the time has come to review public policy around the Universal Service Obligation for broadband". We support the objective of ensuring ubiquitous broadband coverage throughout the UK and believe that Ofcom is well-placed to advise Government on whether and how such an objective should be achieved. While it seems attractive to focus on a specific headline speed, we feel that it is worth exploring whether any commitment should rather be based on the ability to deliver everyday services and applications that meet actual users' everyday needs. Services that could be considered as part of these essential services could include, for example, accessing government services, web browsing, email, VoIP, and decent quality streaming services. This would ensure an element of future-proofing and responsiveness to user demands.

Whilst we are supportive of the objective of a universal broadband service, there are a number of challenges involved in achieving universal coverage, particularly via a regulated Universal Service Obligation given its reliance on the current Universal Services Directive at EU level. We believe that the following points should be taken into account when considering a revised universal broadband policy in the UK:

- What services should be considered as "functional internet access"?
- Is it necessary to set a specific speed or would it be more future-proof to consider service delivery that meets user needs?
- How should the delivery of the service be financed, i.e. should the costs be borne by one or more designated providers, be covered by public funds, through cost sharing between all or some providers that are active in the market, or contributions from end users?

- If public funding is considered the most appropriate funding mechanism, would the delivery of a universal service be the most effective use of public money to ensure that connectivity is delivered to hard to reach areas?
- If the sharing of costs is considered the most appropriate funding mechanism, would this lead to negative effects on competition?

Consumer information and empowerment

The discussion paper makes a number of assumptions about future developments and how they affect consumers' ability to understand the market and make informed decisions, including greater product diversity, pricing and bundle complexity. We fully agree that consumers have a greater degree of choice now than they used to in the past, but would class this as a positive development and as a reflection of a market that is competitive and responsive to consumer demand.

We believe that any intervention from Ofcom aimed at changing consumers' ability to access, assess and act on information needs to be clearly evidence-based and be mindful of potentially unintended consequences. Intervention needs to be effective and proportionate and should not put an unnecessary burden on providers. For example, we would question whether the mandating of simpler and more comparable retail propositions or the provision of mandated data access for intermediaries would be appropriate measures to take by Ofcom. We would also like to highlight that an intervention in the energy market aimed at simplifying the tariff structure and better enable consumer to access cheaper tariffs has ultimately led to the removal of some tariffs and a reduction in consumer choice.

We also believe that Ofcom should put a clear emphasis on providing consumers with relevant rather than simply a high volume of information. For example, we would welcome if Ofcom provided consumers with information that encouraged them look beyond price and headline speeds and consider the communications services they receive or want to purchase in more depth. One area that Ofcom may also want to investigate is whether the information that it provides covers the breadth and depth of the market, particularly with regard to better enabling SMEs to become aware of the full range of providers and services available to them. This may also address Ofcom's concerns around demands of SME demands not being met by the market which we find surprising as the business-ISP market is highly diverse and many of our B2B member offer tailored services to their customers.

Fixed access network functional separation

We note that the discussion paper makes a number of statements relating to how the wholesale market operates and Openreach's performance. We leave it to our members to make detailed statements on whether the current model of functional separation is fitting for the UK market but believe that it is appropriate for Ofcom to consider this question as part of its sector-wide review.