

Annex 1 – responses to Consultation Questions.

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

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 across the UK?*

Yes. Effective competition is fundamental to delivering good outcomes for customers. However, targeted regulatory intervention is also necessary.

Q2: *Would alternative models deliver better outcomes for consumers in terms of investment, availability and price?*

No response.

What more can be done through public policy to deliver truly widespread availability?

Q3: *We are interested in stakeholders' 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?*

Universal availability must be the objective. A mixture of technologies (fibre and wireless) involving investment by both the private and public sector will be required. Ofcom and Government must ensure that the right incentives are in place and that smaller network providers are able to compete with the national infrastructure providers on a level playing field.

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

Q4: *Do different types of convergence and their effect on overall market structures suggest the need for 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?*

Convergence may lead to a blurring of current market definitions. This is an area Ofcom needs to monitor as part of its market review programme.

Q5: *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 concept of SMP as the basis for regulatory intervention is not effective in many markets. Ofcom must consider effective means for the regulation of oligopolies. Guidance on this may be provided by BEREC which will be relevant to UK markets.

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?

Q6: 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?

Competition at all levels of the supply chain is critical. However, pure end to end competition is limited. Access to infrastructure and wholesale products by service providers will continue to be important to allow scope for differentiation and specialisation to meet customer needs.

It seems likely that local providers will emerge to fill spots which are not commercially viable for national providers.

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)?

As noted above, access regulation will continue to be needed. We agree that this will vary according to the market and the services provided.

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?

We do not agree. Service providers are able to provide bespoke services, valued by business customers and to integrate into an overall communications package.

Are there new or unresolved competition issues in digital communications services?

Q9: 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 trend for over the top provision identified by Ofcom in the consumer market is also emerging in the form of apps for business. Regulation needs to reflect the protections offered to users re access to emergency services and resilience etc

Q10: 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?

No response.

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?

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?

We recognise that investment must be protected and that market forces were likely to be effective in ensuring fair pricing at the offer stage. However, Ofcom must ensure that customers are not locked into specific providers or platforms

Q12: 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 concept of SMP has been used to regulate charging by TCPs on their own networks, a similar approach could be provided to ensure that providers do not abuse their position in the longer term.

BT's own fibre products are moving into a mass market phase and price controls on the wholesale products may be appropriate.

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?

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?

We believe that Openreach's investment priorities are likely to be determined at group level. These priorities may not align with customer needs.

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

Openreach's service delivery has been poor. We believe that this is due to failure to invest in network upgrades and engineering resource. Openreach currently contributes a surplus in excess of £1 billion to BT Group, suggesting that if it operated as a standalone entity outside BT Group funds would be adequate to address these issues.

Q15: Are there specific areas of the current Undertakings and functional separation that require amending in light of market developments since 2005?

The scope of the Undertakings, to include a wider product set may be useful. The Equality of Access Office will be able to provide feedback on areas where it has been unable to intervene usefully and effectively due to the current scope.

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

See our response to Q14.

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

Q17: *What do stakeholders think are the greatest risks to continuing effective consumer engagement and empowerment?*

Access to usable services locally (superfast broadband and mobile signal)

Q18: *What indicators should Ofcom monitor in order to get an early warning of demand-side issues?*

Falling levels of switching may be an indication of problems for customers.

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? What role may Ofcom have to play compared to other stakeholders (including industry)?*

No response

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

Q20: 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?

Access to superfast broadband and good quality mobile services.

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

Infrastructure sharing and national roaming.

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

Q22: *Might there be future opportunities to narrow the focus of ex ante economic regulation whilst still protecting consumers against poorer outcomes?*

We support the principle of reducing ex ante regulation but only where evidence supports the case for doing so.

Q23: *Where might future network evolutions, including network retirement, offer opportunities for deregulation whilst still supporting good consumer outcomes?*

The proposed retirement of the BT copper network and withdrawal of wholesale services raises risks. Much greater clarity on BT's plans is required at an early stage. Ofcom needs to ensure that the delivery model involving service providers and resellers is protected to ensure that customer needs are met.

Q24: *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?*

OTT services need to be subject to the same regulation as more traditional services where appropriate to ensure that consumers are protected. This is especially true where services provide services accessing telephone numbers.

Q25: *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.*

No response.