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Dear Tanja

Strategic Review of Digital Communications – discussion document

SSE is a large UK-based energy company and has two areas of external business in the communications markets: an operator business providing connectivity services to business customers and other communication providers; and a retail business using available wholesale products to provide fixed line telephony and broadband services to domestic customers. From the latter perspective, we have been particularly interested, over the years since the last Strategic Review, in the development of switching arrangements for the products we provide and have participated in Ofcom's recent programme to harmonise switching processes for broadband with those for fixed line telephony over the Openreach and KCOM copper access networks.

We recognise that there has been progress since the last Strategic Review in dismantling some of the structural advantages that BT had enjoyed via its ownership of 'bottleneck' access network assets, through the creation and functional separation of Openreach. This has been more successful in relation to the legacy copper-based retail products than for the developing fibre-based ones and this remains a concern. In contrast, there is no regulated access at all to mobile services on an equivalent basis to the mobile network operators and this is also a significant concern given the developing prospect of fixed and mobile retail bundling. We agree that there have been many changes to the markets since the last Strategic Review and are concerned about the further potential concentration in retail markets, spanning fixed line and mobile telephony, with the prospective mergers mentioned in the document.

Against this background, SSE has four main points to make to contribute to the present Strategic Review and these are set out below, with our comments on the specific consultation questions for discussion attached in the appendix to this letter.

1. Innovation from Service Provision

There is much in the document about the potential for innovation from those providing networks. We do not disagree with this but feel strongly that, particularly for the infrastructure serving the mass market of consumers, the contribution of innovation in service provision is significant and should be valued and protected in the regulatory framework. The market is strengthened through the diversity of entrants that are able to take part in the market, with the resulting increase in choice for consumers.

SSE believes that there is great potential for innovation in retail communications services from companies that provide services and are thus close to the customer's interests and preferences. A technological development that further increases this potential, in our view, is the convergence of voice and data services towards one underlying currency of data. The origins of BT's ubiquitous access network lie in the monopoly provision of voice services; subsequent technological innovation has allowed the original use of the networks to be optimised for data transmission, with a voice call now able to be treated as data within the wider interconnected electronic communications networks.

In order to provide retail customers with electronic communications services, there are three required elements: interconnected networks securely providing the required connectivity; service provision entailing transmission and manipulation of data in a secure manner; and a secure customer controlled device to interact with the networks and services. Manipulation of data to create appealing services for users can be undertaken by a wide range of providers and is fertile ground for innovation, as the growth in mobile phone applications or 'apps' has demonstrated.

Other aspects of service innovation lie in the differentiation of various aspects of customer service and responsiveness. It is often new entrants that bring a refreshed approach to interactions with customers that can provide higher quality customer experience in areas that feature on Ofcom's agenda for consumer protection improvements – for example, complaint handling processes. They can also provide innovation in customer offerings through tariff design and alternative loyalty arrangements such as supermarket points or bundling with non-communications products. We note that two out of the three innovations mentioned with respect to Three entering the mobile market in paragraph 1.4 relate to tariff offerings: 'all you can eat' data tariffs; and the scrapping of roaming charges in certain countries. These are the sort of innovations that service companies can bring – they are not fundamentally to do with infrastructure technology.

From SSE's perspective as a retail service provider in the communications mass markets of broadband and voice provision, we have concerns over the direction of thinking in some parts of the discussion document that do not appear to support active regulated access products on which this form of competition depends. We return to this theme in some of the further points below.

2. Communications services seen as a 'utility' by mass market customers

The discussion document touches a number of times on the topic of whether or not communications networks and services can be considered to be a 'utility' like other services commonly accepted as such – examples being gas, electricity, water and some types of transport service. We would like to be clear on our meaning for this term in the remainder of this response: we will use it to mean a service essential to modern life, whose successful delivery is dependent on the upkeep of a robust, reliable and fit-for-purpose network infrastructure. We are aware that the term is sometimes used to indicate a product that, though essential, is a relatively unsophisticated economic good that can be contrasted with the technological complexities of electronic communications, for example. In our view, product complexity is not a relevant consideration to the definition we are using for utility; that definition has a clear relevance for the consumers of electronic communications services that increasingly underpin modern life.

In SSE's view, this is a very important topic for the Strategic Review, as we believe that the ability of consumers to interact confidently with the retail choices available in the market will depend increasingly on the quality of retail market governance, which is a well entrenched concept in other utility markets. We discuss it further below.

There are a number of points in the document where the essential nature of retail communications services (particularly broadband connectivity), depending in turn on the robustness of the underlying infrastructure networks, is highlighted. For example:

- Paragraph 12.24 "*… access to a reliable internet connection and mobile phone have become essential to the way consumers work and live their lives and the functioning of the economy in general*."
- paragraph 13.7 "*Connectivity has become critical to the day to day lives of consumers and businesses …* "

We agree with this and note that these characteristics: of being critical services; of underpinning the working of the whole economy; and of requiring reliable infrastructure are shared with the other services mentioned above, which are considered to be utilities. It is perhaps a matter of semantics as to whether electronic communications networks and services are classified as utilities or not. Various definitions are available on the internet, for example "a company that performs a public service; subject to government regulation" could readily cover the communications sector and we notice that 'telecoms' is often included in lists of public utilities. If, as part of Ofcom's consumer research programmes, it asked customers whether they considered the electronic communications services they use to be as essential to them as electricity, gas or water, we expect that a high proportion would agree with this.

We notice that Ofcom's stance that "*the communications sector is different to utilities*" (paragraph 1.22) seems to be based on two points: that technological change leads to a wide range of different services; and that there is a lack of central planning of investment. The first point need not undermine a classification of utility service, since however many different ways there are of providing the underlying connectivity and voice services, the fact is that a working capability in these services in some form is essential for modern life. It is also noteworthy that the evolution of service competition in other utilities tends to expand the range of 'value added' services that can be competitively provided.

With respect to the second point on investment, we agree that there has been little regulatory involvement in determining this up to now. The history of widely-adopted modern electronic communications is perhaps somewhat shorter than that of energy, water and transport. Some of these infrastructures were originally provided by a range of different companies on a competitive basis and seen as luxury services initially. Society changes and these services, underpinned by reliable networks, came to be regarded as indispensable to modern life, such that government stepped in to impose a degree of coordination on the structure of these industries. In our view, some became rather than started off as ‘utilities’ and the same transformation could now be appropriate for digital connectivity.

Regardless of the pattern over the last few decades of how electronic communications networks and services have been provided and managed, we would argue that the time of a “Strategic Review” by Ofcom is the right time to consider, in conjunction with government, whether other approaches to regulation and management of the sector are worth considering. SSE is strongly of the view that elements of ‘utility regulation’ are relevant to the development of the communications sector in this increasingly digital age and we expand on this topic below.

In our view, there are two aspects to the provision of a utility service: the characteristics of the underlying infrastructure over which the service is delivered; and the framework supporting the end-customer’s ability to choose, use and switch individual retail services that are delivered over the underlying network. The latter framework is known as ‘retail market governance’ and we consider these two aspects in turn.

Infrastructure characteristics

Ofcom makes the point that infrastructure investment in the communications markets is determined by competition and the choice of the network providers in the market rather than through close involvement of the regulator in deciding what investment should be undertaken (paragraph 6.46). We accept that within the present framework of infrastructure provision in communications, there is a significant difference from the way that capital projects are determined in other utilities. We would note, however, that there is a trend towards less prescription from regulators in other utility industries on this point, with correspondingly greater emphasis on ‘customer engagement’ by the network providers and on delivery of outcomes that customers want to see and are prepared to fund. Such an approach would also be welcome in the communications market rather than the dominant access network provider deciding what type of network investment it will provide. In the case of the development of fibre in BT’s access network, this has been provided with limited consultation on what wholesalers and suppliers wished to see as the characteristics and design of the solution: a technology-led rather than market-led development that may better align with commercial strategy than provide optimal service/price combinations for end customers.

Once the infrastructure has been provided, non-discriminatory regulated access for the providers of services – and indeed the separation of ‘networks/infrastructure’ and ‘retail service’ in the regulatory framework – is the norm in other utilities. This separation allows a clear focus in the statutory and regulatory rules on what activities each type of company engaged in the market is required to perform. For networks/infrastructure, there are typically 3 areas of focus for these requirements:

- quality and resilience;
- the provision on non-discriminatory wholesale access for service providers; and
- the provision of systems that support retail market switching.

We consider the last of these under the retail market governance heading below and discuss the other areas in turn below.

An important area of regulation for the ‘networks’ is support for the quality and resilience of the underlying infrastructure supporting the services provided to customers. Reliability measures such as “customer interruptions” and “customer minutes lost” are used and we see no reason why that focus cannot be replicated in communications infrastructure provision for the mass market. In the communications market, reliable connectivity is the underlying utility infrastructure on which a great variety of services can be developed.

On the base of a fit-for-purpose, resilient network with high availability and minimal fault outages, service providers can design product offerings with different characteristics for the end customer. On the basis of a reliable electricity supply, an end customer can purchase different qualities of electrical appliance to carry out a certain function such as refrigeration. An example in communications might be messaging services available to customers with different qualities and prices: a service with guaranteed delivery of messages within certain short timescales is likely to be a more expensive offering than one where the messages have lower priority in traffic prioritisation and take variable times to deliver up to a longer, maximum time limit. Neither of these services will work to the customer's expectation if the underlying network connectivity is unreliable but on the basis of a reliable underlying connectivity, differentiated <u>services</u> allow customers to choose the quality and price combinations that suit them.

In making use of reliable, utility electricity networks, applications have developed that are fundamental to consumers' health and well-being. Some examples of these include home operated kidney dialysis machines, bath hoists and stair-lifts. Other aspects of the utility regulation framework require both network and supply companies to manage registers of vulnerable customers' use of such technology in order to take appropriate action in the event of supply interruptions. Looking at the parallel opportunities in the communications sector, acute health care monitoring and alarm systems could only usefully be established on the basis of fundamentally reliable utility grade connectivity. It can also be seen that both the access network provider and the customer's current retail supplier of communications services could have a role to play to ensure an adequate response for vulnerable customers using such technology in the event of interruptions to communications connectivity.

Another aspect of some other utility networks is that there tends to be a single dominant network provider in a particular geographic area, accompanied by the effective possibility that different network providers are able to compete for provision of network extensions requested by developers of homes and business parks. This structure has led to the uniform framework of non-discriminatory access to the networks – even the competitively provided ones – for all service providers.

In the communications market, the local loops serving the mass market of customers are an effective BT monopoly. Virgin may be a competing infrastructure provider but it does not provide wholesale access to its networks to service providers, not having obligations to do so and so service providers have only one monopoly choice of infrastructure provider. Mobile networks are not a substitute for fixed networks and, we understand, are not capable of carrying all the fixed line traffic in any case. Thus, for service competition to thrive in communications, appropriate forms of non-discriminatory, regulated access will continue to be required both for legacy copper networks and any investment by BT in newer access technologies such as fibre. We believe this requirement should be extended to other providers of fibre technology in new housing developments so that every mass market customer is able to choose between different service providers on the communications network that serves his property. We discuss this further in section 3 below.

Retail market governance

It is the consumer-focussed, demand side of retail communications where we see the strongest similarities between customer needs and expectations for retail communications compared with other traditional utility services. Competition in services exists in some other utilities but a key characteristic of these markets, which is lacking in the communications markets, is the existence of comprehensive, independent and transparent market governance arrangements to protect the consumer experience and allow them to switch easily between different service offerings.

The principal purpose of market governance is to formalise the coordination needed between different market participants to ensure that market processes such as switching work smoothly for the benefit of consumers and can be developed in a controlled manner over time. Market governance requires:

- a formal constitution and a transparent set of rules/codes that describe the role of different types of market entity in the governed market processes and the way that they interact in carrying out these processes;
- an independent market authority that manages the rules, considers change proposals and supervises the implementation of changes to market processes;
- an industry-owned arrangement for representation within and proportionate funding of the market authority; and
- a regulatory requirement that relevant market participants becomes members of and abide by the rules/codes/decisions of the market authority. Typically, industry regulators will have a degree of oversight of the decisions of the market authority and have a dispute resolution role but are not otherwise involved in day to day proceedings of the governance arrangements.

As noted above, governance is necessary to coordinate the interactions between the range of market participants: incumbent network providers; competitive network providers; incumbent retail businesses; new entrant retail providers and sometimes other market bodies such as settlement functions. Such coordination is necessary both for business-as-usual market operation – for example, to define the data-flows and 'handshakes' entailed in accomplishing a customer's wish to change their supplier for a transferrable product – and to allow the market to develop and accommodate change in a controlled manner. An example of the latter would be the planning and implementation of a change to switching arrangements to incorporate a new type of retail product so that customers will have a seamless experience in switching to and away from the new product set in advance of it being introduced to the market. In this way, governance adds orderly platform management, not as an inhibitor to prevent the introduction of change but as an enabler for change in a controlled manner that seeks proactively to minimise any possible harm for consumers.

We have already mentioned that separation of networks and services in the regulatory framework is a characteristic of other network-based utilities where competition is possible. This allows 'networks' to be given a facilitating role in supporting service competition. Consideration of the implementation of retail governance in the energy markets illustrates how separation of different roles for market participants in this way allows implementation of retail market governance. Here, it is the electricity distribution companies that have been required to develop and run registration systems and data transfer networks on a collective basis for energy supply companies to use. The relevant regulatory obligations on supply companies include using the customer switching systems provided and becoming members of the market governance arrangements, which entails them meeting and maintaining take-on assurance criteria such that they do not individually put the operation of the market at risk.

The coordination and governance required to manage these market processes and changes do not emerge naturally in competitive markets. While new entrants may welcome a governed environment to assist them in establishing a retail market presence, incumbent and vertically integrated players have no incentive to submit to a market governance authority or give up the ability they have enjoyed to develop ad-hoc arrangements. Evidence for lack of coordination can be seen in Ofcom's work on strategic switching: both in the existence of the range of switching problems for consumers that Ofcom identified in that work and in the need for Ofcom itself to step in to ensure implementation of the finally mandated harmonised process. This is acknowledged at paragraph 12.7 of the consultation: "*a lack of co-ordination between firms can also negatively impact markets and consumers"*.

Ofcom notes (paragraph 12.5) that communications services are different from those provided by other network industries such as energy and water because there are, in fact, a range of different communications retail services. We agree that the services, platforms and technologies in use to provide retail communications services are diverse, while the basic commodities provided in the other industries mentioned are fairly homogenous: though even here, in electricity, for example, there are a number of possible variations in supply product (e.g. multi-circuit metering, different supply voltages, partial or whole phase supplies). The complexity of switching between different communications products, coupled with the potential harm to consumers when things go wrong suggest that market coordination and support systems for consumers are even <u>more important</u> in retail communications markets than in the more established utilities.

Retail market governance provides a formal route for developing support systems to protect customers: for example, rapid restoration in the event of 'erroneous transfers'; and supplier of last resort arrangements should a supplier withdraw from or fail commercially in the market. These arrangements exist in other utility markets but not in the communications retail market, which becomes increasingly problematic as society changes to become ever more dependent on electronic communications flows for vital services such as personal banking and e-health services.

We expect that retail market governance could also assist in areas specific to communications such as those raised in the second part of section 12 (such as complexity of bundle switching and consumer access to relevant information) and in coping with the technology shocks that Ofcom discusses in section 14. Here, items such as the withdrawal of the legacy PSTN service and the switch off of copper access networks are portrayed as medium term possibilities that could be driven by BT. Such disruption to end customers would be unthinkable in other utility industries but if these shocks have to be catered for in the communications retail markets, how much easier it would be for Ofcom to work through the implications and planning required to safeguard consumers' interests if there was already in existence a comprehensive governance body, whose expertise it could draw on and with whom it could liaise to achieve coordinated planning of the change. It would also be necessary to continue to support service-based competition through the transfer from use of the regulated access product Wholesale Line Rental (WLR) to equivalent regulated wholesale products in this eventuality.

SSE understands that incorporating a more 'utility-style' approach to communications regulation will take some time to evolve and may entail some amendment to legislative frameworks. Ofcom's introductory words to the discussion document suggest that the

Strategic Review may end up recommending legislative change and so we are hopeful that, even if such changes are needed, the Strategic Review is the right vehicle for Ofcom to consider the approach we have outlined to developing a communications sector serving the best interests of the mass market of household and small business consumers in the next decade and beyond.

3. End-to-end competition has limited beneficial application in communications 'mass markets'

There are many mentions of this type of competition in the discussion document and it appears to be a main focus of Ofcom's consideration of future regulatory strategy. We have significant concerns about this when considering the access networks that serve the mass market of household and small business customers due to its fundamental lack of compatibility with the broader base of service competition and access arrangements that we have discussed above.

In maturing network-based industries, the economic incentive on companies is to rationalise overlapping capacity towards one underlying monopoly network – in the end, it may be competition authority considerations that prevent that logical market consolidation. Other market models allow for different owners in different geographic areas, forming part of a logical whole. This is the case in gas, electricity and water industries where there is a regional ownership structure but competition in network extension. This model is also compatible with maintaining service competition as consumers located on any 'independent' network have precisely the same choice between retail service providers as consumers located on the incumbent regional monopoly networks. This ability did not evolve naturally in the market but was specifically enabled in gas and electricity[1] through the operation of the market governance arrangements mentioned above. We see that the same arrangements could operate in the communications mass markets where residential and small business customers moving to areas served, for example, by new fibre networks could be accessible to all retail service providers able to offer fibre-based retail products, using wholesale arrangements with a principal 'host communications provider (CP)' for the new network or potentially interconnectivity arrangements between networks. We believe that this is what customers will expect.

Fundamentally, we believe that customers will continue to expect choice of retail communications service provider wherever they reside or move to. End-to-end competition works against this principle by allowing the access network provider to 'capture' the customer and add captive retail revenue to the commercial benefits for undertaking the investment to develop or extend the network. It also works against the development of standard interfaces that may ease the transferability of services between suppliers.

A customer served by a fixed-line network provided on an end-to-end competition basis cannot, in general, readily move to another network and service combination. Even where, on paper, multiple end-to-end service providers exist, there will be a granularity in provision of local infrastructure on the ground by the end-to-end competitors such that few individual customers, in practice, are likely to be sufficiently near more than one

[1] It is being developed for the non household water market in England, to open in 2017. See, for example, the market blueprint document available at http://www.open-water.org.uk/media/1041/market-blueprint.pdf

infrastructure such that they can economically change from the one that happens to serve their premises to an alternative.

While we acknowledge that the Virgin cable network was originally rolled out to duplicate a proportion of the BT access network and thus provide the alternative connection 'at the premises', we are aware of locations where the physical BT services are no longer provided and thus Virgin rather than BT has the effective local access monopoly. For some customers, the cost of connecting to a different local infrastructure will be an economic barrier to doing so, even if this is restricted to a 'reconnection cost' and even if the alternative infrastructure offered directly comparable quality. Similarly, going forward, we expect that at least some of the potential new investment by many of the network providers cited by Ofcom in section 9 will target new household and/or business park developments leading ultimately to a patchwork of effective local access monopolies.

We discuss our thoughts on mobile end-to-end competition in the next section and conclude this section by noting that for access infrastructure investment to reach mass market customers:

- End-to-end competition in fixed line network provision is unlikely to achieve national scale;
- Competition for network provision to new build housing and similar developments is more likely;
- Retail market governance can be designed to enable customers attached to newly provided networks to have a choice of retail provider – this is likely to entail access requirements on the provider of the new network;
- The coordinating force of retail market governance and access requirements will provide a better and more intuitive experience for customers moving to the new network area than end-to-end competition, which would allow them to become 'captured';
- There will be a benefit to potential providers of such new networks (who may in the future include parties outside the sector) in having a clear set of rules on how they are to provide access – this may increase investment confidence;
- These arrangements would be superior to end-to-end competition in avoiding any new investment whose economics is predicated on captive customers.
- Given that Ofcom's principal duty is furthering the interests of citizens and consumers, we cannot see how the inherent reduction in effective customer choice entailed in end-to-end competition would make it a suitable candidate for a regulatory model going forward, especially when there are other, governed approaches which will better support the end customer experience.

4. Wholesale access to mobile networks and services

Ofcom also discusses the evolution of mobile end-to-end competition in section 9. While end-to-end competition has had a role in developing the competing mobile infrastructures, SSE believes that the approach has to change when consolidation starts to happen. In our view, wholesale access requirements are the way forward to bring more service competition into this retail market, particularly in view of the potential mergers mentioned in the document.

As discussed above, the inexorable economic trend is for the existing mobile network operators (MNOs), as overlapping networks, to consolidate and reduce duplication of infrastructure, as we are seeing in the proposed O2-Three merger and the network sharing arrangements mentioned. In light of this, we consider that the Strategic Review should consider taking a different approach to regulation of mobile networks and services: one that recognises the tendency towards monopolistic infrastructure provision; the need to encourage service competition for the benefit of customers; and the likely impact of the BT-EE merger.

We would like to see non-discriminatory regulated wholesale access products, including at the active level, which support retail competitors to the incumbent MNOs. To be effective, we believe this would have to entail some functional ring-fencing or separation of mobile wholesale and retail businesses in order to establish the level playing field or 'equivalence' that has underpinned regulated fixed line access remedies. There has been little voluntary commercial access offered by the MNOs to date compared with the wide range of fixed line service competitors able to enter the more regulated fixed line market using regulated wholesale products such as WLR.

From the retail customer perspective, we expect that, if the BT-EE merger is allowed to go ahead, there will be a drive for that company to offer bundles of fixed line and mobile service products. While this will offer a new choice to customers in the short term, we see two main detrimental effects: a reduction in competition across a combined fixed and mobile service market; and an adverse effect on switching rates. We discuss these in turn below.

If the BT-EE merger proceeds, the combined group will be in a position to offer bundles of fixed line and mobile products at prices that other fixed line CPs will be unable to match. Retail product innovation is likely to follow in the fixed/mobile space where most other CPs will lack access to the wholesale services necessary to reproduce and build on these developments in their own way. This is because non-discriminatory regulated access to the necessary wholesale inputs is not available for mobile retail services as it is for the main fixed line products. BT would be in a position to combine EE-based mobile retail infrastructure and services with its ownership of the dominant regulated fixed line infrastructure, while CPs offering fixed line services only would be unable to compete in that market. This is similar to the issue of the role played by content in some bundles, discussed in section 8 of the consultation: if a key element of a bundle is indispensable, then it needs to be "*effectively replicable in order to ensure competition is effective in retail markets*" (paragraph 8.37). Thus, without a balancing form of regulated access to mobile infrastructure, the stage is set for a less competitive and less innovative retail market in the longer term.

Even if this issue is sorted out, the fact that mobile switching processes are 'losing provider led' will adversely affect switching rates, just as Ofcom observed for fixed-line and broadband bundles when many broadband switching processes were losing provider led. Lower switching rates adversely affect the competitive dynamics of a market and benefit the first-mover companies able to offer such services – such as the newly merging entity. Instead, we believe the customer's expectation, in being offered bundles of fixed line and mobile products, will be that these two services can be provided and combined by a wide range of suppliers and that they will be able to switch the two elements in a similar manner. We are aware that Ofcom has begun consideration of mobile switching and have responded separately to the recent consultation on that topic. However, the resolution of the issue depends not just on switching mechanisms but on the underlying replicability of mobile services – and that is a matter for this Strategic Review.

SSE hopes that the points we have made in this covering letter and in the attached appendix are helpful to Ofcom as it conducts its Strategic Review and we look forward to discussions on these topics in due course.

Yours sincerely

Aileen Boyd
Regulation Manager

Appendix

Response to consultation questions

Section 6

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?*

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

SSE does not support end-to-end competition, as a policy, in delivering the access networks and services that support retail competition as it blocks out many potential service competitors. We discuss this in section 3 of our covering letter, while section 1 considers the benefits that service provider innovation brings to these markets.

Our proposed approach would be to allow network competition where it is feasible but provide clarity on the requirements that will exist for access network providers, serving the mass market of household and small business customers. For providers of these access networks, there should be clear regulatory requirements to make wholesale network access (at a range of levels including active access) available on regulated terms in order to allow a range of retailers to provide services to customers on these networks. We consider that this would avoid investments being made that are predicated on 'capturing' the retail service revenues from the customer, which in turn denies them the range of choice of supplier that exists in copper fixed line markets, for example.

Outcomes for consumers would be worse if they had instead to seek to switch between networks to obtain different services. Ofcom's recent assessment of switching processes in the mobile market shows that there are concerns about these processes. While mobile services have been provided initially on the basis of end-to-end competition, we do not believe this should be maintained for the reasons discussed in section 4 of our covering letter. For the fixed line market, we do not see any foreseeable further challenge to the ubiquity of BT access networks beyond the Virgin cable network, which is not currently required to allow wholesale access to other service providers. We are of the view that competition in the context of new fibre roll-out risks creating a patchwork of different access networks, where customers cannot readily switch to different services, unless the access requirements we advocate are put in place.

In essence, where access networks have become established, barring the need for extensions to support new developments, SSE advocates taking a utility style regulatory approach to network quality and support for consumers, as discussed in section 2 of our covering letter.

Section 7

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?*

We have a proposal for consideration by policy makers in respect of encouraging availability of communications networks in areas that may not be commercially viable. If a universal and harmonised retail switching process is developed such that potential providers of infrastructure are able to 'plug in' to these arrangements, there may be more investors willing to provide basic open access infrastructure in return for regulated access fees. It might be that not all potential investors are interested in developing a fully fledged active communications network: an ability for central systems to adopt, 'activate' and enable switchable retail services on more passive infrastructure could bring more investment from local resources. This is an area we have discussed in section 2 of our covering letter, by analogy with other regulated utilities where competitively provided networks become part of retail governance arrangements that allow customers to switch service providers on these networks just as readily as on incumbent networks.

Section 8

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?*

Of the types of convergence discussed in this document, SSE is most concerned about the development of retail bundling and agrees with Ofcom's observations on the two types of harm that can result. Firstly, that this can lead to reduced levels of competition where a reduced number of players are able to replicate the popular bundle elements; and secondly, that there can be increasing complexity for consumers in assessing options and switching providers.

In relation to the first point, Ofcom is concerned about the replicability of content. We are now more concerned about the replicability of mobile services in a market characterised by bundles linking fixed line and mobile services. As evidence, these are starting to be seen in the market already and are likely to gather pace with the proposed BT-EE merger. We do believe that a change in regulatory policy with respect to mobile services is required and have discussed this at section 4 of our covering letter. As noted there, we believe the time has come for Ofcom to implement requirements for regulated, non-discriminatory access on wholesale providers – including at active levels – in order to allow existing fixed line only service providers to be able to compete in providing fixed and mobile bundles.

The second area of concern is essentially around whether the switching process can support customers in switching bundles or elements of bundles. We have supported Ofcom's work to develop gaining provider led switching processes in the fixed line markets but these are far from universal as yet. In order to develop switching arrangements into new areas and supervise the maintenance and development of existing harmonised switching processes, we recommend the promotion of independent governance for industry switching arrangements, as discussed in section 2 of our covering letter. Ofcom discusses the relatively low rates of consumer switching for communications retail products at sections 12.30-33 and this is also perhaps evidence that customers are finding switching difficult and off-putting, as bundled services have taken hold in the market.

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?*

Section 2 of our covering letter discusses the application of aspects of utility style regulation in the communications markets. We believe that the current challenges in these markets, combined with the ever increasing reliance of modern society on access to digital connectivity, should encourage Ofcom and government to consider how elements of utility regulation – particularly on the demand side – could provide additional tools to manage the market towards seeking and maintaining beneficial outcomes for consumers. We also believe there should be a greater emphasis on competition in services, as there is in some other utilities.

There is no 'one size fits all' blueprint for the application of utility regulation – there are different detailed approaches in the existing utility sectors and it is perhaps an advantage for Ofcom that it can review the working utility frameworks in these other sectors and consider what elements may be useful for communications service provision to the mass market of consumers and small businesses. Its membership of the UK Regulators Network may assist in this regard.

Section 9

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?

In answer to the above and the more specific questions set out a paragraph 9.2 and 9.25 SSE is not in favour of a regulatory focus on trying to promote end-to-end competition in the access networks affecting the mass market of household and small business customers. For this market, we do not accept that it is in these customers' best interests to become captive customers who cannot switch to other service providers in order for the network provider to "*fully capture the value of network investment*" (paragraph 9.21) by not being required to provide access on a non-discriminatory basis to others. In energy markets, independent providers of additional network capacity are able to achieve value from their investments whilst also allowing such access and we believe this is a better model to use. We would like to see the policy of promoting active wholesale remedies –

as has been the focus in fixed line copper access networks – continued and extended to the maturing mobile service markets.

***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?*

We do not believe that end-to-end competition in fixed line networks is a likely or sustainable form of competition. While there may be opportunities, in new developments, for CPs other than BT to provide physical infrastructure on an exclusive basis, these enclaves would be embedded in BT's ubiquitous access network and would need wholesale access products to support provision of relevant retail services to end customers. As Ofcom notes (para 9.37), it is unlikely that an alternative operator with truly national coverage will emerge given the cost of duplication of existing networks.

We are also concerned with the actual experience of end customers in the scenario of end-to-end fixed line competition. Multiple operators using different networks would potentially lead to areas where only one operator has presence – for instance the new developments. Unless networks are made interoperable in terms of provision of end user services (which may be possible on an underlying IP-based infrastructure), this could lead to large numbers of individual customers effectively having only one economic choice for retail service provision while on paper, at a high level, there is customer choice because more than one end-to-end network operates in the wider area. This point is discussed in more detail in section 3 of our covering letter.

SSE's preference is for the ubiquity of BT's copper and fibre access network for mass market customers to be built on as a single, logical access network, regulated as a monopoly. This would not preclude other CPs providing infrastructure, so long as the principles of network inter-operability and the customers' right to choose any services are enshrined in a regulatory framework maximising use of existing access networks and promoting competition in the services that are able to be provided over them. This emphasis on service competition on a monopolistic (but open to competitive additions) access infrastructure fits well with the utility approach to regulation, with its greater market coordination for the benefit of consumers. We discuss the benefits of this alternative regulatory approach in section 2 of our covering letter.

***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)?*

SSE fully supports access regulation and would like to see this continued at any level that underpins service competition. SSE's retail business model uses active access products such as WLR and we expect that those companies concentrating on the more passive LLU access remedies would still, in their roll-out phase, have used WLR based remedies where they did not yet have a presence at BT exchanges. Some may continue to use WLR in areas where it is not economic to unbundle exchanges in order to keep their retail presence as widespread as possible.

We are very concerned about Ofcom's comments – for example, in paragraph 9.51 – that downstream active access remedies could be removed. We note that Ofcom supported the emergence of multiple fixed-line retail service providers following the outcome of the last Strategic Review through a combination of WLR based and LLU based access remedies. We would be concerned if there was a move away from active access based remedies as this would clearly undermine our own business model and those of the many hundreds of reselling service providers that have entered the market.

We also take issue with the comment in paragraph 9.49 that active access limits the level of innovation possible. We discuss the benefits of innovation from service provision at section 1 of our covering letter and question why Ofcom considers that it would not be beneficial to allow consumers a choice of retail communications offerings from a range of service providers, some of whom could provide other benefits such as supermarket points or discounts on other types of products (such as other utilities) as well as new retail approaches. Since these type of offers are of interest to at least some citizens, we believe that Ofcom would be acting against the interests of citizens and consumers if it withdrew support for the form of access regulation that makes this possible.

In summary, we think Ofcom should keep an open mind on the form of access regulation on a case by case basis and avoid setting a clear strategic preference for a particular approach. As Ofcom notes at para 9.65, active access remedies are used as a way for smaller players (like SSE) to enter a market. We support active remedies and their maintenance once they have been introduced and believe that these can co-exist with other types of access remedy more likely to be used by more established market participants.

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?*

No. We discuss our preferred approach of regulated and non-discriminatory wholesale access to mobile services in section 4 of our covering letter. We understand that it is difficult for potential retail competitors to negotiate acceptable wholesale 'MVNO' contracts with the main MNOs, who have no requirement to provide that access. This excludes a range of competitors, who could bring retail innovation to service offerings.

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?*

We are not convinced that MVNO access is providing effective competition as so many potential competitors are excluded from the market currently. Concerns about retail competition in mobile would be intensified if the BT-EE merger goes ahead.

***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?*

It is difficult to see a scenario where Ofcom would be able to prevent retailers 'bundling' products as they see fit and different 'service bundle' elements may develop over time. Pay TV and content provision are not the same as the pure 'network-based' services of telephony and broadband that Ofcom regulates, although we acknowledge that broadcast content happens also to come under the Electronic Communications Act and Ofcom's remit as a regulator. As bundles evolve in the communications market, we consider that the regulatory framework should encourage these to be 'loosely coupled' such that any non-communications associated product can be selected or de-selected without undermining communications service continuity. Other types of bundle that entail fixed contract periods and/or equipment should not be used to frustrate standardised harmonised gaining provider led switching arrangements by importing losing provider led elements or opportunities for reactive save.

It seems to us that issues of availability of key content are those of a different market from telephone and broadband services. This is an issue for Ofcom to sort out to the extent that it has the appropriate powers for that market. In the market subject to this Strategic Review, the main issue that we can see is preventing the switching process for bundles becoming overly complicated or a barrier to switching, as noted in paragraph 9.100. Ofcom's concern about the availability of key content mirrors our concern discussed above about the potential bundling of fixed and mobile telephone services. In this case, access to 'key' mobile service provision falls within the electronic communications market and, in our view, the solution is wholesale access to mobile services, as discussed.

Section 10

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?*

***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?*

We suggest that SMP (significant market power) infrastructure investment should be driven by two considerations:

1. The requirement to meet quality standards such as caps on customer interruptions; and

2. The potential for increased revenue through the development of attractive wholesale products for wholesalers and retailers – ideally developed through a 'market led' approach rather than a technological 'roll out'.

The most important regulatory principle to adopt with respect to pricing is 'non discrimination' between in house retail businesses and other wholesale customers. We appreciate that there may be circumstances where some pricing flexibility is appropriate but is should never be allowable for the SMP infrastructure investor to favour internal retail parties in price or non-price terms. Greater transparency and 'customer engagement' (to borrow a recently developing concept from utility regulation) would be welcome on SMP infrastructure investment plans in the communications markets. Ideally 'network upgrades' should take place seamlessly in the background – they may lead to different and desirable wholesale products becoming available but they should not undermine or adversely affect existing wholesale or retail products or the end customer experience.

We do not believe that it is right for the case for this type of infrastructure investment to be influenced by consideration of retail revenues that might accrue to the vertically integrated group containing the infrastructure provider through 'first mover' advantage in creating retail products using the new capabilities and/or through advantage from complexities for the consumer in switching away from using those retail products. This runs counter to the consumer protection considerations of enabling the customer to have real choice in who provides services to them. An SMP infrastructure investor that has no in-house retail business would seek to maximise use of the new infrastructure capabilities by developing a wide range of attractive access products and may also have some incentive to ensure that end customers can easily migrate between different retail offerings using its own infrastructure. It can be seen that this situation more readily aligns with customer benefit than the earlier one and feeds into consideration of the best form of separation for Openreach within BT, discussed later in the consultation and this response.

Another aspect of access pricing that can affect competitive outcomes is the structure of charges made for access not just their level. For example, a volume discount approach discriminates against access by smaller players and high upfront charges for wholesale arrangements feed through to high upfront charges for consumers and/or fixed term contracts with high penalties for exit, which is an issue that Ofcom has seen feeding through to consumer concerns and complaints in the retail market. We note that Ofcom specifically abolished certain types of wholesale charge in a recent market review due to their effect in being passed through to the retail market. This illustrates that regulatory intervention is sometimes required in this area of charging and that, by themselves, vertically integrated companies will not develop a charging structure that is most suitable for customers and competition.

Against this background, SSE would propose the development of industry governance over the form of pricing for new technologies and investment by SMP access network providers. As noted in the consultation, after a period of allowing pricing flexibility, Ofcom may have to intervene to set the level of charges for various types of access charges or margins as part of a move to cost based remedies. However, Ofcom are not likely to have the resources to consider structure of charges issues while industry participants will see this as key input to their businesses. A transparent framework within which market participants could propose amendments or raise issues with charging would provide the access provider with the opportunity to react formally and transparently to the issues raised and allow Ofcom to learn about these and take action itself if deemed necessary. This approach has been developed in energy markets over some years, whereby statements of charging principles are required from network providers and appropriate fora have been established for charge structure amendments to be proposed and discussed. Thus, elements of utility regulation, as discussed in section 2 of our covering letter may prove useful in considering appropriate regulatory approaches for communications access infrastructure investment.

Section 11

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?*

Issues that SSE is aware of in relation to Openreach's current position within the BT Group include its contribution, in developing facilities for retail products, to a 'first mover' advantage for the in-house retail business, especially as new technologies are introduced into the access network. It often appears that a 'BT version' of systems and processes to support a new product are available first before 'equivalent' systems are devised for all other service providers – and before the mechanisms for retail switching of the new product have been implemented. We also agree that pricing structures can undermine downstream competition, as discussed in paragraph 11.35 – this links with our points about governance of charge structure discussed in our response to the section 10 questions.

The 'Statements of Requirements' (SoR) process is mentioned at paragraph 11.38-9 and we are not surprised that some providers have raised concerns about this. It does appear that Openreach seems to reject a high proportion of requests from non-BT providers on the basis of the request not being commercially attractive to Openreach. This was the fate of one SoR raised by SSE some years ago and we would not be surprised if the non-BT community has such reduced expectations of the SoR process that proposals are not being brought forward in similar numbers these days due to low expectations of success.

There is also a degree of lack of transparency in accounting terms as we understand that Openreach is not ring-fenced within the BT accounts. We also understand that Ofcom has recently found errors and issues with the way that BT regulatory financial statements have been put together, which can also lead to Openreach's wholesale customers having concerns on discriminatory treatment with respect to cost allocations. Overall, there must be doubt in the minds of most of Openreach's wholesale customers that there is a genuinely 'level playing field' when the investment decisions and management focus of

Openreach are linked to the strategic aims of the BT Group and hence not to the legitimate needs of its external wholesale customers.

Q14*: Are there wider concerns relating to good consumer outcomes that may suggest the need for a new regulatory approach to Openreach?*
Q15*: Are there specific areas of the current Undertakings and functional separation that require amending in light of market developments since 2005?*
Q16*: Could structural separation address any concerns identified more effectively than functional separation? What are the advantages and challenges associated with such an approach?*

Following on from the discussion in response to the section 10 questions, we believe that a more separated Openreach would have greater incentives to ensure that all its wholesale customers were able to use attractive wholesale products to support their own retail services provided over the bottleneck access network. It would have a genuine need to work with all its wholesale customers to find out what products they would like and to strive to provide them in order to maximise its income from the network assets it owns. It is likely that some capability to provide active access products would need to remain/develop within a more separated Openreach, considering that WLR is provided as an active product and, as Ofcom discusses at paragraph 11.20, amendments were needed to the Undertakings to allow Openreach to offer the VULA wholesale product.

We agree with the views mentioned at paragraph 11.26 about the competitive concerns about Openreach performance that is poor in absolute terms: we believe that where customers have reason to be worried about performance issues, they are intuitively more willing to look for retail service from the brand that is associated with the whole supply chain in the hope that problems that they then encounter can more readily be resolved. Thus poor performance of Openreach provides a bias towards customer selection of the associated retail brand. We discuss ideas on improving the focus on performance issues in response to the questions in section 13.

The description of the Undertakings seems an unduly complex document, which has undergone many changes since these were initially agreed and whose scope is not particularly clear. In our view, the development of new products using Openreach infrastructure should be included in the Undertakings in view of the ‘first mover’ advantages that can currently accrue for BT, as discussed above. We suggest that any revised approach to the separation of Openreach seeks to simplify the formal wording needed to codify any remaining need for ‘regulatory rules’. In our view, the key principle should be to ensure that the corporate framework for the Openreach business provides it with incentives that align with those of its wholesale customers as a body.

We note the examples of legal separation mentioned in the consultation and believe that the Scottish Water model could provide a useful model to consider for Openreach. Given the degree of ‘functional separation’ already achieved, we suggest that a move to legal separation may be relatively straightforward and less disruptive to industry to implement than other forms of 'structural separation'. We note that the similar Singapore approach is discussed around para 11.66-8 as having led to low barriers to entry, non-discriminatory access and new service providers in the market, indicating that benefits are possible without the upheaval of ownership separation.

Legal separation would automatically provide a greater accounting transparency for Openreach, although regulatory oversight would still be necessary in this complex area, and service provision by Openreach within the BT Group would need to be contractually clarified. There would still be a role for regulation to cover such areas as effective business separation from the rest of the group; appropriate confidentiality provisions; and non discrimination in areas such as charging. We note that, in addition to the UK utility separation examples mentioned in paragraph 11.69, legal separation of electricity distribution businesses from retail businesses was required some years after privatisation in order to support the pre-existing regulatory principles of non-discrimination for these businesses.

In conclusion, the non-BT wholesale customers of Openreach appear to have ongoing grounds to distrust Openreach's decision making and investment priorities. As noted elsewhere in this response, SSE does not support end-to-end competition in the communications markets and cannot see any circumstances in which the level of separation of Openreach within the BT Group should be reduced. We support Ofcom's consideration of whether other forms of separation could resolve current issues and have suggested that the 'legal separation' route with regulatory oversight may provide advantages with respect to the current situation without the upheaval and cost of full structural separation. In the event of the BT-EE merger going ahead, we would advocate that the mobile access infrastructure then within the BT group should also form part of the separating 'Openreach' assets, to help meet the requirements for wholesale mobile access discussed in section 4 of our covering letter. Ideally, these principles for separation of infrastructure from retail interests should be applied across other vertically integrated entities serving mass market customers in the communications retail markets.

Section 12

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?*

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

***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)?*

SSE believes that the single greatest risk to effective consumer engagement and empowerment in relation to the mass market communications retail markets is the lack of coordination in industry processes. Section 2 of our covering letter discusses our view that communications connectivity IS perceived as a utility and that, in order to protect the consumer, as retail offerings and bundles become more complex, a utility approach should be taken to managing the demand side customer experience. Ofcom has already noted that coordination problems (paragraph 12.7) can lead to customer harm and that "*switching processes left to industry have in some cases led to poor consumer experiences*" (paragraph 12.19). A utility approach to retail market governance would make it a regulatory requirement for relevant CPs to become members of and abide by the rules of an independent market authority dedicated to the maintenance and transparent change control of retail switching processes. In our view, this step is key to achieving genuine consumer empowerment and confidence in the communications retail markets.

We have supported Ofcom in its strategic work on consumer switching and the introduction of the harmonised gaining provider led switching arrangements for fixed voice and broadband on the Openreach and KCOM copper networks. There is much still to do with respect to the wider range of switching situations including for different networks (such as mobile) and various types of bundle – including the fixed and mobile bundles discussed in section 4 of our covering letter. Implementation of further reforms would be assisted by the existence of the type of governance body we have outlined here and described in more detail in our covering letter. Once established, a governance body would produce a wealth of monitoring information that Ofcom could have regard to. As this body would govern detailed processes and market development, Ofcom's role would more clearly reside in keeping an overview of its proceedings and resolving disputes that exhausted the governance body's own dispute handling arrangements.

Section 13

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?*

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

SSE considers that customer concerns about the quality of communications networks mirror the concerns of customers of other utility networks: being fit-for-purpose and having high availability, reliability and fault handling performance. In section 2 of our covering letter, we have referred to the utility network focus on quantitative measures such as minimising customer interruptions and 'minutes lost' – this constraint itself leading to network innovation in areas such as fault handling. We have also discussed how the increasing reliance that society places on the performance of communications networks tends to make them appear as utilities in the eyes of consumers. This being the case, we believe that some aspects of utility management of performance may be a useful strategic approach for Ofcom to consider.

For other networks, statutory guaranteed standards are in place to provide for compensation to consumers – either directly or via their retail supplier – in the event of interruptions of specified durations or combinations, performance outside certain expected limits (e.g. for low pressure in water provision) and lack of adequate planned outage notifications as well as for miscellaneous issues such as the keeping of appointments. These are sometimes mirrored by a regulatory requirement to keep overall percentage success levels for the guaranteed standards above specified thresholds, with the attached risk of regulatory enforcement for failure to meet these. It would seem feasible for Ofcom and government to work together to establish a meaningful set of such standards applicable to relevant types of communications networks.

Clear targets and public reporting against these are likely to provide reputational incentives on networks to minimise standards payments and meet overall targets. Linking performance with financial incentives for price controlled networks such as Openreach, as discussed in relation to Ofwat's Service Incentive Mechanism, may be a further useful mechanism to consider. Ultimately, however, reputational reporting may be less effective where there is only one network being measured. To help provide a route to improving Openreach performance overall, use could be made of regional comparisons. There are likely to be a number of distinct geographic operating units already within Openreach, given the geographic focus of the access network and comparative reporting on meaningful customer-affecting performance metrics could help shed light on the range of regional performance in order to help identify and build on good practice.

We understand that service level agreements between Openreach and its wholesale customers can be set aside through a declaration by Openreach of a 'Matters Beyond Our Reasonable Control' (MBORC) situation and that industry feels there is some lack of transparency in how this can be unilaterally declared. MBORC does not seem to fit well with a guaranteed standards approach, wherein the combination of statutory definitions and exclusions sufficiently and transparently set out the situations where payments are required and where they are not as a matter of law.

As a final point on requirements for publishing information about network quality measures, we would comment that any such requirements should be targeted only on the entities which operate the underlying access networks. The picture for consumers can become confusing if network-based measures are required to be published by retail service providers, as is currently the case for broadband speed advertising. Due to wholesale supply chains, many retail CPs use the underlying Openreach access network whereas there are only a small number of different access networks. This is essentially a matter of clarifying the role and obligations for different types of CP, as discussed under section 2 of our covering letter.

Section 14

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

We are concerned that Ofcom appears to be considering network retirement as offering a deregulatory opportunity. Our experience with the proposed product withdrawals by BT in the very low bandwidth (VLB) area mentioned in paragraph 14.19 suggests that more not less regulatory focus is needed as an SMP player proposes to withdraw a retail product that many diverse UK organisations rely upon.

We very much agree with both the general sentiment in paragraph 14.17 that network transitions require careful handling and with the examples of issues set out in paragraph 14.18. There is no parallel in other utilities for an incumbent network operator deciding to 'withdraw a network'. Instead, such work would be termed a "network upgrade" and would be expected to take place with minimal impact on consumers consistent with the usual incentives on minimising customer interruptions and periods without available service. It is noteworthy that the introduction of greater use of fibre in the Openreach access network is even being referred to as a "network upgrade" in the industry. In our view, it should not be accompanied by product withdrawals and forced migrations at the consumer level and we believe that this is another area where a utility approach to regulation, as discussed in section 2 of our covering letter, might enable Ofcom to establish basic consumer protection requirements during these transitions such as:

- continuity of service;
- coordinated consumer information programmes using retail supply chains;
- migration to suitable follow-on products at no extra cost for consumers coordinated with retail supply chains;
- direct consumer assistance to deal with any different features of the 'new' technology, as appropriate;

Even if the number of consumers using a particular service is 'low', they are likely to regard the communications service they are taking as essential and would expect the regulatory framework to protect their interests during any such transitions.

Compared with the VLB withdrawal, Ofcom appears to have done more thinking on what would be involved for the Public Telephone Switched Network (PSTN) switch off that is contemplated in the next 10 years or so. For this, the scale and scope of coordination required across multiple wholesale supply chains would appear to be orders of magnitude greater in complexity than for the VLB withdrawal, where relatively few individual customers are involved. We agree that appropriate wholesale products will need to be devised and tested in advance of the start of any transition and would also point out that consumer switching processes are also likely to need amendments.

This brings us back to a major theme of our response: the need for retail market governance. The fact that such major network changes are contemplated in the next decade forms another reason, in our view, for the formation of an independent retail market governance structure. If this becomes established among relevant CPs serving the mass market of retail consumers over the next few years, it will form a natural vehicle whereby Ofcom can interact with 'the industry' as a body in order to develop the necessary plans, contingencies and formal project management disciplines to accomplish the project. If there is not such a body in place, those tasks will fall to Ofcom alone, in our view, as there is currently no other body that can coordinate project work across the communications industry.

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?*
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.*

We have supported the idea of a review of the General Conditions, with a view to clarifying the roles of different types of CP in accomplishing the intent of each condition. The discussion in section 2 of our covering letter touches on the practice, in other utilities, of separating out clear roles and rules for network/infrastructure operators and retail service providers. We continue to believe that this approach would be useful for the communications retail market General Conditions.