

Ofcom Digital Communications Review

Consultation Response from The Phone Co-op Limited

About The Phone Co-op

The Phone Co-op is the UK's only customer-owned, democratically controlled, telecommunications provider. Founded in 1998, we have grown organically and through acquisition, and now have some 30,000 business and residential customers receiving fixed and mobile voice and data services. We consider that as such, our voice is very much that of the consumer, and not simply another "industry interest". Our website contains a wealth of information about how we operate and can be found at www.thephone.coop.

The telecoms market has changed fundamentally since the current regulatory framework was put in place, and regulation needs to be updated accordingly

The current shape of telecoms regulation has its origins in two historical situations:

- a) The desire to break the monopoly of the incumbent, and to open up the fixed line market to competition
- b) The need to encourage operators to invest and build mobile telecommunications networks from scratch

Since these initiatives in the 1980s and 1990s, the telecoms market has changed out of all recognition. Regulation needs to be rethought to fit the new situation. There is a danger that if it does not, it may become unfit for purpose and this could lead to highly undesirable outcomes.

In relation to fixed line

We support the complete separation of Openreach and BT. There are a number of reasons for this:

- a) In our experience, many consumers and businesses still believe that BT customers get a better service because they think BT retail has better access to control of the infrastructure than rival operators. Whether this is true or not, the perception leads to a market bias in favour of BT, and BT does little to correct this misconception. This will ultimately only change when Openreach is seen as fully separate.
- b) There is a tendency for government to negotiate, effectively with BT as a single entity on infrastructure decisions, e.g. over the introduction of FTTC, leading to a breakdown of the barriers between the two and a reduction in regulatory protection for competitors.
- c) There is an inherent conflict of interest for the BT Group, on questions such as the allocation of capital between Openreach and BT Retail and a perverse incentive to organise transfer pricing between divisions in a way that may not favour transparent competition. Whether or not BT actually does this, the existence of such an incentive generates mistrust and requires effort to police it, which could be dealt with in one go by legal separation.

- d) A decision to separate Openreach would open up the opportunity for a debate about the right ownership structure for the UK's telecoms infrastructure. One attractive approach would be a form of mutual ownership, recognising its position as a long-term provider of public goods and a key part of the national infrastructure. Under such an arrangement, key stakeholders including service providers and end-users could be members and participate in governance
- e) If the merger between BT and EE is permitted to proceed (which we believe it should not be) it would be unacceptable for so much fixed and mobile infrastructure to be under the control of one operator. This is particularly the case given the extent to which BT's infrastructure is used for backhaul by mobile operators.

In relation to mobile

We believe it's time for complete re-regulation of the industry to reflect the fact that we now have a mature market rather than one where we are trying to get an industry off the ground. We are also concerned that convergence between fixed and mobile may well eventually lead BT to challenge the basis of regulation on the grounds that mobile operators do not face the same controls as BT does. If such a challenge were successful it could lead to the unravelling of the regulation of fixed line and the destruction of the alternative telco industry in favour of a vertically integrated model across fixed and mobile. We do not think this would be good for consumers.

We favour the separation of infrastructure and service provision (although we believe that in a multi-operator market, service providers could continue to own some infrastructure so long as its operation was technically and commercially separate from their activities as retail service providers.

Full details and the rationale for this are contained in a presentation made by our Chief Executive, Vivian Woodell, at an industry conference in September 2015 organised by the Federation of Communications Services. This presentation is attached and forms part of our submission.

In particular we wish to highlight the fact that the market for MVNOs is far from transparent and is not truly open. MVNOs operate at the pleasure of the big networks, some of whom choose not to supply most potential MVNOs (for example, Vodafone has explicitly said it is not interesting in supplying smaller MVNOs). Even where smaller MVNOs are able to enter into wholesale supply contracts, this is typically through aggregators which add cost to the supply chain and in practice act as a conduit for restrictions on MVNOs imposed by the networks to serve their own interests.