



Verizon Enterprise Solutions response to Ofcom's Strategic Review of Digital Communications consultation

1. Verizon Enterprise Solutions ("Verizon") welcomes the opportunity to respond to Ofcom's Strategic Review of Digital Communications consultation (the "Review").
2. Verizon is the global IT solutions partner to business and government. As part of Verizon Communications – a company with over \$127 billion in annual revenue – Verizon serves 98 per cent of the Fortune 500. Verizon caters to large and medium business and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.
3. Verizon's approach to responding to the Review has been to provide a summary of our position in relation to the issues under review and then move on to address the specific questions raised by Ofcom in the Review document which are of particular relevance to our business.
4. Please note the views expressed in this response are specific to the UK market environment and regulatory regime and should not be taken as expressing Verizon's views in other jurisdictions where the regulatory and market environments could differ from that in the UK.

Summary

5. Verizon welcomes Ofcom's Review. It is ten years since the last strategic review and as Ofcom notes, there have been significant changes in technology, the markets and consumer requirements during the intervening period. However, fundamentally the focus of the Review and the issues to be addressed remain the same; levels of competition, incentives to invest and consumer empowerment.
6. As a pan – European Business to Business provider, Verizon generally welcomes any initiative which aims to bring further harmonisation and legal certainty, and reduce administrative burden and unnecessary regulation at

EU and national levels. As such, we are generally supportive of Ofcom's approach and aims in conducting this Review.

7. Verizon considers that the priorities of the Review should be to encourage investment and innovation, protect consumers, and promote competition, including in the high end business services market. This can best be achieved by basing the necessary changes on the following key principles:

7.1. The review should promote a digital single European market by directing further harmonisation and a consistent application of rules across the EU. Obstacles to cross-border provisioning of services should be removed.

7.2. The outcomes should be technology neutral and future proof;

7.3. Generic EU competition policy principles should continue to guide the regulatory approach to the sector including where necessary the concept of ex-ante regulation mainly to address harm to competition or consumers.

7.4. Given the realities of today's digital market dynamics (e-communication providers vs. Over The Top providers ("OTTs")) the Review should result in:

7.4.1. a shift away from sector specific regulations towards increased reliance on generic horizontal regulation; and

7.4.2. only apply regulation where necessary and proportionate and to all market participants equally, with a goal of lightening regulation to reflect increased cross-sectoral competition.

7.5. The Review should explicitly recognize the distinction between residential services (sold to consumers) and non-residential services (sold to (large) business customers). One outcome we are very keen to see is that non-residential/business services are exempted from consumer regulation where possible.

8. The above principles guide our responses for all of the following questions in this consultation.

Strategic Review of Digital Communications consultation - Ofcom's 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?

9. Verizon agrees with Ofcom that effective and sustainable competition is the correct strategy to achieve widespread availability of services. Only in a competitive market will sufficient private sector investment be made available to drive innovation and provide the services consumers require.
10. However, as Ofcom notes, public intervention will still be necessary to ensure advanced services are made available to rural and remote regions of the country; there is no “one size fits all” approach and targeted intervention will continue to have its place.
11. In general, Verizon considers that regulation should only be retained or introduced where necessary and proportionate. In this respect Verizon would urge Ofcom to carefully consider whether every category of player in a given market needs to be subject to regulation.
12. With regard to consumer protection obligations, considering the specificities of business users – such as different contractual provisions, bespoke business needs and rigorously enforced SLAs – we strongly believe that although certain obligations may make sense to protect consumers, they can be unnecessary, irrelevant, potentially disproportionate and burdensome when applied to business providers. Currently too often regulation aiming to protect consumers also applies to business services, which acts as a deterrent to investment, innovation and new developments.
13. Business providers have previously raised concerns with Ofcom about the risk of “unintended consequences” linked to the lack of clarity with regards to the existing end user rights provisions and more specifically the need to distinguish between different types of “end-users” (consumers, micro enterprises and large enterprises). The question as to whether certain forms of regulation, from a proportionality perspective, should apply to different categories of providers, small versus big, consumer versus business, should always be considered.

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

14. Verizon agrees with Ofcom that the correct strategy to deliver efficient investment and widespread availability of services is one based on effective and sustainable competition. Alternative models not based on sustainable competition may deliver short term benefits but only in targeted hot spots (i.e. highly populated regions or high density business concentrations). Such a policy approach would not meet Ofcom's statutory obligations in terms of inclusiveness and would certainly fail the 'widespread availability of services' criteria of Ofcom's mission.

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?

15. This is a key question given the challenge to formulate a framework that will not easily be overtaken by technological developments.

16. However, in general terms, given recent developments in the field of Machine to Machine ("M2M")/Internet of Things ("IoT"), as well as the rapid growth of applications, Verizon would emphasize the importance of a technology neutral approach to regulation. Not only is flexibility essential for market players to keep up with the pace of innovation, it is the only way regulation can remain ahead of technological developments.

17. Similarly, Ofcom should strongly consider whether telecoms regulatory obligations are at all appropriate in the future for emerging developments such as M2M and IoT. In order to foster innovation, Ofcom should strongly consider relaxation of telecom specific regulation for such services.

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?

18. Convergence can be a positive development where it leads to increased efficiencies, lower costs and improved experience for customers. It is a growing phenomenon in many guises in the telecoms sector currently, and we would expect this trend to continue for the foreseeable future.

19. However as Ofcom notes, it is a broad term and its impact needs to be carefully managed to ensure the competitive landscape is not threatened. We consider that the current regulatory framework based on general competition law policy has proven to be an effective and fairly balanced system. Competition law coupled with, where necessary, ex ante regulation that in itself is again based on general competition law principles, has led to a situation in which regulation is only imposed where necessary to address specific competition issues in a proportionate fashion. This approach is flexible and dynamic and we believe that it will remain an appropriate and adequate framework in the event of further convergence and consolidation.

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?

20. Competition law is a powerful tool, and gives Ofcom the ability to take various actions outlined in paragraph 8.52 of the consultation document. As things stand it is not clear that there is a clear evidence-based need to extend or change the status quo, and we do not see a case for this in the review.

21. As a general proposition we do not consider that concentrated markets are in themselves a cause for concern from a competition perspective. Such markets need to be considered on a case-specific basis, taking account not just of market share but also factors such as barriers to entry and countervailing buyer power. Some markets naturally tend towards concentration due to their specific nature, but it does not necessarily follow that there is a problem with this. Indeed some concentrated markets can be highly competitive, whereas others with lots of market players can be less so. In other words, the idea that the concentration of a market has a direct bearing on the competition within that market should be treated with caution.

22. We are sceptical that there is a demonstrable need to create a specific approach to dealing with oligopolies. Joint dominance already allows NRAs to

impose ex ante obligations when market power is not individual but held by more than one operator.¹

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?

23. With regard full end to end competition varying by geography, it is considered unlikely that there will be any significant change in the next five to ten years. Currently, competition in the B2B market is very much dependent on geography (potential customer density being the key driver), and this is unlikely to change in the foreseeable future.

24. From a B2B perspective, only in parts of London do truly competitive market conditions potentially exist. From Verizon's perspective, competitive conditions outside of the two defined geographic markets will remain unchanged, for the above referenced period, and therefore we do not see any potential for either expanding the deregulated zones or generating additional geographic markets.

25. Overall, Verizon considers that the appropriate regulatory approach for the future is one based on general UK and EU competition law policy, which is well established in the UK and understood by the market.

26. Competition law coupled with, where necessary, ex-ante regulation that in itself is again based on general competition law principles, to address harm to competition or consumers results in a system in which regulation is only imposed where necessary to address specific competition issues in a proportionate fashion. This approach is flexible and dynamic and enables an evolutionary move from ex-ante sector specific regulation to general competition law whenever justified by competitive developments.

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

¹ There are precedents that prove that this is a viable approach to regulate more than one operator when necessary. It does not seem necessary to create new tools to further regulate this market structure.

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)?

27. Based on the current UK specific market characteristics, access regulation will continue to be required in the near future, especially for B2B providers. As noted above, the current market regulation approach is flexible and dynamic and enables a move from ex-ante regulation to general competition law whenever competitive conditions change significantly.

28. At this moment in time it is too early to commit to one approach, such as passive remedies as noted by Ofcom. Ofcom needs to keep an open mind to all available options and continue to assess the appropriate approach on a case by case basis.

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?

29. As indicated above we consider that the existing regulatory framework is sufficiently dynamic and flexible to address new and evolving market developments, including regulation applied to perceived or actual bottlenecks.

30. This flexibility is ensured by (i) the fact that the ex-ante system itself is based on general competition law principles, (ii) the periodic definition of the relevant markets, and (iii) the proportionality judgment of the NRAs to periodically conduct market reviews and to impose ex ante access obligations to address market failures.

31. While we agree with Ofcom's view in paragraph 10.12 that significant and poorly signalled changes in policy can damage investor confidence and increase risk on investment, this needs to be carefully balanced with the need to maintain competition once the services are launched and the returns on investment are known.

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?

32. Ofcom market reviews found that there is unlikely to be much, if any, infrastructure competition in fixed markets in the UK outside of London and other major cities, in the near future. If this remains the case, Ofcom's focus in terms of pricing approaches needs to be on supporting sustainable competition. The key focus should be on the avoidance of any approach that undermines incentives for investment; Ofcom's default position should be to intervene early rather than too late due to the risk of dampening investment in key markets.

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?

33. In regard to competitive sections of the market, by its very nature, Verizon would not expect to encounter any major QoS issues or concerns; such issues may more naturally occur in uncompetitive sections of the market.

34. Ofcom is currently proposing to take action to address industry concerns with Openreach performance following responses to the Fixed Access Market Review and the BCMR. Ofcom's proposals are welcome but do not go far enough nor do they reflect the urgency that is required in terms of speed of implementation. As such, urgency and speed are two key factors that Ofcom needs to embrace when implementing proposals to improve the quality of service experience of consumers.

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

35. Verizon would urge Ofcom to approach this question without any preconceived ideas. Structural separation, which has been the subject of considerable media attention, is not necessarily the answer. Greater monitoring and enforcement of Openreach SLAs would go a considerable way to improving the situation. Incentives from increased competition is likely to be the most effective way of improving quality delivered to consumers but only once the issues have been resolved where there is limited competition, i.e. issues with the products provided by BT (Openreach).

36. BT maintains more products than would be expected in a competitive market. Furthermore, a number of such products are only purchased by BT's

downstream business and this provides the opportunity for anti-competitive pricing of wholesale offerings, with the potential to distort competition. Ofcom should review the offerings from Openreach and ensure that the portfolio meets the needs of the market and does not have discriminatory impacts.

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?

37. Verizon considers that the current ex ante regulatory framework is appropriate and it also allows for an evolutionary move from ex-ante sector specific regulation to general competition law whenever justified by competitive developments. We consider that this ultimately leads to a situation in which regulation is only imposed where necessary to address specific competition issues in a proportionate fashion.

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

38. Verizon considers that opportunities to de-regulate will arise as markets become sufficiently competitive – which may or may not be as a consequence of network evolutions.

39. Obviously regulation should only be retained where it is necessary and proportionate – so we would expect the ongoing cycle of market reviews to identify opportunities for de-regulation as a consequence (among other things) of network developments.

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?

40. The review must reflect the new digital market realities, and when looking at the digital market as a whole the question should not be how but rather whether it is appropriate to regulate.

41. In our view this is an opportunity to focus on a regulatory agenda that protects consumers, encourages investment, and enables the cycles of innovation that generate opportunity and economic growth – while avoiding regulation that attempts to outsmart what has become a highly dynamic ecosystem. This calls mainly for horizontal rather than incremental sector specific regulation.

Our strong view is that existing horizontal regulation such as the UK and EU competition laws and Data Protection provisions go a long way to addressing any regulatory concerns – and should only be supplemented as a last resort when there is concrete evidence of consumer harm that cannot otherwise be remedied.

42. With regard to OTT services, we consider that it is very important that Ofcom recognises the differences between consumer products and those services that are only purchased by business customers.

43. We welcome and support the policy framework in place in the UK with regards to net neutrality, which Ofcom references on p165. We agree that, so far, this has resulted in a balanced approach with positive consumer outcomes. We see no need to introduce further regulation in this area, which would only serve to constrain innovation. Again as NN related policy frameworks aim to protect consumers and possibly micro-enterprises, we believe that business providers, due to the very nature of the service they provide (different contractual provisions, bespoke business needs and rigorously enforced SLAs), should be exempted. Considering both elements above, we are concerned about the draft EU TSM Regulation's NN provisions.

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.

44. We strongly believe that there is scope to remove, reduce and/or simplify existing regulation. We therefore welcome Ofcom's statement to this effect in paragraph 14.4.

45. As alluded to earlier in our response, we strongly believe that consumer-oriented obligations are frequently unnecessary and disproportionate when applied to business providers. We would like to see far greater focus on whether new regulation should apply to all providers or whether exemptions should be allowed for certain categories.

46. In this respect we welcome and fully support the thresholds set out in the Digital Economy Act provisions which effectively exempt providers with a relatively low subscriber base. We consider that there is scope for taking a

similar approach to other regulatory requirements, if it is not possible to introduce an explicit exemption.

47. We also support the call for a root and branch review of the General Conditions (GCs). These are now over 100 pages long, and would strongly benefit from a thorough review and revision.
48. Ofcom should undertake a critical review of each GC, determine whether it is really needed, and whether it is possible to carve out proper exemptions for those providers who should or do not need to be captured. For example in some cases it should be possible to carve out B2B providers. This would help to cut the unnecessary regulatory burden on such providers while having no ill effect on consumers.
49. We strongly hope and expect that Ofcom will use the Review in part to clarify the position of business providers and business users with respect to provisions which are clearly aimed primarily at protecting residential consumers, and as well as, where they so request, micro-enterprises and SMEs that purchase consumer products. It would greatly help business providers such as Verizon if there was a clear demarcation between consumers on the one hand and business customers on the other.
50. Our view is that consumer protection should apply to generally standardised services provided under common terms and conditions, provided on a mass market basis to users with typically less limited technical knowledge and, relative to larger business customers, less bargaining power.
51. There are clear examples of where the GCs can be refined in this respect, for example switching obligations. These should not apply to enterprise services. Also issues such as contract termination are already covered in large part through contracts. Moreover, the very nature and complexity of services of the European business services market, and the high level of competition in Europe, gives the large business customer a high degree of control and leverage in striking the business deal it desires. This is often a bespoke contractual arrangement with detailed SLA's which the provider must meet, giving the business customer a high degree of empowerment in a way not available to consumers of mass-market services.
52. As a pan European B2B provider we also strongly encourage Ofcom to support initiatives which help to promote a digital single market at EU level. A single market approach will only truly work if providers do not face any

barriers to selling services in the way that their customers demand them to be sold. We strongly advocate the “one stop shop” approach to authorizations, so that providers are not restricted in the way they commercially contract across the EU. Once notified in one jurisdiction, a provider should be allowed to sell in all other EU jurisdictions. There should be a set list of broad service categories instead of a patchy list of services in each country, which will especially help with new services – we should also be able to make submissions online, in various languages etc.

53. We also encourage Ofcom to foster harmonisation at every opportunity; one good example of this is the need for definition of a harmonised set of IP based wholesale access services across the EU. This type of initiative is a crucial but as-yet unrealised step towards a truly single digital market. Currently there is far too much fragmentation in far too many areas. Urgent efforts are needed to implement harmonization procedures wherever there is an opportunity to do so. The EC, and national regulators, must operate with harmonisation at the forefront of the mind in everything that they seek to do.

Verizon Enterprise Solutions
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