

Strategic Review of Digital Communications 2015

<p style="text-align: center;">Overarching issue (see consultation paper)</p>	<p style="text-align: center;">Specific questions (see consultation paper)</p>	<p style="text-align: center;">Response (numbers refer to consultation paper paragraphs)</p>
<p>Should competition policy remain at the core of good availability outcomes for most consumers, complemented by targeted intervention as required?</p>	<p>Question 1: 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?</p>	<p>Yes. Hence the need to ensure that local authorities go out to competitive tender for the next round of BDUK funding, including use of any clawbacks from Phase 1 resulting from underspend and/or greater than forecast take-up. Hence also the need for the vigorous investigation of allegations of predatory behaviour by BT, including with regard to using state aid to overbuild competitors' networks or withholding information on their plans regarding areas covered by contracts which involve state aid.</p>
	<p>Question 2: Would alternative models deliver better outcomes for consumers in terms of investment, availability and price?</p>	<p>The re-creation of Openreach as a monopoly utility, separate from BT, however owned and funded, is most unlikely to deliver better value for consumers than the promotion of competition between suppliers of fixed and mobile infrastructures.</p>
<p>What more can be done through public policy to deliver truly widespread availability?</p>	<p>Question 3: 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?</p>	<p>The biggest challenge is to encourage BT to restart the investment programme that it began to wind down in 2008 while, in parallel, encouraging investors to support those who are building local and national infrastructures to bypass BT's overloaded and crumbling exchange and backhaul networks.</p> <p>This is best done by encouraging local authorities to go out to open tender for networks to serve those areas which do not already</p>

		<p>have competing suppliers capable of enabling uses and business to use government “digital by default” systems at times of peak demand. The service levels should be measured using actual experience not theoretical line speed.</p>
<p>Does convergence and consolidation in our sectors suggest new approaches or tools are required to deliver effective competition?</p>	<p>Question 4: 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?</p>	<p>Quadplay, alias the bundling of telephone line, broadband and access to content (Internet and TV), into combined packages is as great a threat to consumer choice as earlier forms of “bundling” were to business customer choice in the Computer Industry in the 1980s.</p> <p>There is also the growing threat from integrated US-centric OTT cloud-based models (e.g. Amazon, Apple, Facebook Google etc.) as they take on the Quadplay providers.</p> <p>Robust action by US Competition Authorities against bundling in the 1980s enabled the micro-computer revolution.</p> <p>There is a need for similar regulatory action to open up and preserve consumer choice in the face of the threats of both Quadplay and OTT.</p>
	<p>Question 5: 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?</p>	<p>Yes – but the failure to take rigorous action against, for example, BT’s predatory action with regard to the supply of broadband to business, calls in question the ability of Ofcom to fulfil its statutory duties. It should either exercise these or pass the task to the Competition and Markets Authority</p>
<p>What model of competition should future regulatory</p>	<p>Question 6: What do you think is the scope for sustainable end-to-end competition in the provision</p>	<p>There is no longer a clear distinction between fixed and mobile infrastructures. Both increasingly share backhaul</p>

<p>strategy focus on: full end to end networks; passive access to support end to end networks; or active wholesale remedies to deliver downstream competition?</p>	<p>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?</p>	<p>networks and the majority of traffic now comes from mobiles which roam (albeit not yet seamlessly) across domestic routers, wifi hotspots and mobile masts.</p> <p>The structure of the competing services and infrastructures over which they roam is evolving in ways that are not always related to population density or geography.</p> <p>The resultant competition issues need to be addressed to prevent new monopoly bottlenecks from emerging. That entails reverting to basic regulatory principles and taking action on abuse when it happens rather than trying to predict the future.</p>
	<p>Question 7: Do you think that some form of access regulation 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)?</p>	<p>Yes and it should continue on a case-by-case basis. The pace and direction of change (with for example the growth of smart buildings and cities, IoT, Quadplay and the new OTT business models) is too uncertain for anything else.</p>
	<p>Question 8: 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?</p>	<p>We will hopefully continue to have competing end-to-end services but they increasingly run over infrastructures shared by both fixed and mobile operators. The need is to retain a choice of infrastructure services at each stage (including for back up and resilience) and prevent monopolies (alias single points of vulnerability/failure) appearing at choke points</p>
<p>Are there new or unresolved competition issues in digital</p>	<p>Question 9: In future, might new mobile competition issues arise that could affect consumer outcomes? If so,</p>	<p>Technologies, architectures and business models are all in a state of flux with the transition to an always connected smart world.</p>

communications services?	what are these concerns, and what might give rise to them?	<p>That world is reliant on an evolving mesh of interconnected and inter-operable, but hopefully not critically inter-dependent physical networks. That physical mesh serving the UK has to much better follow internet principles to avoid multiple points of vulnerability/failure.</p> <p>Ofcom will therefore need to make much better use of its powers to reduce the risk of sections of monopoly infrastructure maintaining or introducing single points of vulnerability/failure.</p>
	Question 10: 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?	<p>Yes. As with previous network technologies (canals, railways etc.) suppliers will seek to use dominant positions in one market (e.g network access) to try to dominate another (e.g content). The tools to prevent this are available but need to be used, including with regard to Quadplay and OTT..</p>
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?	Question 11: What might be the most appropriate regulatory approaches to the pricing of wholesale access to new and, risky investments in enduring bottlenecks in future?	<p>The need is to give those who invest in removing bottlenecks reasonable confidence that market risk will not be compounded by regulatory uncertainty, provided they do not, in turn, create and abuse new monopoly positions.</p>
	Question 12: 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?	<p>Intervention should be confined to preventing abuse by those with dominant power. Attempts to maintain/protect prices should be confined to preventing price-cutting to exclude competitors. They should not be used to protect obsolete, high cost infrastructures.</p>
Are there changes in competitive outcomes or the	Question 13: Are there any actual or potential sources of discrimination that may	<p>Local Loop unbundling and the subsequent attempt to functionally separate BT local</p>

<p>overall market context that might suggest the need to update or evolve the current model of fixed access network functional separation?</p>	<p>undermine effective competition under the current model of functional separation? What is the evidence for such concerns?</p>	<p>loop operations as Openreach led to cheap broadband but delayed UK investment in fibre by at least a decade.</p> <p>The main concern today is that anti-competitive behaviour by BT is delaying infrastructure investment by its competitors while BT runs down its own investment in order to use regulated revenues and/or those from captive markets (e.g. business leased lines) to cross subsidise its content operations.</p> <p>There is a mass of evidence, arguments and counter-argument and the Competition and Markets Authority should be tasked to sort through it while others focus on building for the future.</p>
	<p>Question 14: Are there Wider concerns relating to good consumer outcomes that may suggest the need for a new regulatory approach to Openreach?</p>	<p>UK plc will remain beholden to BT's funding, investment and delivery decisions and timescales until its competitors have been able to reduce their dependence on Openreach and on the BT Wholesale backhaul networks and central switching and billing. This is not healthy. Hence the need to encourage infrastructure competition.</p> <p>BT's timescales for new connections, upgrades and repair are arguably a bigger issue than price and need separate performance monitoring.</p>
	<p>Question 15: Are there specific areas of the current Undertakings and functional separation that require amending in light of market developments since 2005?</p>	<p>The functional separations agreed a decade ago need to be reviewed and revised in the light of both practical experience and developments since.</p>
	<p>Question 16: Could structural separation address any concerns more effectively than functional separation? What are the advantages and</p>	<p>BT currently appears to have neither the cash flow nor the borrowing capacity to fund the investments needed to meet EE's current commitments, the needs</p>

	challenges associated with such an approach?	<p>of its business customers and to provide a good user experience to its new TV customers.</p> <p>Neither functional nor structural separation is likely to address this problem unless they enable a truly massive injection of funds.</p>
Should Ofcom do more to further support empowerment at each stage of the consumer's decision-making process?	Question 17: What do stakeholders think are the greatest risks to continuing effective consumer engagement and empowerment?	The lack of meaningful information on the quality of service (including response times, resilience and reliability) they can reasonably expect to receive from suppliers.
	Question 18: What indicators should Ofcom monitor in order to get an early warning of demand-side issues?	<p>It should poll government and others on the bandwidth and response times needed to handle their planned services. It should collate the forecasts being used by suppliers, including of equipment.</p> <p>All forecasts are, however, suspect. It should, therefore, focus on better identifying and responding to demand side issues when they happen rather than trying to predict the unpredictable. That will entail collating complaints from developers and customers regarding the availability and quality of services and the obstacles to getting satisfaction .</p>
	Question 19: 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	<p>There is a need to give customers very much better information on the speed of response and quality of service they can expect to receive, as opposed to meaningless headline speeds, let alone terms like “superfast.</p> <p>Ofcom is in a unique position to assemble, assess and publish such information (including from the in-house performance monitoring operations of operators and internet service</p>

	other stakeholders (including industry)?	<p>providers and users with large numbers of customers, e.g. on-line retailers).</p> <p>Perhaps its role should be to require providers to make the necessary information available to third party providers such as the Consumer Association.</p>
What more should Ofcom do to support better quality of service for consumers, in either competitive or less competitive markets?	Question 20: 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?	The discussion document refers to the poor reliability and lack of rapid response experienced by many SMEs (13.14) and the failure of BT to offer service level options (e.g. 4 hour and 24 hour response) to its own customers, let alone those of its competitors, BT appears to claim lack of demand for services about which it does not inform customers (13.38/9). This should be addressed as matter of urgency with urgency.
	Question 21: What further options, If any, should Ofcom consider to secure better quality of service in the digital communications sectors?	<p>E-health, including telecare, is just one of many IoT applications where reliability and resilience are critical. There is evidence from SMEs that the ability to rely on rapid communications, without the fear that they will fail or degrade at times of peak demand (e.g. run up to year-end or a national holiday), has a transformative effect.</p> <p>There is a need to explore the willingness to pay extra for improved quality of service drivers, in the context of a more nuanced debate on neutrality and traffic management, alias capacity rationing.</p>
Are there opportunities for deregulation or simplification that will bring broader benefits whilst avoiding new	Question 22: Might there be future opportunities to narrow the focus of ex ante economic regulation whilst still protecting consumers against poorer outcomes?	<p>Ex ante regulation commonly protects incumbents against change and should be avoided.</p> <p>Ex post regulation can, however, be too little too late with innovation dead and new</p>

risks to consumer harm?		entrants bankrupted before action is taken. A balance is needed with a preference for identifying areas where rapid and effective ex post action may be needed in the light of what problems actually arise.
	Question 23: Where might future network evolutions, including network retirement, offer opportunities for deregulation whilst still supporting good consumer outcomes?	The recent decision to allow BT to raise charges because of the cost of maintaining legacy copper networks was a step in the wrong direction. Those building new networks and/or making major upgrades should be allowed to offer three to five year fixed contracts. This can greatly reduce the cost of raising funds by enabling leasing as opposed to risk finance. Allowing dual pricing, with those paying up-front connection charges subsequently paying only marginal maintenance and operations costs, would further remove the need to fund risk capital.
	Question 24: 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?	The potential implications of the rise of OTT services can be viewed as “Quad Play on Steroids”: would-be global monopolists doing deals with current local infrastructure and network monopolists to get better quality of service, marketing advantages and consumer lock ins. They are likely to require a robust approach to predatory behaviour as this emerges.
	Question 25: 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	The ability to use internet metadata to routinely identify geographic location (increasingly a mobile) removes the case for requiring a PSTN line to enable the emergency services to trace the origins of traffic.

	<p>could be mitigated? Please provide evidence to support your proposals.</p>	<p>The new alternatives appear not only more reliable but significantly cheaper.</p> <p>There is also a need to mandate “reasonable” action by operators to reduce the volume of fraud conducted over their networks by those actively disguising the origin of the traffic.</p>
--	---	--