

Your response

| Question | Your response |
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| <p>Do you agree that the key potential market developments over the next five to ten years are those set out in Section 5? Are there any other key developments we should consider?</p> | <p>The discussion paper rightly recognises that mobile services will become increasingly important over the next five to ten years. Year-on-year demand for mobile data provided over public mobile networks will continue to grow. This will particularly be the case for higher quality mobile services like 5G, and, towards the end of the decade, Next Generation services like 6G.</p> <p>This in part will be due to continual growth in the use of data-heavy services, such as video streaming, and Next Generation technology, including autonomous vehicles and the growth of the Internet of Things in consumer settings. New industrial use cases will also continue to arise (although we expect many of these will rely on private, rather than public networks).</p> <p>Importantly, the growth in the market will also result from increased use of mobile services to provide fixed wireless access services, particularly as a tool to address rural not-spots that currently are underserved by connectivity. The government has made clear that fixed wireless access will play an important part in its strategy to reach Hard- and Very-Hard-to-Reach premises.¹</p> <p>Meeting this growing demand will require effective, evidence-based regulation that removes existing barriers to mobile infrastructure rollout. We welcome Ofcom’s methodical approach to assessing the likely direction of the market, but believe it is important that Ofcom works with government to ensure their respective interventions in the market work in harmony.</p> <p>The discussion paper also sets out a range of expected changes in how mobile networks are provided. While we agree with each point, given the focus of our business we are particularly cognisant of the growing trend for mobile network operators (MNOs) to seek to monetise their mobile infrastructure holdings. This commercialisation builds upon the service-led consolidated delivery models of Mobile Broadband Networks Limited (MBNL – set up by EE & H3G) and Cornerstone Telecommunications Infrastructure Limited (CTIL – set up by Vodafone & Telefonica (O2)) established in 2007 and 2013 respectively. CTIL has evolved into a Wholesale Infrastructure Provider, becoming part of Vantage Towers, which has led to the separation of network assets from the MNOs, transforming the market for passive infrastructure over the last 5 years.</p> |

¹ [Improving broadband for Very Hard to Reach premises](#), DCMS 2021

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| | <p>Wholesale Infrastructure Providers have strengthened their role in the market, both through the consolidation of MNOs' own asset bases, and through the continued expansion of fully independent Tower Companies like Cellnex. We believe this trend has – and could continue to have – negative implications for investment into mobile networks.</p> |
| <p>Do you agree that competition among MNOs is likely to continue to play a key role in the delivery of good outcomes, as outlined in Section 6?</p> | <p>To meet the expected growth in demand for mobile data outlined above, MNOs will need to undertake significant and sustained investment in mobile networks. This is particularly the case for 5G, where rollout to date has fallen behind other competitor nations. The government's latest target – for the 'majority' of the UK population (i.e. 50.1%) to have 5G coverage by 2027 – is underwhelming, particularly given the UK's largest cities already have well-established 5G networks from one or more mobile operators. It is brought into stark perspective by comparison to Germany, where the government intends to achieve 100% 5G rollout by 2025, despite operators being required to pay rates aligned to the market value for land.</p> <p>Ofcom expects competition in the market to play a key role in meeting this growth, delivering additional capacity by "<i>driving investment in strong, secure networks that meet the future needs of customers</i>". The discussion paper notes that this additional capacity can be achieved by investment in technology upgrades that improve spectrum efficiency, or by deploying current spectrum more widely on existing sites. The paper also notes that an increased number of mobile sites will be needed to meet demand in some areas.</p> <p>However, unlike in fibre networks, to date the government has not focused on creating market investment conditions in the mobile market. Instead, it has undertaken more direct interventions, particularly in the land market for mobile sites. Most recently, it has proposed changes to the Electronic Communications Code that are being given effect through the Product Security and Telecommunications Infrastructure (PSTI) Bill.</p> <p>These changes are intended to deliver faster, more collaborative rental agreements for the properties on which mobile masts are based, in turn speeding up rollout of 5G networks. However, we are concerned that the government's proposed approach will not return the sector to a functioning land market, built on consensual deal making. Instead, the new legislation will further embed the reliance on protracted legal action, unnecessarily hindering rollout.</p> |

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| | <p>While the Code is largely a matter for DCMS, Ofcom does play an important role in supporting implementation of the Code, including through monitoring the site market and creating an effective Code of Practice governing behaviour of Code Operators and site providers. The Code's operation also impacts Ofcom's broader responsibility for the development of communications networks. We therefore believe it is important that any reforms to the Code support Ofcom's wider strategic ambitions for the mobile market, and are firmly grounded in evidence, if they are to have a positive impact on UK connectivity.</p> |
| <p>Do you consider that there are likely to be significant wider external benefits (externalities) from a quicker or more widespread rollout of high-quality networks than that which the market is likely to deliver, as discussed in Section 6? If so, please provide clear examples to help explain your answer.</p> | <p>Nil response</p> |
| <p>Do you agree with our views on how competition across the value chain may evolve over the next ten years, and the potential implications for the delivery of good outcomes, as outlined in Section 6?</p> | <p>The discussion paper notes that Ofcom expects to see a more complex system of competition across a fragmented value chain. This hypothesis is supported by the growing trend for MNOs to seek to monetise their mobile infrastructure businesses, with significant implications for investment into mobile networks.</p> <p>CK Hutchison's sale to Cellnex of its passive infrastructure in the UK was the latest in a series of moves by MNOs to divest or commercialise their mobile towers businesses. The discussion paper references the potential for this trend to lead to greater sharing of infrastructure. This would be a welcome development.</p> <p>However, these partnerships (such as Vodafone and Virgin Media O2's agreement to commercialise their towers infrastructure in CTIL) and acquisitions (principally Cellnex's purchase of Arqiva and CK Hutchison's passive infrastructure divisions) have fuelled a growing market power among a small number of players in the Wholesale Infrastructure Provider market segment. This ongoing consolidation creates significant barriers to new entrants, allowing incumbents to prevent a market-based solution on the basis of choice and competition.</p> <p>MNOs have routinely sold off their passive infrastructure on long term contracts, entering into deals including long term "all or nothing" 'service supply agreements' with Wholesale Infrastructure Providers such as CTIL and Cellnex. This gives rise to a situation where Wholesale Infrastructure Providers are able</p> |

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| | <p>to use the Code to force down the amount of rent they pay to a site provider, but not pass any of those savings on to the MNOs placing apparatus on their passive infrastructure. Over time, the MNOs are likely to find themselves being held to ransom for access to infrastructure, paying far above the rental rates secured by Wholesale Infrastructure Providers across their portfolios. The Competition and Markets Authority (CMA) recognised the inherent dangers in this, finding that “the sale of the CK Hutchison business to Cellnex would raise significant competition concerns”, and ordering Cellnex to sell over 1,000 tower sites to address those concerns.²</p> <p>The separation of passive infrastructure businesses from their MNO partners has had the added effect of weakening the relationship between profits accrued from successful towers businesses and investments in mobile networks. Profits that previously flowed directly to MNOs are increasingly accruing to companies that do not make decisions about network investment and are free from obligations about coverage.</p> <p>To illustrate this point, when Vantage Towers was floated, IPO documents relating to CTIL stated explicitly that only 30% of rent reductions will be reinvested. In planning future regulation of the mobile market, we believe Ofcom should consider how regulatory or competition mechanisms can influence the channelling of profits from each part of the mobile value chain into investment, and how changes in the structure of the infrastructure market strengthen or weaken this relationship.</p> <p>We are concerned that the government’s approach to regulation of the sector, including through changes to the Electronic Communications Code, are not keeping pace with developments in the market. We firmly believe Ofcom should take a future-looking approach that considers specifically how the passive infrastructure market will develop, in turn informing evidence-based, future-proofed regulatory interventions.</p> |
| <p>As set out in Section 6, do you agree that quality of experience will become more important in the future? Do you agree that developing better information on quality of experience for customers will help further the delivery of good outcomes?</p> | <p>We agree that quality of experience will become more important in the future. However, for some people in the UK basic connectivity is still an aspiration. We believe that it is essential to have good quality information and data in order to make evidence-based decisions that improve connectivity and customer experience across the UK. We are concerned at the lack of any accurate and up-to-date data for mobile sites in the UK, including the overall number of sites, their location, and the operators present and technology deployed on each.</p> |
| <p>Do you think there is more that could be done to reduce barriers to customers</p> | <p>Nil response</p> |

² [Tower site sale to address concerns in telecoms merger](#), gov.uk, March 2022

receiving good indoor coverage (see Section 6)? If so, please outline what steps could be taken and what impact those steps would be likely to have.

Do you agree that clarifying our future regulatory approach will help encourage investment, as outlined in Section 7?

The discussion paper rightly notes that regulation can influence investment incentives. We also agree with its position that regulatory clarity and certainty can in turn encourage investment. Ofcom's intention to set out explicitly how proposed policy interventions would impact investment is therefore to be welcomed.

We note with interest Ofcom's view in Section 7 – contrary to those of the MNOs – that higher revenues for MNOs would not necessarily lead to greater investment in mobile networks. We concur – improved profitability (or reduced costs) does not necessarily improve incentives for future investment. This view stands in contrast to the government's approach to the land market for mobile infrastructure, where its policy proposals are predicated on reducing the costs MNOs (and tower companies) face in rolling out mobile infrastructure, rather than addressing the incentives for investment. The government is pursuing further changes to the Electronic Communications Code – building on reforms it made in 2017 – that aim to further reduce the total rent paid by Code operators to mobile mast site providers.³

The policy justification for changes to the valuation mechanism built into the Code is that cost savings will be reinvested in networks. Revisions to the Code's valuation method have meant that operators are routinely reducing rental payments by 90%. However, the Code gives no legal provision for monitoring of the extent to which these rent savings are reinvested into networks compared to the old Code. Moreover, since 2017, the ongoing commercialisation of MNOs' passive infrastructure businesses means that site providers are routinely contracting with Wholesale Infrastructure Providers who do not make decisions about network investment, rather than operators with coverage obligations.

This severely weakens the government's policy justification. There is no data to show what proportion of rent savings have been reinvested (although it is clear that they have not led to transformative investment in mobile networks, and have not overcome the other inhibitors to investment, particularly the

³ The new legislation will extend the "no-scheme" valuation mechanism to the Landlord and Tenant Act 1954 and the Business Tenancies Order 1996, impacting c.15,000 sites that currently fall outside the auspices of the Electronic Communications Code.

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| | <p>current lack of commercial incentives to invest in 5G). The discussion paper itself identifies the data limitations Ofcom has faced when assessing MNOs' historic performance. We believe the government should begin to track levels of investment in the sector, including assessing the impact of its own policy changes on investment. The Product Security and Telecommunications Infrastructure Bill could be a good legislative vehicle for doing so.</p> |
| <p>Are there any other potential barriers to the delivery of good outcomes over the next five to ten years that we have not considered? If so, please outline what these are likely to be, with supporting examples/evidence where possible, and any suggestions for how they might be reduced.</p> | <p>The discussion paper focuses on the impact that competition between MNOs can have on driving delivery of good outcomes. At the network level, we firmly believe competition between MNOs must be supplemented by strong and effective working relationships between MNOs and site owners in order for mobile infrastructure to function effectively. This has become more complex with the insertion of Wholesale Infrastructure Providers' as Code Operators in the connectivity chain in the Electronic Communications Code revisions made in 2017.</p> <p>Ofcom's Code of Practice that governs the behaviour of Code Operators and site providers aims to support the smooth implementation of the Code. We believe that this Code of Practice should be strengthened to ensure more constructive operator behaviour, and better alignment of expectations between site providers and operators.</p> <p>This could include clearer advice on interpretation of the Code in key areas such as automatic rights to upgrade and share, access to sites, and redevelopment. The Code of Practice should be linked closely to the system of dispute resolution that the government adopts. Ofcom should have substantial powers and appropriate resource to deal with systematic or repeated breaches. This would place Ofcom on a similar footing to regulators in other UK utility regimes, such as Ofgem and Ofwat, who have statutory powers to enforce the relevant regulations governing access to land in their sectors.</p> |