



# Strategic Review of Digital Communications: Terms of Reference

Competition and investment in converged  
communications infrastructure

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## About this document

This document sets out the terms of reference for Ofcom's Strategic Review of Digital Communications, considering competition and investment in converged communications infrastructure.

Ten years after the completion of our first strategic review, Ofcom is conducting an overarching review of the UK's digital communications. The aim of the review is to make sure digital communications markets continue to work for consumers and businesses.

This review will consider future issues relating to infrastructure and competition. Key to this will be how incentives for efficient investment and effective competition drive good outcomes. These outcomes include coverage, choice, price and quality of service for consumers, citizens and businesses. It will cover both fixed and wireless networks and services, and take account of alternative services delivered over the internet ('over-the-top').

The review will have at least two main phases. Phase one will focus on evidence gathering and understanding experiences of digital communications. Building on stakeholder responses to this discussion document, the second phase will draw initial conclusions and set out a clear plan for next steps.

We anticipate concluding phase one of the review in summer 2015, and phase two around the end of 2015.

## Strategic Review of Digital Communications

# Terms of Reference

## Summary

- 1.1 Ten years after the completion of our first strategic review, Ofcom has announced an overarching Strategic Review of Digital Communications in the UK. This review will consider future issues relating to infrastructure and competition. Key to this will be how incentives for efficient investment and effective competition drive good outcomes. These outcomes include coverage, choice, price and quality of service for consumers, citizens and businesses.
- 1.2 Whilst the primary focus may be on infrastructure, the review will also need to understand how services are offered over digital communications infrastructure. The review will cover both fixed and wireless networks and services and take account of alternative services delivered over the internet ('over-the-top').
- 1.3 The aim of this review is to make sure communications markets continue to work for consumers and businesses. The review will focus on three overarching questions:
  - **Efficient investment:** How can incentives for efficient private sector investment and innovation be maintained and strengthened, to ensure widespread availability and high quality of service?
  - **Competition:** What should be the focus of competition policy in future networks (the 'enduring economic bottlenecks')?
  - **Deregulation:** What is the scope for deregulating networks and services downstream of any 'enduring bottlenecks'?
- 1.4 Ten years ago, the original Telecoms Strategic Review focused on the question of separation of BT's access network. Whilst this issue will feature in any consideration of future infrastructure, competition and investment, a strategic review focussed on the market structure in fixed telecommunications risks being overly backward looking. For this review to be genuinely strategic, it needs to take account of digital communications infrastructure and competition more broadly.
- 1.5 We anticipate that this review will have at least two main phases.
  - 1.5.1 Phase 1 will focus on evidence gathering, and understanding consumers' and stakeholders' experiences of digital communications. This will inform a discussion document on potential challenges to making markets work for consumers in summer 2015.
  - 1.5.2 Building on stakeholder responses to this discussion document, Phase 2 will look to draw initial conclusions and set out a clear plan for next steps. The exact nature of our Phase 2 output will depend on the evidence and analysis arising from Phase 1. We anticipate concluding Phase 2 around the end of 2015.
- 1.6 Stakeholder engagement across industry, consumer groups and policy makers will be necessary throughout the review. We will shortly be publishing our initial plans to ensure this happens.

- 1.7 Whilst we cannot say now what the outcomes of this broad review might be, it could result in one or more of the following:
- no major change to current approaches, but greater clarity on our strategic approach for the future;
  - identifying areas of change, including deregulation, which can be implemented via the current framework; or
  - a common view on how future regulatory frameworks should evolve, including at European level.
- 1.8 Overall, this review will provide a well understood strategic framework in which future regulatory decisions can be taken.

## **Introduction**

- 1.9 Digital communications are critical to the UK's economic success and social cohesion. They are used by the average UK adult for over half of their waking hours. The coverage, capacity and reliability of the digital infrastructure over which these services are provided are of fundamental importance to both consumers and businesses.
- 1.10 To support the future development of digital communications, it is essential that there should be a clear strategic framework in which future regulatory decisions can be taken. This must be designed both to promote competition and to support continued investment and innovation. It should take into account the range of market developments, announcements and expected evolutions within digital communications services. This will allow us to ensure good outcomes for consumers, citizens, businesses and the UK generally.

## **Why now?**

- 1.11 We have recognised for some time that there is likely to be merit in carrying out a new strategic review of digital communications. We set out in our May 2014 Fixed Access Market Review and in our Draft Annual Plan how the tenth anniversary of our first strategic review of telecoms might provide a sensible opportunity to undertake such a review.
- 1.12 There are a number of further reasons for taking action now. We have seen a number of significant wider developments. These include plans for the next round of fixed and mobile network investment, the use of 'over the top' communications services and continued market interest in convergence and consolidation across the value chain.
- 1.13 These considerations all suggest now is the right time to carry out a strategic review.

## **The terms of reference**

- 1.14 This document initiates a new, overarching and evidence based review of digital communications, focusing on investment in and competitive access to infrastructure. This includes both underlying connectivity and communications services. Increasingly, digital communications encompasses a combination of fixed, wireless and mobile connectivity, and communications services provided over these networks.

Our intention is not to include content services within the scope of this work, whilst noting the continued increase in take-up of bundled services.

- 1.15 This is an important review of our sector. Setting out the terms of reference now allows us to gather the views of a wide range of stakeholders on how markets can work effectively for consumers in future.

## Background

- 1.16 It has been ten years since we undertook our Telecoms Strategic Review. The early scope of that review initially covered all telecoms services, considering how the telecoms industry might look in the future and how we should approach regulating it.

- 1.17 Much has changed between 2005 and today:

- broadband adoption has increased from 31% to 78%;
- take-up of bundled services has risen from 29% in 2005 to 63% today;
- significant commercial and public sector investment in superfast broadband has resulted in 78% availability five years after deployment started. Adoption of this new service is now 27%;
- mobile broadband availability has increased significantly, with 3G increasing from 82% to 99% of premises, and 4G services available to 73% of premises. Mobile broadband take-up is now 67%;
- new entrants have shown strong growth in some areas (for example, local loop unbundling now accounts for 44% of broadband connections, up from 17% in 2005); and
- we have seen significant consolidation, including the formation of EE from Orange and T-Mobile and acquisitions of smaller broadband ISPs (O2, Tiscali, AOL, Be, Easynet).

- 1.18 Since the Telecoms Strategic Review (TSR), our approach to regulating communications services has evolved. The TSR considered the arguments for functional or structural separation of BT's access services division (Openreach) to ensure equality of access. We agreed the BT Undertakings, resulting in the functional separation of Openreach, in September 2005. We also placed significant emphasis on ensuring good quality local loop unbundling products and processes to promote competition. Subsequently, we have carried out a series of three-yearly reviews of telecoms markets to assess whether there is effective competition and imposed regulatory remedies accordingly.

- 1.19 In residential markets, we removed retail price regulation of residential telecoms services in 2006. We also introduced our strategic approach to superfast broadband services in 2010 to support both competition and investment. In business markets, our approach to leased lines regulation has evolved as the industry has moved to new Ethernet products. In mobile markets, we have promoted competition, investment and innovation through a range of activities, including the 4G spectrum award.

- 1.20 Today, our strategy draws on a range of policy interventions to promote competition, investment, innovation and widespread availability. These include:

- regulated access to markets where there is significant market power, (e.g. competitive access to BT's access network, VULA, mobile termination);
- interventions to secure non-discrimination (through market reviews as well as equality of input through BT's Undertakings);
- promoting widespread availability (e.g. through our superfast broadband regulatory approach, mobile coverage obligations);
- demand side policies including approaches to promote effective switching (e.g. gaining provider led, mobile number portability) and informed consumers (fixed and mobile broadband speeds, complaints); and
- policies aimed at improving the quality of service offered to wholesale and retail customers (quality of service KPIs, minimum standards).

1.21 Our current strategic approach has contributed to substantial benefits for consumers and businesses across the UK in the last ten years. For example, over this period mobile prices have fallen significantly, with a typical bundle of mobile services having more than halved in price. Ofcom's European Broadband Scorecard shows that the UK leads the EU's five biggest economies on most measures of coverage, take-up, usage and choice for both mobile and fixed broadband. Following both commercial and public sector investment, average broadband speeds continue to grow, rising to 22.8Mbps for fixed broadband in November 2014.

## **The purpose and scope of this review**

- 1.22 The aim of this review is to make sure digital communications markets continue to work for consumers, citizens and businesses as technologies develop and markets change. It will involve a strategic assessment of digital communications as a whole, with a focus on infrastructure and the role of competition in delivering benefits in terms of choice, investment and innovation.
- 1.23 This review will offer the space for policy makers and stakeholders to think more broadly and longer term, complementary to but without some of the constraints associated with the European Framework's defined processes.
- 1.24 For a review of telecommunications to be genuinely strategic and forward looking, it needs to take account of market developments. These include the increasing convergence between fixed and mobile communications, associated developments in wireless networks, and the ever increasing importance of 'over the top' services.

## **We will start with a consideration of the current strategies and policies**

- 1.25 The starting point for any review should be to consider the successes and any limitations of our existing strategy across digital communications. We want to understand stakeholders' views on areas where existing approaches might require improvement, or where existing intervention is no longer necessary or proportionate.

## **The core future issues: efficient investment; focussed regulation delivering competition; and potential for deregulation**

- 1.26 The review is focussed on how Ofcom can contribute to deliver better outcomes for consumers and businesses through competition, investment and innovation. It is also designed to consider opportunities for deregulation.

- 1.27 Whilst we cannot say now what the specific outcomes of this broad review might be, the questions which we would expect to answer include:
- **Efficient investment:** How can incentives for efficient private sector investment and innovation be maintained and strengthened, to ensure widespread availability and high quality of service?
  - **Competition:** What should be the focus of competition policy in future networks (the 'enduring economic bottlenecks')?
  - **Deregulation:** What is the scope for deregulating networks and services downstream of any 'enduring bottlenecks'?

### Incentives for efficient investment

- 1.28 We are at an important stage in the next round of significant investment in networks.
- 1.29 In fixed broadband, we have an established regulatory framework for superfast broadband, which has been successful in driving both availability and take-up. There is an emerging debate about how best to drive competition and investment in ultrafast broadband, made more prominent by the recent announcements of major investments by BT and Virgin Media.
- 1.30 We are also at an important stage in the evolution of mobile broadband. Operators are undertaking further investment in 4G to support continued increases in the quality of mobile voice and data services. There is an emerging debate about what 5G will be.
- 1.31 We need to consider how incentives for efficient private sector investment and innovation can be maintained and strengthened, to ensure widespread availability and high quality of service.

### Promoting effective and sustainable competition

- 1.32 The continued trend of convergence is driving new business models, new network architectures and merger activity. Adoption of bundled services continues to grow. It is likely that fixed and mobile technologies and networks will converge over time. End user devices are making increased use of wireless, and networks are making increased use of fibre to provide the necessary network capacity.
- 1.33 In light of these market developments, it is important to consider whether interventions are required to promote continuing competition, and if so where. Where are the future 'enduring bottlenecks', and how can regulation address them? In light of market developments and outcomes, might it be necessary to vary the existing model of functional separation for Openreach?

### Identifying opportunities for deregulation

- 1.34 Increasingly networks are providing connectivity, with many services delivered 'over the top'. Internet players such as Skype and WhatsApp already deliver a wide range of voice, video and messaging services over broadband. Most of the UK's fixed network operators now have plans to emulate these internet players, by delivering services over their broadband networks and eventually switching off their traditional voice networks. At the same time, companies continue to undertake targeted investment in new networks where the economics work.

- 1.35 Given this, what is the scope for deregulating those networks and services which are downstream of any 'enduring bottlenecks', and relying instead on competition to deliver good consumer outcomes?

### Wider policy issues

- 1.36 In addition to these three core questions, we would expect a number of wider policy issues to be relevant. These may include: ensuring the continued resilience of UK telecoms infrastructure; supporting minimum service levels to consumers; the role of policy in addressing take-up issues and the digital divide.
- 1.37 Understanding how these play into Ofcom's broader approach to making markets work will be an important element of the review. However, policy related to these issues is not a core focus for this review.

### **Linkages to existing policy development**

- 1.38 A key benefit from this review will be a well understood and holistic view of future policy across digital communications networks and services. In this respect, it will need to take account of, and work alongside, the ongoing process of existing policy development.
- 1.39 Given the current EU Framework process, it is inevitable that any broader strategic review will need to be run concurrently with existing policy development. As we develop our views on the Digital Communications Review, our work on existing market reviews, and new policy development and enforcement will continue. Our aim is to complete this review as quickly as possible in order to ensure an overarching regulatory strategy in which more specific policy will sit.
- 1.40 Our review will be aware of and consistent with the wider EU Telecoms Framework in which we operate. However, its conclusions may also help inform future debates on how the European Framework could evolve over time.

### **Timescales and approach**

- 1.41 In part, our approach will depend on the outcomes of early engagement with stakeholders and assessment of current and future market outcomes. However, we anticipate at least two main phases of work.

#### **Phase 1: evidence gathering, stakeholder engagement and discussion**

- 1.42 The first phase of our work will focus on the current and future market dynamics that may affect digital communications. It will also consider existing regulatory approaches in both fixed and wireless services.
- 1.43 As part of phase 1, we will engage early with a wide range of stakeholders through direct meetings and workshops. This will include industry, consumer groups and UK Government and the devolved administrations. This engagement will seek views on a range of areas including:
- end user demand and use of communications services;
  - the business models and strategies of communications service providers;
  - existing outcomes in terms of wholesale and retail services;

- network availability and investment incentives;
- new technologies and network convergence;
- existing regulatory remedies to competition concerns; and
- the scope for deregulation or new approaches to regulation.

1.44 We intend to complete this phase of work with a public discussion document setting out the potential challenges and issues for regulation and deregulation. This will be published in Summer 2015.

## **Phase 2: analysis, initial views and any next steps**

1.45 Building on stakeholder responses to our discussion document, we intend to publish a document setting out our initial views and any next steps by the end of 2015. The exact nature of this document will depend on the evidence and analysis presented in response to the Phase 1 discussion document.

## **Next steps: stakeholder engagement**

- 1.46 Making this review a success will require effective and continued stakeholder engagement with a wide range of organisations. This will help us to gather views on the review and shape our discussion document. Our next step will be to set out our initial engagement approach.
- 1.47 We would be pleased to receive comments about these Terms of Reference and the scope and content of this review. To let us know your thoughts, to ask questions, or to request further information about the Digital Communications Review, please email [digital.communications.review@ofcom.org.uk](mailto:digital.communications.review@ofcom.org.uk) .