



TELECOMS INSIGHT

Welcome to the Telecoms Quarterly Newsletter

The convergence of advancing technologies in the sector makes it even more important for those in the industry to keep abreast of new developments wherever and whenever they occur. But when time is at a premium, it can be a challenge to keep up with the breadth and pace of change.

*To try and help, **Telecoms Insight**, is our new quarterly newsletter. In it you will find summaries of the key developments taking place around the globe pulled together by our specialist lawyers.*

We hope you enjoy our first issue which focusses on the UK and Ofcom's Digital Strategic Review.

Something for Everyone? [Ofcom's Digital Strategic Review Initial Conclusions](#)

After Ofcom's CEO had publicly stated that the status quo was not an option, two things stand out from this document.

One is that Ofcom is trying to sell a message of something for everyone, from consumers to competitors to BT (whilst not wielding the axe on a separation of BT). Although BT will be pleased with this outcome, it will however be disappointed that nothing significant is signalled on the issue of regulation of content which was a key focus for it. Ofcom will continue to work on the switching of bundles including content and its only new endeavour in the content space is to put in place monitoring of the pay TV value chain.

The second key takeaway is that this is a direction of travel document with the real issues to be fought out between BT, Ofcom and other players in a host of other market reviews including Business Connectivity and Wholesale Local Access, as well as other consultation processes over the next 3-24 months.

To help you navigate the key issues, we look at some of the areas covered in the digital strategic review in more depth below.



A Fibre Future

In a step that would once have been unusual, but is now becoming more common, Ofcom's report makes a technological choice – fibre. Ofcom clearly sets out that it favours a strategic shift to large scale deployment of new fibre networks as an alternative to copper based technologies which plays against BT's drive to G-Fast (a copper based technology).

This choice of fibre is to be underpinned by reform of the ducts and poles's access (DPA) regime that currently applies to Openreach, including the requirement for equivalence of inputs to Openreach ducts and poles, better information and more efficient processes as well as the opening up of ducts and poles access to serve business customers.

One interesting point to note is that in its discussion of DPA for business customers and its discussion of dark fibre in this document, Ofcom seems to be tentatively backing away from its proposed decision in the BCMR consultation to require BT to make available dark fibre. With the BCMR statement due out soon, expect much more debate on this in the coming months.



Improved Quality of Service and Automatic Compensation for Consumers

A key focus for Ofcom is quality of service at all levels of the value chain.

In terms of Openreach, Ofcom propose that they will introduce new minimum standards set at a level designed to ensure effective competition and extend these to cover new aspects of service. They are also considering introducing standards for the absolute number of faults in the network and also setting an average level of performance. Ofcom will look to see how (as is standard practice in some other industries) charge controls could incentivise these behaviours.

Again there is little detail on how this will work in practice, with the details to be covered in forthcoming market reviews.

The Quality of Service statement, which is sure to garner the most tabloid headlines, however is that Ofcom proposes to introduce automatic compensation for consumers where retail providers do not deliver certain quality of service standards. Again there is little detail on how this will be achieved but we presume that it will be by amendment to the General Conditions. Expect a consultation therefore on automatic compensation including the thorny issue of at what level that compensation is set, how to identify the guilty party in a multi-provider value chain and the triggers for payment.

An Independent Openreach

Ofcom indicates that the current Openreach structure is inadequate and that their goals for Openreach are:

- Openreach governance that is more independent than at present and can serve all customers;
- Greater autonomy over budget and decision making;
- Greater consultation with customers on substantial investment and innovation decisions;
- Enhanced operational capability.

Ofcom suggests that one model that could achieve these goals would be to establish Openreach as a wholly owned subsidiary of BT Group including a separate Openreach board with its own statutory accounts, autonomy and an explicit responsibility to treat all downstream customers equally.

Ofcom makes it clear that a strengthened model of functional separation such as that outlined above may be a proportionate response to their concerns but that if this does not occur, then structural separation is still on the table. The subtext for BT is therefore clear, come up with a proposal to make functional separation work better or the axe that is poised will fall and Ofcom will make a referral to the Competition and Markets Authority. There is a sense of déjà vu here from the last strategic review process and we expect lots of long nights of negotiations between BT and Ofcom. It is not clear however how big a stick the threat of a referral is this time around, especially given the recent EE/BT approvals and the fact that Ofcom itself in this document suggest that much of what it needs to achieve on quality of service and greater access for competitors can be done through its upcoming market reviews.



No excuse for “lazy” consumers in future

Whilst consumer protection is a key part of Ofcom’s remit, to our mind Ofcom has always been overly focussed on “inactive” or “passive” consumers. Their long running switching project has at some times seemed to focus on switching for the sake of switching and we find some of the same ideology repeated here. Ofcom proposes to introduce more information for consumers and will require providers to reduce the complexity of package comparisons by requiring providers to make available standardised information on the average monthly cost of the core elements of their service contract. Ofcom hopes this will give consumers a single figure that they can then conduct a like by like comparison on, with the hope that this will drive greater levels of switching.

In case this is not enough however, Ofcom has also indicated that they will look to identify additional measures for consumers who are not responsive to this information. They suggest (without providing any detail) that this could be through stronger triggers for them to consider other deals when their contracts expire.

At some points this reference to urging stronger triggers is related to vulnerable customers particularly those with landline only contracts. At other points, the references seem to include all customers. Whilst we have no concern with Ofcom assisting the vulnerable we would be concerned if their true intention was to cover all consumers who, in Ofcom’s mind, “fail to switch”. Not switching is not always a failure to choose, it can be a choice that customers are happy with their existing provider.

Mobile Services-“as you were”.

Apart from the switching and consumer issues raised above, mobile services and issues relating to them contain very much an “as you were” focus. Ofcom discusses poor mobile coverage and indicates that it will continue to seek to include new coverage obligations in spectrum licences in order to increase coverage particularly in rural areas. It will also continue to ensure consumers have the best information about coverage.

So all to play for. As predicted however, this review was never going to be the major movement that some expected.

The next big battlegrounds are the BCMR, the next round of the Wholesale Local Access market review and the ongoing (and it seems the never ending) switching work on mobile and on switching of bundles. The forthcoming review of the General Conditions also takes on more importance given Ofcom’s emphasis on consumer protection in this statement.



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