

Ms Naomi Standing
DCMS
1C/09 100 Parliament St
Westminster
London
SW1A 2BQ

27/03/2019

Cc: sspconsultation@culture.gov.uk

NON - CONFIDENTIAL

Consultation Response: DCMS Statement of Strategic Priorities

Introduction

Gigaclear welcomes the opportunity to respond to DCMS's consultation concerning its first proposed Statement of Strategic Priorities, as introduced by the Digital Economy Act 2017.

DCMS's Future Telecoms Infrastructure Review (FTIR) set out clear policy ambitions; targeting full fibre connections to 15 million premises by 2025, and nationwide coverage by 2033. To support network operators in accelerating delivery to meet these coverage ambitions, the FTIR established multiple strategic policy priorities. These are to:

- reduce the costs and barriers to the deployment of fibre networks;
- enable easy access to Openreach's passive infrastructure;
- provide stable and long-term regulation that incentivises investment and ensures competition;
- an 'outside in' approach to full fibre deployment so that the most commercially difficult to reach premises are not left behind, and;
- the need for a timely switchover to full fibre networks.

As the UK's largest rural point-to-point Fibre to the Premises (FTTP) network operator, we are committed to delivering 'future proofed' full fibre connectivity in hard to reach rural areas. Gigaclear then plays a critical role in delivering an 'outside in' approach to the wider aspirations set out within the FTIR.

In the below, we comment on the desired policy outcomes for each of the five policy priorities. For those relevant to Ofcom's regulatory functions (the last four bullet points), we consider how Ofcom can be instructed to effectively deliver the associated policy ambition.

1. Reduce the costs and barriers to the deployment of fibre networks

We welcome the launch and continued work of DCMS's 'Barrier Busting Taskforce', who have already achieved multiple successes in addressing disputes between local authorities, highways departments and network operators, thereby enabling the delivery of full fibre infrastructure. Recent consultations concerning absentee landlords in wayleave negotiations and delivering fibre in newbuilds are also testament to this team's success. We look forward to reviewing DCMS's conclusions following these consultations and continued engagement with this team in the future.

2. Effective and easy access to passive infrastructure in telecoms and other utilities

As a FTTP network operator committed to connecting underserved rural areas, our network expansion is often constrained by the scarce availability of existing duct and pole infrastructure. When considering network expansion into any new location, analysis of any pre-existing physical infrastructure that may

support network rollout is then a critical element of the design stage. The high cost of building the physical infrastructure required to deploy fibre, such as underground ducts and chambers or telegraph poles, is a barrier to large-scale network deployment by competing operators due to the substantial capital investment this requires. Openreach's control of the largest and most comprehensive duct and pole network in the UK then allows it to deploy fibre more cheaply and quickly than its competitors. Improving access to Openreach's ducts and poles for rival operators can then help to address this enduring advantage for Openreach in deploying fibre. This is because viable access to pre-existing infrastructure has the potential to dramatically reduce the costs associated with network delivery, thereby releasing more funds to connect more premises at the access network level.

The importance of fair, open and equivalent access to BT's Duct and Pole (DPA) product suite cannot then be overstated. This is a pre-requisite to the rollout ambitions set out in the FTIR.

With that said, at this time, Gigaclear does not utilise any BT DPA products. This is because the pre-existing Openreach infrastructure in many areas of historic Gigaclear build has been 'direct bury' copper legacy network, so would not facilitate the rollout of full fibre infrastructure. In these scenarios, Gigaclear then utilises its own ducted infrastructure.

Yet in light of Gigaclear's future rollout plans and our ongoing interest in large scale state aid programmes such as the Scottish Government's Superfast Broadband R100¹ programme, Gigaclear continues to explore utilising DPA where such infrastructure exists within planned delivery areas. Further, in areas such as Scottish islands, another form of passive infrastructure offers the opportunity to substantially reduce network rollout costs, that being subsea cabling.

Where pre-existing subsea connections have been part funded through state aid, BT is obliged to provide both a passive and active benchmarked wholesale solution. Dark fibre (passive) solutions for these services were recently introduced by BT. However, we have recently been informed that the Northern Lights subsea cable was funded without state aid. At present, BT does not then offer a dark fibre solution for this link.

We are then concerned that Ofcom is proposing to not deliver a dark fibre remedy, due to a perception that there is little demand for such a solution and that such a remedy would not be effective due to little uptake of such a remedy in comparable markets. We have submitted evidence to Ofcom highlighting the demand for such a solution and ask DCMS to instruct Ofcom to review this assessment of demand to ensure that dark fibre remedies can be a viable solution to enable full fibre delivery in hard to reach rural areas.

3. Stable and long-term regulation that encourages network investment

We welcome a move to 5 year market review cycles. Investment in network infrastructure has a long return cycle, so investors need confidence in a stable regulated environment.

We also commend DCMS for prioritising a regional approach to understanding competition and assessing significant market power. As networks growing on a regional basis, this is a crucial means of understanding genuine competition. Ofcom already seem to be exploring this in its consultation concerning 'promoting investment and competition in fibre networks'.

However, with this approach comes caution – Ofcom's initial thinking on this approach is to assess whether an area could be 'potentially competitive' based on Ofcom's own assessment of what areas may/may not be viable for competition in the future. Such an approach risks pre-emptively removing regulation in areas which may then in turn stifle competition rather than facilitate it. Ofcom should only then consider

¹ <https://www.gov.scot/publications/reaching-100-superfast-broadband/>

removing regulatory controls where effective competition is already evidenced, rather than a hypothetical based on Ofcom's best guess of what the future may bring.

DCMS is right to stress that continued investment in new networks is key to improving consumer outcomes, in terms of choice, service quality, and innovation. We then welcome DCMS's view that 'promoting investment should be prioritised over interventions to further reduce retail prices in the near term'.

However, there is a tension between the stated position above, and DCMS's statement that 'to aid the migration of consumers [from copper to fibre], we would expect fibre networks to have suitable 'entry level' products at prices similar to those provided on copper networks, including voice-only services for those who want them'.

Whilst this may be possible for operators installing fibre in densely populated urban areas, this is unlikely to be viable for rural operators such as Gigaclear. In such rural areas, the 'cost per premise past' is often many times than that in urban areas. This is still the case even where state aid is used to deliver the network, as the aid is used to 'gap fund' the differential between costs that would be commercially viable and the expected cost of delivery²; not to ensure that prices are comparable to copper infrastructure levels. This is also acknowledged by Ofcom in its current consideration of what can be defined as an 'affordable' broadband service. Ofcom states that 'in practical terms, where the Universal Service Provider is required to charge its USO customers the same price as its non-USO customers, it will set prices on the basis of the cost of supplying both USO and non-USO premises. Where the ratio of USO to non-USO premises served by a network is small, prices will reflect conditions that prevail over the bulk of the network'.³ It then proposes that within the current market environment, a monthly charge of £45 as an affordability safeguard cap (inclusive of VAT and blended one-off charges). This is then substantially higher than market entry copper pricing.

It should also be noted that Openreach national product pricing is derived from cross subsidising more expensive delivery costs with lower delivery costs in dense urban areas. It is then unreasonable to expect wholly rural operators to match this pricing model.

A potential solution to this would be to encourage the copper switch off in such rural areas. As this geographic market is unlikely to accommodate multiple fibre networks competing against each other, prioritising the copper switch off in these areas will increase take up on the fibre network, which can consequently reduce entry pricing. We discuss this further in response to point 5.

4. An 'outside in' approach to deployment

Within the draft SSP, DCMS states that 'Government will work with Ofcom to ensure effective alignment between the USO programme and our longer-term connectivity ambitions'. We are concerned that Ofcom's proposed delivery of the USO will fail this ambition and severely frustrate the delivery of publicly funded rollout programmes such as those administered by BDUK.

The Order states that where an end-user's current broadband connection does not meet the technical specification required, the USP would need to assess whether such a connection would become available at that location as a result of any publicly-funded rollout programme within the period of one year from the request date.

² Across these intervention areas, the Gigaclear commercial contribution to build costs makes up the vast majority of the capital funding of the scheme.

³ Section 8.15 https://www.ofcom.org.uk/data/assets/pdf_file/0024/129408/Consultation-Delivering-the-Broadband-Universal-Service.pdf

In response to the June 2018 USO consultation, Gigaclear, along with multiple other operators, highlighted that the 'one year' element of this assessment was unlikely to be a sufficient means of mitigating against the operation of the USO undermining wider publicly funded rollout programmes, as many of these have delivery timeframes significantly beyond that of 12 months.

Gigaclear then asked Ofcom to consider expanding the 'one year' cut off timeframe, to instead align with inclusion within a publicly funded-rollout programme.

In response, Ofcom states that 'we cannot change the parameters of the Order, including extending the cut-off timeframe from the point of the request beyond one year. We cannot therefore impose any obligations in the universal service conditions which may be in contradiction to, or inconsistent with, the provisions set out in the Order.'⁴

We strongly urge Ofcom to consider this proposal. If it does not, the USP will be compelled to connect premises which are included in publicly funded network rollout programmes, but which will not be connected within a year of the request being made. This has two severely negative outcomes;

1. The USP delivered connection (if delivering just over the required technical parameter) will likely be redundant once the aid programme connects that premises to a superior service.
2. The USP delivered connection (if above 30mbps) risks rendering the premises served as ineligible to be connected under the publicly funded network rollout.

The first point not only risks the USPs (and ultimately the USO industry fund) investing in infrastructure with a short lifespan, but also that the marginal improvement in speed delivered will have a material impact upon the rate of uptake on the publicly funded network rollout subsequently delivered. This suppression of expected uptake of the publicly funded infrastructure will likely result in an expansion of the investment gap that the state aid programme seeks to fill.

The second point is most prominent where the USP for a given geography is an alternative entity to the network operator that has secured a full fibre state aid contract and/or a digital exclusion area across the same location.

Many of these larger programmes come with delivery timetables significantly beyond 12 months.⁵ This is often due to fibre delivery in rural areas requiring substantial works activity with a finite labour supply, an absence of viable backhaul options and a limited delivery speed due to highways access restrictions. It is then likely that, as currently designed, premises included within large state aid intervention contracts will still be eligible for connectivity under the USO.

If a premises is then served by the USP as opposed to the full fibre state aid programme, it risks receiving an inferior connection and will also reduce the pool of premises eligible for delivery under the intervention, making aggregation more difficult and increased distances between each covered premises, thereby increasing the required level of aid and/or descoping premises from improved coverage due to increased costs per premises past (CPPP), which consequently requires changes to design which result in delivery delays.

End-users requesting a connection under the USO may then unknowingly be trading the promise of a full fibre connection in the medium term for a marginally above 10mbps service in the short term.

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/129408/Consultation-Delivering-the-Broadband-Universal-Service.pdf

⁵ For example, see <https://www.gov.scot/Publications/2017/12/2810/1>

To mitigate this problem, we propose that premises due to receive a connection meeting the USO technical parameters through a publicly-funded network rollout programme be exempt from USO eligibility. Delivery timeframes would then be set by the state aid delivery timetable, as agreed with the national competency centre for state aid broadband. This would still meet the requirement set out within the Order to exclude premises where a connection would become available as a result of any publicly-funded rollout programme within the period of one year from the request date.

Alternatively, USPs could be obliged to first explore using the network infrastructure that has secured the state aid contract/intervention area, when serving premises included within that geography. In this manner, the entity that has secured the state aid contract is given the opportunity to prioritise the rollout in order to serve it within 12 months.⁶

However, we acknowledge that this requires the USP retailer to be operating over the state aid network as an ISP. We discuss this in more detail in the below.

5. Switchover to full fibre

As detailed in response to point 3, the copper switchover could have a critical role to play in driving down fibre entry level pricing in rural areas. It is also likely that market forces will see copper switch off occurring in rural areas first; the incumbent has little incentive to maintain two networks in rural areas and there is unlikely to be a business case for delivering scale full fibre networks within pre-existing full fibre networks areas. In areas where alternative fibre networks have then delivered scale full fibre networks, there is a strong commercial incentive for the incumbent to decommission legacy infrastructure.

Whilst DCMS is then right to highlight that such commercial conversations should be ‘led by industry’, there is a critical role for both Ofcom and DCMS to play to ensure that regulatory obligations (such as ‘must offer’ obligations usually placed upon incumbents), can be moved and reallocated on a regional basis if required, should regionally defined copper to fibre migrations occur.

Ofcom will also have a critical role in enabling ‘cross platform switching’; most notably from the incumbent operator to alternative network operators delivering fibre infrastructure. At present, this process is almost exclusively ‘Losing Provider Led’, in that customers seeking to migrate to alternative networks must contact their current ISP operating over the Openreach network to initiate the switch. Those looking to migrate to ISPs operating over alternative networks such as CityFibre, Hyperoptic or Gigaclear’s, cannot then contact these ISPs to start the switching process.

Incumbent based ISPs are then well placed to use ‘reactive save’ activity to attempt to deter the customer from leaving the ISP and consequently the Openreach network. Such an outcome is contrary to FTIR’s stated goal of bringing down the barriers to switching. Further, the European Electronic Communications Code stipulates that a ‘Gaining Provider Led’ switching service should be in place to better enable cross platform switching, which will in turn facilitate take-up of fibre-based services.

In light of the above, DCMS is well placed to instruct Ofcom to review cross platform switching in order to facilitate gaining provider led switching as a matter of priority, in order to facilitate the goals of the FTIR.

⁶ Thereby making the premises ineligible for a connection through the USO.