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Dar Sir or Madam,

CONSULTATION – PROMOTING COMPETITION AND INVESTMENT IN FIBRE NETWORKS (INITIAL PROPOSALS – APPROACH TO REMEDIES)

I welcome the opportunity to respond to this consultation on proposed remedies to promote competition and investment in fibre infrastructure. As this response raises points in relation to the ongoing Reaching 100% (R100) procurement, I would ask that this response – or at least sections relating to the procurement – is not made public.

As Ofcom is aware, the Scottish Government's ambition is for Scotland to be a truly digital nation; one underpinned by high quality connectivity which is a critical enabler of innovation and economic growth. Recognising the vital role public investment has to play in delivering such an ambition, and despite telecoms being reserved to Westminster, the Scottish Government has developed the R100 programme to extend superfast broadband to every home and business in Scotland.

The Scottish Government has made clear that a regulatory framework that incentivises and encourages commercial investment – whilst proactively considering new approaches to regulation – is equally important. For some time, we have urged Ofcom to more clearly identify and align national regulation with needs at a regional level. Having reviewed the proposals outlined in this consultation, I commend Ofcom for their clear commitment to improve the telecoms market in this regard and to consider new approaches to achieve this.

With this in mind, I broadly welcome the proposals outlined. Investment from commercial suppliers is critical to achieving the Scottish Government's R100 target, and so I am pleased that Ofcom is focusing on incentivising and encouraging competition where possible.

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In principle, I welcome the proposed shift to a Regulatory Asset Base (RAB) approach in non-competitive markets as a means of stimulating investment in those hardest to reach areas. The RAB model should complement and align with any public investment programmes, such as R100. Therefore, we would welcome further engagement on the design, process and impact of the associated charge controls so that we can determine what impact, if any, these changes may have in rural Scotland and to ensure alignment with R100.

The proposal to introduce dark fibre in non-competitive areas is a positive one. As Ofcom is aware, we have received representations from a mobile network operator asserting that unrestricted access to BT's ducts and poles is insufficient for the UK to be a leader in 5G. Whilst this operator calls for unrestricted access to BT's dark fibre, we consider that access in non-competitive areas is likely to be critical in helping to support the deployment of mobile infrastructure, in creating competitive leased line provision, and in helping smaller alternative operators to push their own networks further.

It is essential that Ofcom manages overall pricing for these remedies in a way that ensures there are not significant variations across different regions and geographies. In particular, it is our view that it would be untenable should Scottish consumers be required to pay significantly higher prices than other parts of the UK as result of our unique and challenging geography.

It is clear that, in developing proposals for each market, Ofcom has endeavoured to balance competitive entry and fibre deployment with the potential impact on consumers. I recognise that, by promoting fibre network competition, consumers are more likely to benefit from more competitive pricing and services. These proposals appear to strike an appropriate balance between incentivising fibre investment from alternative operators and protecting and empowering consumers. The Scottish Government would look to ensure consumers are protected from excessive charges, particularly in non-competitive areas.

Lastly, reflecting our own view that future-proofing our networks is a key priority, I welcome Ofcom's intention to support the transition from copper to fibre networks and the phased move of regulation in that direction. Whilst I am aware that Ofcom are actively considering how our most vulnerable citizens can be protected during this transition, I would seek greater clarity on how this will be achieved.

Scotland has a number of geographical and topographical challenges that make it unique amongst the four nations that make up the UK. As you may be aware, it is the Scottish Government's view that the regulatory regime must be constructed in a way that recognises and responds to these to ensure that Scotland receives maximum benefit from the investment that commercial suppliers are making.

The proposals within this consultation document represent a key first step in delivering regulation that takes these kinds of needs into consideration, with the aim of ensuring fairness for customers in Scotland, but I also wish to stress that it is vital that the Scottish Government is given the opportunity to contribute to further discussions on the proposed changes.

I look forward to further engagement with Ofcom in the months ahead as we embark on delivery of our R100 commitment.

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Kind regards

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