



Competition Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

By email: approachtoremedies@ofcom.org.uk

RE: Promoting competition and investment in fibre networks: Approach to remedies

Dear Sir/Madam,

1. The Consumer Council for Northern Ireland has a statutory remit to promote and safeguard the interests of consumers and have specific functions in relation to energy, water, transport, food and postal services. We welcome the opportunity to provide a response to Ofcom's consultation on its approach to remedies for Promoting Competition and Investment in Fibre Networks.

Northern Ireland context

2. Access to telecoms is an integral part of all our daily lives. It is an essential service, providing, among other things, access to online banking and government services. Poor broadband can lead to digital exclusion and, consequently, social isolation; as industry plans to move away from the Public Switched Telephone Network (PSTN) to Voice over Internet Protocol (VOIP), it is vital that no consumer is digitally excluded.
3. Northern Ireland compares favourably to other regions in terms of percentage of premises with access to full fibre services. However, we still have the highest proportion of premises unable to access decent broadband connections¹ across the UK. 5% of premises are affected in Northern Ireland, compared to just 2% in the UK. This is more common in rural areas, with 17% of premises affected in Northern Ireland compared to 12% in the UK². In addition, ultrafast broadband is available to over half of UK properties (53%). However it is only available to 45% of properties in Northern Ireland³.

¹ Defined by Ofcom as a download speed of 10Mbit/s and an upload speed of 1Mbit/s

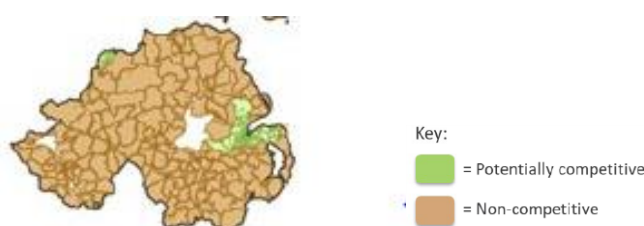
² Ofcom Connected Nations 2018

³ Ofcom Connected Nations Update: Spring 2019

Regulatory Approach

4. The Consumer Council notes that Ofcom is proposing three categories of geographic area for targeting its ex-ante regulation: competitive; potentially competitive; and non-competitive. We note that Ofcom will not impose regulation in competitive areas, however it should retain the right to make regulatory interventions should the market require it to ensure that consumers of essential services receive adequate protection when required. The Consumer Council's remaining comments will focus on the potentially competitive and non-competitive areas, as these cover the majority of Northern Ireland, as Ofcom's map shows (Figure 1).

Figure 1: Taken from Ofcom's Illustrative Map of the UK showing potentially competitive and non-competitive postcode sector areas



5. Generally, The Consumer Council supports a proportionate approach to regulation. We appreciate the complexities to deliver regulatory objectives that deliver for both consumers and investors. We note Ofcom is proposing different regulatory approaches in potentially competitive areas and non-competitive areas. The regulatory approach that Ofcom adopts has a significant impact on infrastructure investment and the price consumers pay. We seek reassurances from Ofcom that Northern Ireland consumers will not be disproportionately impacted and that the proposals will not lead to unintended sub-regional price differences.
6. The Consumer Council notes that one of Ofcom's objectives is to protect consumers against high prices. Ofcom has noted in its consultation that its regulatory approach will involve trade-offs between achieving each of its objectives; and that a key consideration is to get the right balance between retaining incentives to invest in new networks and protecting consumers in the shorter term.
7. However, it is clear that the broadband market is failing consumers. Loyal consumers are paying £1bn per annum⁴ more than they should and Ofcom has already had to intervene in the retail market by

⁴ CMA: "Tackling the Loyalty Penalty" Response to Citizens Advice Supercomplaint, Sept 2018 p.50

introducing end of contract and best tariff notifications and initiating a review of price differentials and consumer vulnerability in the fixed broadband market.

8. In the absence of a fully functioning competitive market, retail market failures and Northern Ireland’s unique circumstances, Northern Ireland consumers rely on Ofcom to set fair and transparent prices and to protect them against unreasonable practices. That is why Ofcom’s regulatory approach should be consumer-centric. Improving consumer outcomes should be at the heart of every regulatory decision.

Consumer Principles

9. The Consumer Council uses eight consumer principles (Figure 2) to understand how particular issues, policies and regulatory proposals are likely to affect consumers. We recommend that Ofcom adopt these eight principles as the foundation of its regulatory approach. This will help ensure consumer needs are being met in Northern Ireland, consequently leading to improved consumer outcomes.

Figure 2 Consumer Principles



Fairness

10. Ofcom’s proposed Regulatory Asset Base approach (in non-competitive areas) for promoting investment in fibre will allow cost recovery across a wider consumer base, i.e. consumers taking copper services as well as consumers taking fibre services. We note that this will provide BT with greater certainty to recover the cost of its investment in these areas as it would share the costs of its investment. However,

further information is needed to understand the impact this will have on the price consumers pay, and Ofcom should provide assurances that consumers in non-competitive areas will not be placed at a disadvantage compared to those in potentially competitive areas.

11. To remain competitive and improve productivity and profits, businesses are naturally driven to make efficiencies. Therefore, it is important that Ofcom ensures that companies with Significant Market Power (SMP) are similarly incentivised to make efficiencies that will improve services and prices for consumers. This must be reflected in Ofcom's regulatory approach.
12. The Consumer Council notes with interest the recent research published by Citizens Advice "Monopoly Money: How consumers overpaid by billions". It is important that consumers have confidence that the price they pay for their broadband service is value for money. We are happy to work with Ofcom to ensure that Northern Ireland consumers get a fair deal.

Access and Choice

13. The Consumer Council appreciates that the regulatory landscape needs to be sufficiently attractive for companies to encourage them to invest in particular areas and with newer technologies e.g. fibre, and that consumers will ultimately benefit from this. However, with 40,000 premises in Northern Ireland unable to access decent broadband, we believe that Ofcom should incentivise these companies to invest in harder to reach areas. We acknowledge that this may also require government investment. This is becoming increasingly urgent as we continue to move toward a more technological society.

Information

14. Openness and transparency is key for any effective regulatory approach. A SMP's plan for fibre deployment should be publicly available in non-competitive areas. To that end, information should be published in relation to the location of infrastructure so that consumers know which areas can and do receive fibre.

Approach to Quality of Service

15. The Consumer Council notes that Ofcom reports broad stakeholder satisfaction with current Quality of Service standards and therefore proposes to maintain the current level of standards, which include KPIs, Service Level Agreements, Service Level Guarantees and performance standards. However, Ofcom should keep this under review to ensure that consumers do not receive a diminution in service, particularly during the transition from copper to fibre.

Retirement of the Copper Network

16. The switchover process from Public Switched Telephone Network (PSTN) to Voice over Internet Protocol (VOIP) is a significant technological transformation impacting how consumers will be able to make and receive calls. The Consumer Council is aware that the switchover is being led by industry. Nonetheless the role of Ofcom is particularly important to protect the interests of consumers and therefore its regulatory approach should ensure that:

- vulnerable consumers receive the promised support from providers during the transition;
- telecoms consumers do not have to pay more for services/products because of this migration;
- there is a better understanding of the costs that consumers may incur as a result of changes other industries may have to make to accommodate the retirement of the PSTN lines, for example energy, finance and water consumers;
- there are technological solutions for consumers who do not, and will not, have decent broadband; and
- consumers will always have access to emergency services, particularly in the event of a power outage.

17. We are happy to discuss this response, or other issues arising from it, with Ofcom if required.

Yours sincerely

Ciara McKay

Policy Officer