

## Written evidence submitted by Three (DEB 15)

### Digital Economy Bill

Digital communications have become a fundamental part of the economic and social life of this country. It is critical that these markets work well for all UK citizens and consumers. Unfortunately, longstanding structural problems in the market have inhibited its competitiveness, working against consumers and limiting investment in both coverage and capacity.

The Government has brought forward long delayed reforms to the communications market in the **Digital Economy Bill**. These measures will help tackle a number of key issues and create a more vibrant market that delivers for consumers. It is vital that these necessary reforms are not derailed by vested interests to the detriment of consumers, competition and the UK's digital economy. Key measures are:

#### Appeals: Empowering Ofcom (Section 74).

Ofcom, the UK's communications regulator, has struggled to bring forward effective and timely reforms needed to make the communications market work better for consumers. This is due to an outdated process through which incumbent companies can legally challenge its decisions.

Unlike any other UK regulator, Ofcom has a complex 'on the merits' appeal standard, as opposed to judicial review. This makes it easy for incumbents to legally challenge Ofcom's decisions, slowing down and even preventing key and urgently needed reforms from being made. For example, mobile consumers had to wait seven years for regulation to be introduced that ensured Freephone 0800 calls are free from mobile numbers and, after ten years, they are still waiting for the introduction of a simple switching process.

Section 74 of the Bill enables Ofcom to perform its functions more effectively and would also bring substantial cost benefits to consumers. Independent analysis carried out by Economic Insight using Government data estimates a net benefit of £238 million – largely the result of faster appeals leading to more reform, lower prices and more competitive offerings.

Ofcom must be brought in line with other UK regulators by changing their standard of legal challenge to Judicial Review. Section 74 will empower them to make bold, timely and effective decisions, to the benefit of consumers.

#### Simpler Mobile Switching (Section 2).

A simple switching process is the cornerstone of a competitive market and enabling consumers to choose the tariff or service that best suits their needs. uSwitch has found that consumers who do switch save £100 a year. Yet the switching regime in mobile is currently working against the interests of consumers; inhibiting switching, creating significant consumer harm and constraining competition.

Unlike other core services, such as banking and energy, mobile customers have to contact their existing provider before they can switch. Known as a 'Losing Provider Led' (LPL) system, it is not only an inconvenience, but it is a cause of consumer harm. This is because under this system the Losing Provider has no incentive to help the customer manage the switch.

Ofcom has found that 22% of switchers lose mobile service during the switching process, often for over a day, and 32% go through a period of having to pay both providers.<sup>1</sup> uSwitch has estimated that consumers spend over 2 million hours a year trying to leave networks.

Ofcom is clear that changing to a 'Gaining Provider Led' (GPL) system, where the new provider arranges the switch on behalf of the customer, will make the market more competitive, drive down prices and ease the process for consumers. By putting the service provider the customer wishes to move to in charge of the

<sup>1</sup> Ofcom, *Consumer Switching Proposals to reform switching of mobile communications services*, 2016.

switch, they are incentivised to ensure the switch runs smoothly, ultimately benefiting the customer. Indeed, Ofcom has estimated a total consumer benefit of £46 million over ten years.

Despite the compelling case to move to a GPL system, progress has been slow. This is partly due to incumbent operators who benefit from the inertia in the market and therefore have legally challenged attempts at reforms. This is why legislating in Section 2 to clarify Ofcom's power to implement such reforms is so crucial; enabling them to introduce simpler switching for UK consumers.

Ofcom must be empowered through Section 2 to introduce Gaining Provider switching for mobile consumers, to encourage more consumers to switch and to tackle the significant consumer harms caused by the current process.

## Improving the reliability of mobile coverage (Part 2).

To ensure high quality mobile services across the UK, it is important that operators are able to upgrade and repair sites quickly, and roll-out their network in a cost-efficient way. This is why Three supports the measures in Part 2 of the Digital Economy Bill to reform the Electronic Communications Code. The Code will enable mobile operators to provide a more reliable service in the following ways:

- **Upgrading Sites** - To meet the UK's growing demand for mobile data, existing infrastructure needs to be upgraded. However the current Code inhibits investment in upgrades, as mobile operators have to renegotiate rental terms and rights when they deploy new technologies, such as 4G. It is not uncommon for increases of 50% in the annual payment to be demanded in return for rights to upgrade technology, even when this has no adverse visual impact.

In order to meet consumers' coverage expectations, operators must be able to share and upgrade infrastructure with other mobile operators. The reforms in the Bill will give operators an automatic right to upgrade and share apparatus where there is minimal adverse visual impact. This will enable operators to roll out new technology like 4G quickly and encourage site sharing, thereby improving coverage and reducing costs for operators and consumers.

- **Repairing Faults:** Customers expect faults on their network to be repaired quickly. A YouGov poll recently found that 79% of people expect network outages to be repaired within four hours. To do this, operators need to gain access to the affected site. Yet on average it currently takes more than 48 hours to access sites, and can sometimes take as long as 10 days.

The reforms in the Bill will provide for a speedier dispute resolution process. This will benefit all parties, as disputes will be resolved more swiftly. The new Code will also contain provisions that allow fast interim access to sites, to ensure even if there is an ongoing dispute between a landlord and mobile operator, customers do not suffer through loss of coverage.

Electronic Communications Code reform must enable operators to offer a more reliable service, by allowing operators automatic rights to upgrade and share sites, as well as ensuring disputes are resolved swiftly in the event of landowners unfairly blocking access to sites.

October 2016