

CJ Kimber, CMA Chairman
Conference Speech, 1245 24th February – Embargoed until 1300 24th February

My Lords, ladies and gentlemen

We live in interesting times.

- Last week the Council of Ministers met in Prague to discuss the future structure of telecoms in the EU - unfortunately, with uncertain results.
- Around the same time, BT's share price fell to an historic low.
- The growth of broadband take-up has slumped to a relative trickle.
- Some mobile operators are still cautious about any attempt to refarm 2G spectrum.
- The broadcasting sector is in disarray.

Who would be a regulator at such a time? Indeed, who would be a politician at such a time? Who can lead the UK's businesses – so dependent on digital network investment – in these 'interesting times' ?

But at challenging moments like this we rise to the occasion. We produce the right people - and the right solutions - for intractable problems. To quote Ed Richards : "Government in this area works in cycles. This is the point in the cycle where you need some urgency - some vision - and some decision-making from government."

The interim report on Digital Britain is an example of this process at work.

- We have a Minister who is a real expert at his business.
- We have a series of visionary proposals.
- We have some new thinking – coming from his office.

And we have powerful examples from other European countries to demonstrate the commercial and societal imperatives of investing in what President Obama called: *"the digital lines that feed our commerce and bind us together"*

OK – I know that Lord Carter's interim report hasn't been universally welcomed but let us not forget that an interim report is, after all, an interim report. We all have a chance to inject our views to ensure that the final version is best-of-breed. The report has raised as many questions as it's provided answers. We are, at best, uncertain about the target of "up to" 2Mhz. We would like to see a commitment to national roaming for basic mobile voice and data calls. But, at least, we think it reflects what is - or was 4 weeks ago - politically possible. Getting all government departments to buy in to that draft was a major achievement in its own right. It's a step in the right direction and we also applaud the revision of government policy on spectrum auctions.

CMA will certainly be contributing to the final version of Digital Britain. We will be right up there with the pack – playing our part in deriving and in driving the new policies that the UK's businesses and citizens need for the next decade.

We begin that process today as we launch our first-ever Manifesto. We bring forward proposals for changes that will benefit British enterprise and, through that, the national economy.

As befits our status as a national charity this is not a politically partisan document. Its purpose is to draw the attention of legislators, of all varieties, to what needs to be done to enable British businesses to be at the forefront of international competition. Our conference this year addresses each of our manifesto's five fundamentals.

First is the need to address a significant failure in our national ICT policy making. The structure of UK government is unavoidably complex but it fails to acknowledge that ICT, like finance, is all important and all pervasive - again – *“the digital lines that feed our commerce and bind us together”*.

- The lack of any central remit for ICT policy has an impact that might be compared to the lack of centralised financial authority in the Treasury,
- or centralised Energy policy,
- or a focus for environmental issues,
- or indeed any other component part of the UK’s essential infrastructure.

ICT policy-making is spread between many departments. Worse than that – it lacks continuity and stability in ministerial appointments. Lord Carter of Barnes has now been appointed as our first-ever Communications Minister. Excellent - but he reports to two masters. Responsibility for broadcasting and content is centred on DCMS in Trafagar Square. The technical and economic aspects of telecommunications are at the far end of Whitehall in BERR. The physical distance – a mere 10 minute brisk walk – stretches across a gulf of non-convergent confusion.

What’s more, we sense that activities that really ought to be carried out in government have been outsourced to the regulator. And at the same time the regulator is becoming visibly under-resourced and over-stretched. Governments deal in policy and regulators in policing that policy. While the resources of Ofcom are diverted into policy-making and, we now hear, into regulating the postal services, there is an inevitable vacuum at the top. Further distortion is introduced when we remember that, as an independent regulator, Ofcom isn’t responsible to government at all, but to Parliament.

Ladies and gentlemen, we have an industry that is visibly converging at high speed.

- It demands a high-speed, converged approach to policy-making at the top reaches of government,
- It demands a properly resourced, fully independent regulator.
- It demands a clear division of responsibilities between these two.

Other countries have already got such a Ministry - in particular Japan. Is it merely a coincidence that this focus has driven Japan towards a fully-fibred access network ?

Second in our Manifesto’s fundamentals is the urgent need for a new Comms Act. About two-thirds of the revenues received by the telecoms industry comes from public and private enterprise. Despite unceasing pressure from CMA over the last 5 years the political and regulatory focus is still on protection of the “citizen-consumer” rather than recognising, or even understanding, the needs of the business user. For sure Ofcom is belatedly recognising the problem and is trying, albeit far too slowly, to do something about it. But the culprit, - the Communications Act 2003 – doesn’t allow Ofcom much leeway.

The problem is that the Act fails to recognise that there are significant differences between Granny Jones and UKplc. The needs of large businesses were specifically excluded from the present Act because politicians believed that big business was well able to look after itself and that the primary duty of the legislation was to protect the citizen-consumer.

Events over the past five years have shown that this just isn’t the case. There are many very real differences between the needs of domestic and business consumers, and the concerted lobbying power of the suppliers far outweighs anything that their business customers can bring to bear. We need fair recognition of the

interdependencies between citizens and the needs of commerce – again – *“the digital lines that feed our commerce and bind us together”*

That is why the Act has failed UKplc. Everyone now seems to accept that a new Act is being prepared. It is urgently overdue and should put a legal duty on Ofcom to address the needs of enterprise users in its consultations and decisions.

The third of our Manifesto fundamentals is the need of UKplc for next generation broadband access networks to reach every part of the country. Five years ago, Lord Currie, in his speech to this same conference, didn't pull any punches on this issue. I quote:

“as a Nation we have set ourselves a target for the roll-out of ‘broadband’ without having the physical infrastructure for a true broadband access network in place. We can stretch the POTS to being a mid-band network. And DSL is that ‘stretch’ on copper wire. But true broadband it ain't. DSL at 512k is a convenience product. A useful help to individuals and SMEs. But it is not the major, life-changing experience that broadband should be.”

Lord Currie also robustly resisted any wishful thinking for state intervention. He called for progress towards 10Megs through competition. He said that we need to focus our vision on outcomes and then work back from there to market incentives and the art of the possible.

Successive reports from the Broadband Stakeholders Group, from Francesco Caio, and now, at long last, from Digital Britain, have all echoed Lord Currie's thoughts. We can dither no longer. We must do something about it. In anticipation, perhaps, of a new and more-dynamic approach from the top, Ofcom has announced that BT will be allowed to make a reasonable return on investment in VDSL. Ofcom has also said that it is tearing up – sorry – adjusting – its previous dogmatic dedication to free-market auctions for spectrum – something that CMA always claimed would end in tears. Efficient market theory seems to be increasingly recognised as a deficient market theory.

But universal broadband access isn't enough by itself to guarantee our future. Unless effective policies are in place to prevent anti-competitive restrictions on the use of the new networks, we could face a return to a monopoly, in both infrastructure and services.

Our fourth fundamental is in the Manifesto because we're thoroughly fed up with the inadequate coverage provided by the existing GSM networks. And 3G coverage is even worse. We recognise that recovery and reallocation of the 2G spectrum to 3G services is going ahead, but we are not convinced that national coverage will be improved.

Last week Ofcom announced that the 3G operators have all met their coverage requirements imposed as part of the auction process. Job done? I don't think so. The implication is a bit like saying we have 100% broadband - so not a not-spot in sight?

We are demanding roaming of basic services between national operators. We challenge Ofcom's allegation that this will reduce competition. If Digital Britain recommendations are to mean anything in practice, this is the minimum condition that must be imposed on the MNOs who, on the face of it, enjoy a sort of collective Significant Market Power in the UK market

And, for our fifth and final fundamental, we seek reassurance from government that it will, over the next five years, actively encourage the European Commission in its pursuit of a clear roadmap, complete with milestones and targets, towards a single market in ICT goods and services across all 27 Member States.

So, let me summarise. CMA is asking politicians to:

- Address the need for converged, ICT policy making at the top reaches of government;
- Bring forward new or revised legislation that places a responsibility on the regulator to address the specific needs of UK plc;
- Adopt, without further delay, a national policy aimed at the provision of a universal broadband access infrastructure to which all service providers have open access unconstrained by technical architectures;
- Ensure real, effective and sustainable competition in the supply of telecommunications goods and services;
- Promote a mobile communications network that provides better than 95% geographical coverage and allows roaming of basic services between national operators.
- Pursue a Single Market in telecommunication goods and services across and within all 27 Member States of the European Union, based on a harmonised and rationalised system of sector-specific regulation and competition law.

Ladies and gentlemen, there is far more in our Manifesto than I've been able to announce today. I hope you'll pick up a copy during the break – I look forward to your comments. Even more important, as you listen, and I hope applaud, the speakers gathered here for our conference, you will pick up on these big themes and fresh ideas and ask yourselves this basic question: "what will I or my business do to help CMA pursue these goals and secure greater infrastructure investment in *"the digital lines that feed our commerce and bind us together"*?"

We ask of government only that they do not, in these torrid times, inadvertently let go of something that they might not yet have fully grasped.

My lords, ladies and gentlemen. Last year, at this Conference, we announced CMA's forthcoming 50th anniversary. I concluded by saying "Long may we continue". I echo that sentiment today, but with the added wish that a new drive and determination from government and the regulator will serve us all well though the economic crisis and in the years to come.

We - and I hope all of you - will play a major part in these endeavours.