

Hard Brexit to Change Regulatory Landscape

- UK Brexit objectives become clearer and look like a complete break
- Government takes some action to promote fibre networks
- Potential long term effects on communications policy and regulation becoming clearer

The UK looks likely to be heading towards a hard Brexit, in which it severs all formal ties with the EU completely, according to the Prime Minister's speech on January 17th. Such a break could have profound long term effects on sector policy and regulation in Britain, offering the government more scope for direct involvement, for good or ill, if it so wishes. In September 2016, SPC Network published a [paper](#) setting out our thoughts on what Brexit might mean for various aspects of regulation in the electronic communications market. In this issue of Hexagon, we examine how events since September, in particular the PM's speech, might affect our Brexit scenarios.

When Mrs May became Prime Minister, she told us two things about Brexit: first that "Brexit means Brexit" and secondly that she would not give a running commentary. We also found out at that time that Mrs May sees government as a positive force in society and the markets and that her government would be more involved in industry than those of her predecessors. What we did not know then was quite how the government would be involved.

In the light of this little knowledge, SPC Network developed four scenarios for Brexit and industrial strategy, which we placed on a simple two by two matrix shown below.

1 Soft Brexit/Non-intervention <ul style="list-style-type: none">• Business as usual option• Least change• Little influence on policy	2 Soft Brexit/Interventionist <ul style="list-style-type: none">• Maintains EU regulation• Potential for disputes with EU if interventions breaches rules
3 Hard Brexit/Non-intervention <ul style="list-style-type: none">• Potentially most "Thatcherite" outcome• Removes EU regulations and lets industry get on with it	4 Hard Brexit/Interventionist <ul style="list-style-type: none">• Most diverged from today• Opportunity for government to drive significant changes• What might they be?

In the four months since we published our paper, some clarity has begun to emerge about which of our scenarios seems most likely.

Brexit means...

On 17th January, Mrs May gave her long awaited speech on just what Brexit really means. We now know that it does not mean being partly in and partly out of the EU. Rather it means severing formal ties completely: the UK will not be part of the Single Market and will

not be subject to ruling from the European Court of Justice (ECJ). She held out some possibility of being an “associate member” of the customs union and indicated that leaving the EU would be a process not an event, perhaps taking place over several years.

The Brexit we can expect, therefore, will be towards the “hard” end, even if not immediate. Those who hoped that the UK would be part of the European Free Trade Association (EFTA) and so be part of the single market and thus subject to EU regulations will, no doubt, be disappointed.

*It looks likely that Britain will follow a hard
Brexit/interventionist direction.*

From the day the UK leaves the EU, nothing will change immediately as the government has said that existing laws that originate in Brussels will pass into UK law. However, once out of the EU, the UK government will be able to repeal

and change those laws with impunity should it wish to do so.

As far as the SPC Network Brexit Matrix is concerned, the direction set by the government is towards the lower half, even if the move will only be gradual as laws and regulations diverge from the EU model.

Industrial Strategy

The government’s more active involvement in the digital economy was set out, to some extent by the Chancellor of the Exchequer in his [Autumn Statement](#). He told us that he wants the UK to be “world leader in 5G” and that this would mean a full fibre network: “a step-change in speed, security and reliability”. The government will make available one billion pounds (€1.14 billion, \$1.20 billion) to act as a catalyst for “private investment in fibre networks and to support 5G trials”. He also announced 100% business rate relief for five years for investment in new fibre, a seemingly mundane announcement but one with the potential to have a powerful effect on the

business case for fibre. Finally, he announced that he had asked the National Infrastructure Commission to make recommendations for the future infrastructure needs of the UK. [Their findings in regarding 5G were published in December 2016.](#)

At the regulatory level, in the past few months, Ofcom has become more bullish about its desire to see the legal separation of BT and has written to the European Commission to say that it will be consulting further on the matter before notifying the Commission of its plans.

*We must avoid overstating short term and
underestimating long term effects*

These words and actions, if taken at face value, suggest that the government is moving to the bottom right hand corner of our Brexit Matrix: a hard Brexit with a strategically interventionist government.



There is often a tendency to overstate short term and understate the long term effects of policy changes. We do not, therefore, expect immediate changes on un-EU Day, whenever that may be. However, if this government and its successors follow the path set out in the last few months, we may well see substantial divergence from our current direction in the years that follow. Those long term effects could be profound.

Implications for Regulation

One thing that will not change as a result of Brexit will be the fundamental economics of networks or competition policy. Some markets will remain subject to Significant Market Power (SMP) and firms that enjoy such a position will need to be regulated to protect consumers and/or encourage competitive entry.

In our September paper we explored the possible effects of our four scenarios on three areas of policy: infrastructure & investment, inclusion & universality, and trust & security.

For each of these policy areas we examined possible effects on specific regulations. In the infrastructure and investment area we looked at state aid, SMP regulation, the Access to Infrastructure Directive and the vertical structure of BT.

Outside the EU and State Aid rules, the UK government would be free to invest as it pleases in a state funded network. We do not see the UK creating a national broadband network funded by the state or re-nationalising BT, after all it still has a rather large debt mountain. However, if the government loses more patience with, what it sees as, the industry's slow pace towards full fibre, it may seek to become directly involved in investment decisions. Some people might support that, others might say the government could do that anyway under the State Aid rules.

The UK could also move away from, or at least amend, the approach taken by the EU to SMP regulation. There could be opportunities to move away from the silos imposed by recommended relevant markets and to vary

the length of time between market reviews. A more strategic, long term approach could be adopted especially in infrastructure markets.

Finally, the government could involve itself, with or without justification, in the structure of BT. It was not so long ago that the final decision on mergers and acquisitions was handed from the Secretary of State to the Competition Commission, the forerunner of the Competition and Markets Authority. So what is to stop the government becoming more involved in decisions about industry structure in future without an EU norm to comply with? Indeed, could the government take back to itself some of the powers currently granted to Ofcom under the EU regulatory framework?

Mrs May's speech has not answered all questions and the industry may still have some deep thinking to do about how to respond to the long term effects. But it does now seem clearer that it will be a "hard Brexit" and this government, at least, will be more involved in industrial strategy.

